



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 3, 1980

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 80-5

Sheriff F. T. "Jim" Chaffee
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Automobiles and Other Vehicles--Size, Weight
 and Load of Vehicles--Weight Limitations

Synopsis: The vehicle gross weight limitations prescribed by subsection (b) of K.S.A. 8-1909 apply to highways and bridges in the interstate system of highways, as well as all other highways in this state, while the limitations set forth in K.S.A. 8-1909(a) no longer have any application.

The exemption in K.S.A. 8-1909(b)(2) for truck tractor and dump semitrailer combinations applies only to the gross vehicle weight limitations specified in the table set forth in said subsection, and such combination of vehicles is not exempt from other statutory weight limitations on vehicles.

Whenever a vehicle suspected of being overweight is stopped pursuant to K.S.A. 1979 Supp. 8-1910(a) and no portable scales are available for checking the vehicle's weight, only stationary scales at the location of the stopped vehicle or located at a motor carrier inspection station within five miles thereof may be used to determine such vehicle's compliance with the state's vehicle weight laws. For such purpose, the operator of such vehicle may not be compelled to drive to any location other than a motor carrier inspection station, and the distance to such station is to be measured lineally over the most direct route from the stopped vehicle's location to the inspection station.

A farm truck is subject to the overweight permit requirements of K.S.A. 8-1911(a).

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Dear Sheriff Chaffee:

By reference to a memorandum prepared by your legal advisor, you have requested our opinion on four questions generally involving statutory weight limitations on vehicles operated on the highways of this state. Paraphrased, these questions are:

1. Under what circumstances do the vehicle gross weight limitations established respectively in subsections (a) and (b) of K.S.A. 8-1909 apply?

2. Does the exemption for truck tractor and dump semi-trailer combinations in K.S.A. 8-1909(b)(2) exempt such combination of vehicles from all statutory weight limitations?

3. Pursuant to K.S.A. 1979 Supp. 8-1910(a), what scales may be used by a police officer or other authorized person to determine the weight of a vehicle that is suspected of being overweight, and under what conditions may the driver of such vehicle be required to drive to the nearest scales?

4. Are farm trucks subject to the overweight permit requirements of K.S.A. 8-1911(a)?

As to your first question, regarding the vehicle weight limitations established by or pursuant to K.S.A. 8-1909, please note that, on its face, subsection (a)(2) thereof establishes limitations on gross weight of vehicles which are applicable on all highways or bridges in this state. However, pursuant to subsection (b) of this statute, the state's secretary of transportation is authorized to designate highways and bridges on which the gross vehicle weight limitations specified in paragraph (2) thereof are applicable, except that the secretary of transportation may not so designate any highway or bridge included in the interstate system of highways. We are advised by the State Department of Transportation that, on June 13, 1973, all highways and bridges not in the interstate system were designated as being subject to the weight limitations prescribed by subsection (b)(2).

As a result of such designation, 8-1909(a) applied only to highways and bridges in the interstate system, while 8-1909(b) applied to all other highways in this state. However, on January 14, 1975, the state highway commission (statutory predecessor to the secretary of transportation) adopted a resolution pursuant to the authority granted in 8-1909(c), which reads as follows:

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"(c) When and if the congress of the United States returns to this state the exclusive power to determine gross weight limits on the interstate system, or when and if the congress of the United States adopts gross weight limits on the interstate system commensurate with such limits prescribed by subsection (b), the secretary of transportation may approve and designate highways and bridges included in the interstate system upon which a vehicle or combination of vehicles having the gross weights prescribed by subsection (b) may be operated."

The resolution adopted by the commission, pursuant to the foregoing authorization, recited passage of the 1974 amendments to the Federal-Aid Highway Act of 1956, promulgating weight limits for vehicles on interstate highways. Such limits increase incrementally in relation to increasing distances between extreme axles of the vehicle or combination of vehicles, subject to a maximum vehicle gross weight of 80,000 pounds. Such limits are "commensurate with" the weight limits prescribed by the table set forth in 8-1909(b), and the resolution made said table of limits applicable to the interstate system, subject to the maximum gross weight limit of 80,000 pounds.

As a result of this resolution, the table of weight limits set forth in 8-1909(b) is applicable to both interstate and non-interstate highways, and 8-1909(a) no longer has any application.

