

**OPINION
51-74**

June 29, 1951 (OPINION)

HIGHWAYS

RE: Axle Load Law

This will acknowledge receipt of your letter of June 25 in which you state that a question has arisen as to the interpretation to be placed upon some of the language contained in Senate Bill 117 of the 1951 Legislative Assembly as it amends subsection 3 of section 39-1204 of the 1943 Revised Code as amended by chapter 264 of the 1947 Session Laws.

You state that the specific language which it is alleged is incapable of interpretation and therefore unworkable, reads as follows:

All axles shall have adequate acting brakes and all tandem axles must be so constructed and installed so that a vertical movement of either axle in an amount of not to exceed 3 inches will not alter the load imposed on the axle by more than 1500 pounds."

In order to ascertain the consequences of the language above quoted from Senate Bill 117 of the 1951 Legislative Assembly the matter was submitted to competent engineers. It was the conclusion of some very competent design engineers that the above quoted language would result in making illegal all present tandems whether tractors or trailers. It was further the conclusion of the engineers that the physical facts involved were such that there was no way by which the language of the above quoted could be applied if the vehicle had come to rest.

After the matter had been submitted to the engineers, it was deemed necessary to put the language of the statute above quoted to a practical test. That test demonstrated that if the axle of the tandems were weighed separately, at rest, the load imposed on an axle varied more in each instance than 1500 pounds, resulting in the conclusion that if the statute was applied it would be impossible for any trailer or tandem operator to come within the terms of the law.

This matter was fully investigated and the law has been briefed thereon and from such brief it would appear that when an act is so imperfect as to be incapable of construction and interpretation, it is in effect unworkable and may be so declared.

On the basis of the brief submitted by your office in this connection it would appear that the language above quoted, both on the basis of theoretical facts and actual tests cannot be put into effect without confiscating the property of truck and trailer owners.

It would appear further that it never could have been, and was not the legislative intent, to insert language into the law which would have this result.

Since the language quoted does not affect the balance of the statute it is my opinion that the rest of the statute may remain in full force and effect and is operative regardless of the fact that the above quoted language cannot be applied.

Upon due consideration of the brief that was submitted, and the law therein contained, and the fact that the language of the statute cannot be applied on the basis of the evident susceptible intent of the Legislature, it is the opinion of this office that the language quoted is inoperative and unworkable. It is not of accurate interpretation, and consequently this portion of the statute is inoperative and void.

ELMO T. CHRISTIANSON

Attorney General