

STATE HIGHWAY COMMISSION: Regulations limiting loads  
required to be filed in office  
of Secretary of State.

July 17, 1949

7/26/49

Hon. John M. Cave  
Prosecuting Attorney  
Callaway County  
Fulton, Missouri



Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Your opinion is hereby requested upon the following set of facts: Pursuant to authority contained in Section 8407, Revised Statutes of Missouri 1939, the State Highway Commission imposed a load limit of not to exceed 400 pounds per inch width of tire upon a state highway in Callaway County, Missouri. In view of Section 31 of Article 1, Section 16 of Article 4, and Section 2 of Schedule, all in the Constitution of Missouri of 1945, is such action of the State Highway Commission in violation of the Constitution of the State of Missouri."

Section 8407, R.S. Mo. 1939, provides:

"Whenever by reason of thawing of frost, or rains, or due to new construction the roads are in a soft condition, the maximum weights on all vehicles mentioned in the preceding section, including trucks, tractors, trailers and semi-trailers and other vehicles therein mentioned may be limited by the state highway commission to such an amount and in such manner as will preserve the road under such conditions; and said commission shall give due

notice thereof by posting notices at convenient and public places along said road or roads or parts thereof which are subject to said regulations and reduction of weights."

Section 8410, R. S. Mo. 1939, provides:

"Any person, firm, corporation, partnership or association violating any of the provisions of sections 8405 to 8409, inclusive, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than five dollars (\$5.00) nor more than five hundred dollars (\$500.00) or by imprisonment in a county jail for a term of not exceeding twelve (12) months, or by both such fine and imprisonment."

Section 31 of Article I of the Constitution of Missouri, 1945, to which you refer, provides:

"That no law shall delegate to any commission, bureau, board or other administrative agency authority to make any rule fixing a fine or imprisonment as punishment for its violation."

We are of the opinion that this provision was not intended to apply in the present situation where criminal punishment has been prescribed by the Legislature and is imposed by the courts for violation of a regulation which the Legislature has authorized an administrative agency to make. We feel that the section is intended to apply to a situation in which the administrative agency might make the rule or regulation and also provide by its own rule a fine or imprisonment as punishment for violation of the rule or regulation. This view is supported by the discussion of the provision in the Constitutional Convention when the question was asked of Mr. Marr, Chairman of the Committee presenting the provision: "Well, do you have in mind regulations which they may write under legislative authority where the Legislature itself has provided the penalty?" To this question Mr. Marr replied: "No, this doesn't strike that at all. There the Legislature provides the fine and imprisonment for whatever violation there is." (Tr. Debates of Constitutional Convention, page 1370.)

The second constitutional provision, Section 16 of Article IV of the Constitution of Missouri, 1945, referred to by you, provides:

"All rules and regulations of any board or other administrative agency of the executive department, except those relating to its organization and internal management, shall take effect not less than ten days after the filing thereof in the office of the secretary of state."

The State Highway Commission is a "board or other administrative agency of the executive department." See Section 12 of Article IV of the Constitution of Missouri, 1945.

The constitutional provision to which you have referred makes no exception regarding rules and regulations of the Highway Commission. No exception is made, applying to rules and regulations, notice of which is required to be given in a particular way, by the statutory provision authorizing the promulgation of the regulation. Nor is any exception found in the legislative enactment under this constitutional provision. Section 2 of an act of the 63rd General Assembly, found in Laws of Missouri, 1945, page 1504, provides:

"(a) Each state agency shall file forthwith in the office of the Secretary of State a certified copy of each rule adopted by it, including all rules now in effect. The Secretary of State shall keep a permanent register of such rules open to public inspection.

"(b) Each rule hereafter adopted shall become effective ten days after such filing unless a later date is required by statute or specified in the rule."

Section 1(b) of that act defines the term "rule" as follows:

"(b) 'Rule' includes every regulation, standard, or statement of policy or interpretation of general application and future effect, including the amendment or repeal thereof, adopted by an agency, whether with or without prior hearing, to implement or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include regulations concerning only the internal management of

the agency and not directly affecting the legal rights or privileges of, or procedures available to, the public."

A regulation of the State Highway Commission adopted pursuant to Section 8407, supra, would seem to fall within that definition. Inasmuch as there is no exception applicable to such regulation, we are of the opinion that, under the constitutional and statutory provisions above referred to, such regulation would not become effective until ten days after filing in the office of the Secretary of State and that, in the absence of such filing, there would be no basis for any criminal prosecution for its violation.

As for the third constitutional provision to which you have referred, Section 2 of the Schedule, provides, in part:

" \* \* \* All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

In view of our interpretation of Section 31 of Article I, as set out above, we are of the opinion that Section 8407, supra, is not inconsistent with that constitutional provision and is not repealed thereby. Nor do we see any conflict between Section 16 of Article IV and Section 8407. Section 16 of Article IV does impose an additional requirement to be met in order to make effective any rule promulgated under Section 8407. However, there is no such inconsistency as would cause the repeal of Section 8407 under Section 2 of the Schedule.

#### Conclusion.

Therefore, this department is of the opinion that a regulation adopted by the State Highway Commission pursuant to Section 8407, R. S. Mo. 1939, relating to the load limit on state highways, must, in accordance with Section 16 of Article IV of the Constitution of Missouri, 1945, and Section 2 of an act of the 63rd General Assembly, Laws of 1945, page 1504, be filed with the Secretary of State, and that such regulation would become effective ten days after such filing; that no prosecution may be had under Section 8410, R. S. Mo. 1939, for violation of such regulation unless the regulation has been filed in the office of the Secretary of State; that Section 8407, R. S. Mo. 1939, authorizing

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the State Highway Commission to promulgate such regulations, is not inconsistent with either Section 31 of Article I or Section 16 of Article IV of the Constitution of Missouri, 1945, and therefore was not repealed by Section 2 of the Schedule to the Constitution of 1945.

Respectfully submitted,

ROBERT R. WELBORN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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