Your second inquiry concerns the exemption for combinations of truck tractors and dump semitrailers provided in K.S.A. 8-1909(b)(2). Such exemption is contained in a proviso immediately following the table which contains the gross vehicle weight limitations, and it reads as follows:

"Provided, The above table shall not apply to truck tractor and dump semitrailer when such are used as a combination unit exclusively for the transportation of sand, salt for highway maintenance operation, gravel, slag stone, limestone, crushed stone, cinders, coal, blacktop, dirt or fill material, when such vehicles are used for transportation to a construction site, highway maintenance or construction project or other storage facility"

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Various aspects of this exemption have been addressed by prior opinions of this office, including Attorney General Opinion No. 79-308 (a copy of which is enclosed), but none of these specifically concern the applicability of other statutory weight limitations to the combination of vehicles specified in the foregoing proviso. In this regard, we noted previously that the weight limit table in 8-1909(b)(2) is applicable to both interstate and non-interstate highways, except that vehicles operating on interstate highways are subject to a maximum gross weight of 80,000 pounds. Thus, the exemption from the table in 8-1909(b)(2) applies to combinations of truck tractors and dump semitrailers operating on both interstate and non-interstate highways. In our judgment, though, such combinations operating on interstate highways are subject to the maximum weight limitation of 80,000 pounds that is applicable to all other vehicles and combinations of vehicles. However, in attaining a weight of 80,000 pounds, all other vehicles and combinations of vehicles must have a distance between extreme axles of 51 feet, as prescribed by the table in subsection (b)(2), while a truck tractor and dump semitrailer combination is not so limited as to distance between axles when operated in accordance with the proviso quoted above.

In addition, since said exemption applies only to the table in 8-1909(b)(2), which specifies the maximum gross weight to be borne by all axles of a vehicle or combination of vehicles, we also have concluded that, whether such combination of vehicles is operated on an interstate or non-interstate highway, the provisions of K.S.A. 8-1908(b), specifying gross weight limitations on any one axle on a vehicle, are applicable. However, by virtue of the highway commission's previously-mentioned resolution of January 14, 1975, the per axle gross weight limitations for interstate and non-interstate operation are identical, being 20,000 pounds per axle. Subsection (b)(1) of 8-1909 prescribes the applicability of 8-1908, and the requirements of this latter statute are independent of the gross weight limitations set forth in 8-1909(b)(2); furthermore, it is clear from the introductory language of subsection (b)(2) that the vehicles specified therein are "[s]ubject to the limitations prescribed in K.S.A. 8-1908."

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Finally, it is our further opinion that truck tractor and dump semitrailer combinations specified in the first proviso of 8-1909(b)(2) are subject to the succeeding proviso's limitation on the gross weight to be borne by any vehicle's tandem axles. As previously noted, the exemption for truck tractor and dump semitrailer combinations pertains only to the table specifying maximum gross weights to be borne by all axles of a vehicle or combination of vehicles. It does not exempt such combination of vehicles from other weight limitations, such as that contained in the second proviso of 8-1909(b)(2), specifying the maximum weight to be borne by a vehicle's tandem axles.

With respect to your third inquiry, concerning the determination of weight of a suspected overweight vehicle, it should be noted that, effective January 1, 1978, the legislature abolished ports of entry (L. 1977, ch. 304, §1, now K.S.A. 1979 Supp. 66-1316). In lieu thereof, the legislature authorized the secretary of revenue to acquire land for, construct and operate such number of motor carrier inspection stations as the secretary deems necessary

"to enforce the laws of this state relating to: The size, weight and load of motor vehicles and trailers; registration and insurance laws and requirements of the Kansas corporation commission; motor fuel use tax laws, liquid fuel carriers tax laws and motor vehicle registration laws applicable to vehicles; and livestock inspection laws." K.S.A. 1979 Supp. 66-1318.

In addition, it is clear from the provisions of K.S.A. 1979 Supp. 66-1318(b) that the legislature intended motor carrier inspection stations to include the functions previously performed by weight stations. Thus, K.S.A. 8-1910 was amended by this same enactment (L. 1977, ch. 304, §17) to accommodate such intent, with one such amendment substituting "motor carrier inspection station" for "weight station" in subsection (a), which now reads as follows:

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"(a) Any police officer or properly designated department of revenue agent or employee having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the same by means of either portable or stationary scales and may require that such vehicle be driven to the nearest motor carrier inspection station in the event such station is within five (5) miles."
(Emphasis added.)

