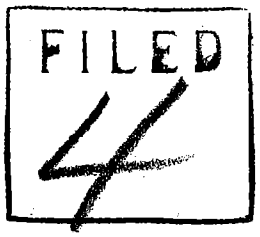
SPEED LIMIT:
MOTOR VEHICLES:
MUNICIPAL SPEED LIMIT:

1. The speed limit on an undivided Federal highway traveling through a municipality that has properly enacted a 30 miles per hour speed limit is 30 miles per hour, and the violation of this speed limit is a municipal offense. 2. The driver of any motor vehicle other than an emergency vehicle who drives in excess of 70 miles per hour by day or 65 miles per hour by night on an undivided Federal highway through a municipal area which has a speed ordinance is guilty of a misdemeanor under state law. 3. The operation of a motor vehicle at speeds of up to the maximum allowed by state law are not always authorized through a municipal area under state law when the situation requires a lower speed for careful and prudent operation in the highest degree of care.

September 21, 1959



Honorable Henry Balkenbush
Prosecuting Attorney
Osage County
Linn, Missouri

Dear Sir:

You recently asked for an opinion as follows:

> "The undersigned desires to have the benefit and advice of the learning and experience of your staff in interpreting Section 304-10 Revised Statutes of Missouri supplement 1957, particularly subsection 3.
>
> "In any city or town, village where the speed limit is not set by local authority, no vehicle shall be operated at a speed of excess of 45, miles per hour.
>
> "This is my question, does this section intend to adopt or does it by implication the speed limit of the city of Linn, Missouri, which has by ordinance been at 30 miles per hour for more than 20 years and is posted by signs of the State highway department. If it does not, then in that event leave the highway traversing through the City of Linn wholly without any speed regulation other than that set out in subsection 1, of Section 304-010, or does the speed limit of 45 miles per hour apply, or is there any speed limit at all."

We take your question to be: What is the speed limit on an undivided Federal highway running through a municipality where the municipal corporation has by ordinance decreed a

speed limit of 30 miles per hour?

In order to properly answer your request, it is necessary to construe Section 304.010, RSMo Cum. Supp. 1957. The first four numbered paragraphs read as follows:

> "1. Every person operating a motor vehicle on the highways of this state shall drive the same in a careful and prudent manner, and shall exercise the highest degree of care, and at a rate of speed so as not to endanger the property of another or the life or limb of any person.
>
> "2. Except as otherwise provided by law no vehicle shall be operated in excess of
>
> (1) Seventy miles per hour on any divided federal highway or, when lighted lamps are not required by law, on any other federal highway;
>
> (2) Sixty-five miles per hour on any other road or highway in the state when lighted lamps are not required by law;
>
> (3) Sixty-five miles per hour on any undivided federal highway when lighted lamps are required by law;
>
> (4) Sixty miles per hour on any other road or highway in the state when lighted lamps are required by law.
>
> "3. In any city, town or village where the speed limit is not set by local authority, no vehicle shall be operated at a speed in excess of forty-five miles per hour. All ordinances of cities, towns or villages, regulating the speed of vehicles on major state highways shall be designed to expedite the flow of traffic thereon to the extent consistent with public safety.
>
> "4. The limits on speeds set by this section do not apply to the operation of any emergency vehicle as defined in section 304.022. Nothing in subsections 2 and 3 shall make the speeds prescribed therein lawful in a situation that requires lower speed for compliance with the basic rule declared in subsection 1."

This is a penal statute and, therefore, it is generally conceded under the law to be strictly construed against the state. It is not necessary, however, to overlook the legislative intent in the construction of criminal statutes. Our court said in the case of State v. Ballard, 294 S.W. 2d 666, 669 [1-4]:

> "[1-4] Without losing sight of the established rule that criminal statutes must be strictly construed, we must look to the end sought to be accomplished, or evil sought to be suppressed in interpreting the intention of the legislature in the enactment of the statute under consideration. The rule of strict construction is not violated by according the language used by the legislature its full meaning in support of the policy and aim of the enactment. The rule does not compel a narrow or forced construction, out of harmony with the manifest purpose and intent of the statute or one which would exclude cases from it that are obviously within its provisions."

