

FILE

Subject

*State Boards
Highway Commission*

Copy to



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

August 5, 1974

Opinion No. 74- 263

Frank L. Johnson
Chief Attorney
State Highway Commission
State Office Building
Topeka, Kansas 66612

Attn: Elmer Hoge

Dear Mr. Johnson:

As amended by 1974 House Bill 1852, now ch. 421, L. 1974, K.S.A. 77-422 states in pertinent part thus:

"An emergency regulation adopted on or after May 1 and prior to October 1 in any year shall take effect, without a hearing thereon, after approval by the attorney general, upon filing with the revisor of statutes . . . and shall not be effective after April 30 of the succeeding year, unless the state agency adopting such emergency regulation shall thereafter regularly adopt and file such regulation prior to October 1. *An emergency regulation adopted during the period commencing on October 1 of any year and ending on April 30 of the succeeding year shall not be effective after April 30 of the year following the end of such period as an emergency regulation . . .*"
[Emphasis supplied.]

On January 8, 1974, the State Highway Commission adopted and filed with the Revisor of Statutes emergency regulation no. 36-1-21, authorizing the use of certain lights in lieu of escort vehicles in the movement of certain mobile homes upon certain

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highways of the state. On March 1, 1974, the Commission adopted and filed with the Revisor emergency regulation no. 36-13-11, pertaining to the design of school bus bodies.

Under K.S.A. 77-422, prior to its amendment as quoted above, these emergency regulations would expire on December 31, 1974. 1974 House Bill 1852 became effective July 1, 1974. You inquire concerning the expiration dates of the above-mentioned emergency regulations. At the time these two regulations were adopted, the law provided that as emergency regulations, they would expire on December 31, 1974. The legislature may, of course, change this date.

Remarkably, section 1 of the new enactment is entirely silent as to the expiration date of emergency regulations enacted after January 1, and prior to May of this year. To a limited extent, the enactment must be given retroactive effect. It became effective July 1, 1974. It provides that any emergency regulation adopted "on or after May 1 and prior to October 1 in any year" shall take effect upon filing with the Revisor of Statutes, and "shall not be effective after April 30 of the succeeding year" This provision may be given limited retroactive effect, to fix the expiration date of emergency regulations filed between May 1 and July 1, 1974, the latter date being the effective date of the act. However, as to emergency regulations filed prior to May 1, 1974, and after January of this year, the act is silent, and affords virtually no basis upon which to form a definitive and conclusive opinion on the question. The general principles governing retroactive application of statutes are well established. "The general rule, however, is that a statute operates only in the future from its effective date; that it has no retrospective effect unless its language clearly indicates that the legislature so intended, and that retrospective application is not to be given where vested rights will be impaired." *Johnson v. Warren*, 192 Kan. 310 at 314, 387 P.2d 213 (1963). Nothing in House Bill 1852 suggests that the Legislature had any intention whatever concerning application of the law to the expiration date of emergency regulations adopted in 1974 prior to May 1.

During the time in question, the law provided an expiration date for emergency regulations of December 31. Although repealed July 1, the new enactment, insofar as it covers any period of time between January 1 and April 30, appears to apply prospectively.

Applying accepted rules of statutory construction, there is virtually no expression of legislative intention to support such

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a retroactive application. Whatever the reason for this serious omission, be it inattention or inadvertence, we feel constrained to conclude that the expiration date of the regulations in question is December 31, 1974, and that, in order to maintain the effectiveness of such regulations thereafter and until April 30, 1975, they must be resubmitted and refiled in accordance with K.S.A. 77-420 *et seq.*

Yours very truly,


VERN MILLER
Attorney General

VM:JRM:jsm

cc: John Weeks
Revisor of Statutes
State Capitol
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