The foregoing statutory provisions impart the authority for stopping a vehicle suspected of being overweight and weighing such vehicle to determine its compliance with state laws governing weight of vehicles. Although we have found no specific statutory provision authorizing law enforcement agencies to purchase and utilize portable scales, such authority is, in our judgment, implied from the above-quoted provisions. Such conclusion, as it pertains to state agencies having responsibility for enforcement of the state's weight laws, is supported by the following statement in K.S.A. 1979 Supp. 66-1324:

"Nothing in this section shall be construed as prohibiting the secretary of revenue, any properly designated agent or employee of the department of revenue, the superintendent of the highway patrol or any member of the state highway patrol from stopping any or all motor carriers, trucks or truck tractors for the purpose of conducting spot checks to insure compliance with any state law relating to the regulation of motor carriers, trucks or truck tractors."

Thus, we assume that when a police officer or other authorized agent checks a vehicle's weight by means of portable scales, such scales will, for the most part, have been acquired for such purpose by the governmental agency by which such officer or other person is employed, although we find nothing to preclude the use of properly-calibrated, portable scales which are not the property of such agency.

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Where portable scales are not available and it is necessary to check the vehicle's weight by means of stationary scales, the operator of the vehicle may be required to drive such vehicle "to the nearest motor carrier inspection station in the event such station is within five (5) miles." With regard to this provision of 8-1910(a), your legal advisor has offered two suggestions with which we cannot agree. First, he has suggested that the distance to the motor carrier inspection station is to be measured in air miles. While the statute is silent as to the standard to be used for determining such distance, we find no basis for the conclusion that the distance is to be measured in air miles. To the contrary, within the context of this statute, it is clear that a lineal measurement is required. The distance under consideration is the distance between the stopped vehicle and the nearest motor carrier inspection station; it is the distance to be driven by the operator of the stopped vehicle. Obviously, therefore, it is a surface distance, to be measured, in our judgment, over the most direct route between the location of the stopped vehicle and the nearest motor carrier inspection station, with such measurement to be determined by lineal standards. (See K.S.A. 83-101 et seq.)

It also has been suggested that, pursuant to 8-1910(a), the operator of a stopped vehicle may be required to drive such vehicle to any scales within five miles of the stopped vehicle. Again, we find no basis for such conclusion. The statute specifically authorizes the police officer or other appropriate person to require the operator of the stopped vehicle to drive such vehicle "to the nearest motor carrier inspection station," if it is within five miles. Accordingly, we must conclude that such officer or other person has no authority to require the operator to drive such vehicle to any other scales.

Thus, in our judgment, when a vehicle is stopped pursuant to K.S.A. 1979 Supp. 8-1910(a) and no portable scales are available for checking the vehicle's weight, only stationary scales at the location of the stopped vehicle or located at a motor carrier inspection station within five miles thereof may be used to determine such vehicle's compliance with the state's vehicle weight laws.

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Finally, you have inquired whether farm trucks are subject to the overweight permit requirements of K.S.A. 8-1911(a). Pursuant to this statute, before any vehicle or combination of vehicles which does not meet the statutory requirements as to size, weight or load may be operated or moved on any highway, a permit for such operation or movement must be obtained from the appropriate governmental authorities. However, certain vehicles are exempt from this requirement during daylight hours pursuant to the following proviso in 8-1911(a):

"Provided, No permit shall be required to authorize the moving or operating upon any highway of farm tractors, combines, fertilizer dispensing equipment or other farm machinery, or machinery being transported to be used for terracing or soil or water conservation work upon farms, or vehicles owned by counties, cities and other political subdivisions of the state, unless such moving or operation occurs at any time from a half hour after sunset to a half hour before sunrise"

It is to this exemption that your inquiry is directed, and you have asked our opinion whether farm trucks are encompassed thereby. We think it requires little discussion to note that the only conceivable way that such exemption can apply to farm trucks is if "other farm machinery" can be construed to include such vehicles. In our judgment, it is obvious that none of the other vehicles or classes of vehicles specified in this proviso can be so construed.

While the Uniform Act Regulating Traffic on Highways (of which 8-1911 is a part) contains numerous definitions, which for the most part are included in Article 14 of Chapter 8 of Kansas Statutes Annotated, neither "farm truck" nor "farm machinery" is defined therein. Absent such statutory definitions, these terms are susceptible of various interpretations, creating an uncertainty as to the scope of the exemption. Thus, with respect to "other farm machinery," it is appropriate to utilize principles of statutory construction to define the breadth of this term's meaning.

