

Answer by letter-Wood

September 24, 1969

OPINION LETTER NO. 315



Honorable John J. Johnson
State Senator, District 15
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Johnson:

By letter of June 23, 1969, you inquired as to the constitutionality of House Amendment No. 1 to Senate Bill No. 180 of the Seventy-Fifth General Assembly.

Senate Bill No. 180 repeals and re-enacts §§304.018 and 304.021, RSMo 1959, which sections generally relate to regulation of traffic. House Amendment No. 1 which was adopted provides as follows:

"7. The state highway commission or local authorities with respect to roads under their respective jurisdictions, on any section where construction or major maintenance operations are being effected, may fix a speed limit in such areas by posting of appropriate signs, and the operation of a motor vehicle in excess of such speed limit in the area so posted shall be deemed prima facie evidence of careless and imprudent driving and a violation of section 304.010, RSMo."

We understand that the question is whether there is an unconstitutional delegation of legislative power.

It has been held that the highways are subject to reasonable regulation and supervision by the State in the exercise of its police power and that the State may delegate this power (State ex rel. Audrain County v. City of Mexico, 197 S.W.2d 301, 303 (Mo. 1946)). For example, a delegation by the legislature to the State Public

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Service Commission of the power to prescribe safety regulations applicable to common carriers and making the violation of such regulations a misdemeanor is proper (State v. Dixon, 73 S.W.2d 385 (Mo. en banc 1934)). Although the police power in regulating motor vehicles may be delegated to local governing bodies, such local governing bodies may not in turn delegate this power to its officers or employees (Cavanaugh v. Gerk, 280 S.W. 51 (Mo. en banc 1926); Automobile Club of Missouri v. City of St. Louis, 334 S.W.2d 355 (Mo. 1960)).

House Amendment No. 1 to Senate Bill No. 180 appears to be a proper delegation of police power in regard to construction site traffic speed control provided that the State Highway Commission or the local governing body itself exercises this power. In other words, if the House Amendment were interpreted so that officers, agents or employees of the highway commission, county courts, city councils, road district commissions or township boards could themselves establish speed limits, we believe this would be an impermissible delegation of legislative police power. But if the House Amendment is interpreted and applied so that the highway commission or the local governing body itself establishes the maximum speed limit in the construction project area, then we believe the law is constitutional.

Yours very truly,

JOHN C. DANFORTH
Attorney General