The above is a St. Louis Court of Appeals decision.

The Federal Court of Appeals in the case of Cofer v. United States, 256 F.2d 221, 223 [6,7] said in part:

> "'* * * even penal provisions must be "given their fair meaning in accord with the evident intent of Congress."'"

In the light of the above-cited authority we now view your question.

Paragraph three of Section 304.010, supra, prescribes a speed limit of 45 miles per hour in any town, city, or village, where the speed limit is not set by local authority. Under the facts given us, the speed limit through the town of Linn is set at 30 miles per hour by local authority and, therefore, the 45 miles per hour provision above referred to is not applicable. Any operation in excess of 30 miles per hour would be in violation of the municipal ordinance. A violation of the municipal ordinance, however, is not a crime in the usual sense of the word. A violation of municipal ordinance is handled by the municipal court, not by the magistrate court. This fact does not prevent the filing in magistrate court of a state charge if one should properly arise out of the facts surrounding the municipal charge, and all of the other provisions in the statutes

prescribing the method of operation of a motor vehicle, such as are found and contained in the general rules of the road, apply in cities. The fact that a municipal charge is filed does not preclude the state from filing a proper state charge. In State v. Garner, 226 S.W. 2d 604, 609 [12], the court says:

> "[12] The 9th assignment is that appellant in this State prosecution was twice put in jeopardy on the same facts, because he had also been prosecuted on them in the City courts. Under the general rule here and elsewhere this does not constitute double jeopardy, because the two jurisdictions are different, and a prosecution under a municipal ordinance is generically civil and not criminal."

We feel that your request also raises the question as to the applicability of paragraph two, Section 304.010, supra, which sets forth state speed limits on operation of a motor vehicle as to the town of Linn. The state speed limit was obviously designed to prevent the operation of motor vehicles on the highways in this state at over the prescribed maximum speeds. It was designed to set a limit on the speed the general traveling public may go regardless of whether or not good road conditions might conceivably make a higher rate of speed proper for the safe operation of a motor vehicle. In other words, we feel that the legislature intended the speed limits set forth in paragraph two of Section 304.010, supra, as a maximum in all instances for the general traveling public. You will note that the first part of paragraph two says, "Except as otherwise provided by law no vehicle shall be operated in excess of". The only provision for operation at a higher rate than the rate prescribed is found in paragraph four of Section 304.010 which exempts emergency vehicles from the speed limit.

It is our view that the legislature intended that no vehicle should be operated at a speed of over 70 miles per hour on undivided Federal highways in this state in the daytime or over 65 miles per hour at night unless these vehicles are emergency vehicles as defined in the law.

We feel that even though the 45 mile an hour provision does not apply in towns and villages where the speed limit is set by municipal ordinance, the 70 miles per hour regulation above referred to does apply as a matter of state law. It seems

to us that the legislators intended this section to be an absolute maximum in every case except for emergency vehicles. Therefore, a person who operates in excess of 70 miles per hour in the daytime on an undivided Federal highway through a municipality could properly be charged with speeding under the terms of Section 304.010, supra. Such a person could also be charged with the municipal violation for operation in excess of the municipal speed regulation.

In passing, we call your attention to paragraphs one and four of Section 304.010. These paragraphs make it clear that speeds up to the maximum are not always authorized if a situation requires that the vehicle be operated at a lower speed for careful and prudent operation with the highest degree of care.

CONCLUSION

It is the opinion of this office that:

1. The speed limit on an undivided Federal highway traveling through a municipality that has properly enacted a 30 miles per hour speed limit is 30 miles per hour, and the violation of this speed limit is a municipal offense.

2. The driver of any motor vehicle other than an emergency vehicle who drives in excess of 70 miles per hour by day or 65 miles per hour by night on an undivided Federal highway through a municipal area which has a speed ordinance is guilty of a misdemeanor under state law.

3. The operation of a motor vehicle at speeds of up to the maximum allowed by state law are not always authorized through a municipal area under state law when the situation requires a lower speed for careful and prudent operation in the highest degree of care.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James E. Conway.

Yours very truly,

JOHN M. DALTON
Attorney General

JEC:mc