Of particular relevance to our consideration is the statutory construction rule of ejusdem generis. In Trego Wakeeny State Bank v. Maier, 214 Kan. 169 (1974), the Kansas Supreme Court explained the rule thusly:

"The rule of ejusdem generis is a well known maxim of construction to aid in ascertaining the meaning of a statute or other written instrument which is ambiguous. Under the maxim, where enumeration of specific things is followed by a more general word or phrase, such general word or phrase is held to refer to things of the same kind, or things that fall within the classification of the specific terms." Id. at 174.

It is apparent that the language in question here creates a situation for the application of this rule. The term "other farm machinery" is general in nature and is preceded by an enumeration of specific farm vehicles, i.e., "farm tractors"; "combines"; and "fertilizer dispensing equipment." Thus, pursuant to the rule of ejusdem generis, to be included within "other farm machinery," a farm truck must fall within the same classification as these enumerated vehicles. This requires an identification of the characteristics of this classification.

"Farm tractor" is defined in K.S.A. 8-1420, as follows:

"'Farm tractor' means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry, and such term shall include every self-propelled implement of husbandry."

To complete this definition, "implement of husbandry" is defined in K.S.A. 8-1427 as meaning

"every vehicle designed or adapted and used exclusively for agricultural operations and only incidentally moved or operated upon the highways. Such term shall include, but not be limited to, a fertilizer spreader or any 'nurse tank' used in connection therewith, regardless of ownership."

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Considering these definitions in conjunction reveals that a farm tractor is a motor vehicle, the highway use of which is only incidental to the primary function of being used off the road for agricultural purposes. Similarly, even without statutory definitions available for "combines" or "fertilizer dispensing equipment," it is abundantly clear that these vehicles also are primarily designed and used for off-the-road agricultural operations, and are only incidentally moved or operated upon the highways.

Thus, it is our opinion that any vehicle included within the term "other farm machinery" must be designed and used primarily for off-the-road agricultural purposes and only incidentally moved or operated upon the public highways. As a result, we do not believe a farm truck is encompassed by such term. We noted previously the absence of a statutory definition of "farm truck," but we assume your inquiry has reference to those vehicles classified as farm trucks by K.S.A. 1979 Supp. 8-143 for the purpose of vehicle registration. The pertinent provisions of this statute read as follows:

"A truck or truck tractor owned by a person engaged in farming and which truck or truck tractor is used by such owner to transport agricultural products produced by such owner or commodities purchased by such owner for use on the farm owned or rented by the owner of such farm truck or truck tractor, shall be classified as a farm truck or truck tractor" (Emphasis added.)

Even though a farm truck is a motor vehicle used in connection with agricultural operations, it is, nonetheless, a motor vehicle designed and used primarily for operation and movement on the public highways, as opposed to off-the-road agricultural usage. The fact that farm trucks are required to be registered confirms this conclusion. Pursuant to K.S.A. 1979 Supp. 8-127, registration is required only for vehicles "intended to be operated upon any highway in this state."

In our judgment, then, a farm truck cannot be included within the term "other farm machinery" as used in the exemption provisions of K.S.A. 8-1911(a). Therefore, we have concluded that a farm truck is subject to the overweight permit requirements of that statute.

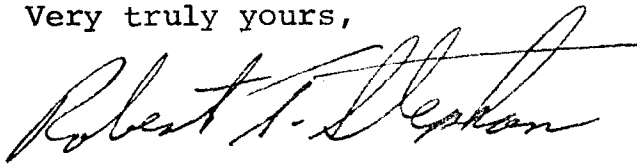
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Our conclusion also is in harmony with another well-recognized rule of statutory construction, that where there is doubt as to the meaning of a proviso in a statute, it is to be narrowly construed, in order to expedite the general legislative mandate to which it constitutes an exception. This principle was stated in City of Winfield v. Board of County Commissioners, 205 Kan. 333 (1970) as follows:

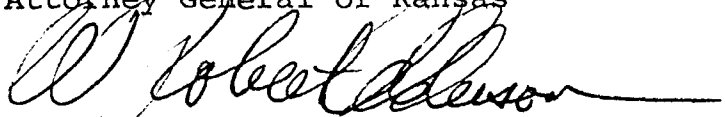
"A proviso which follows and restricts an enacting clause general in its scope should be strictly construed, so as to take out of the enacting clause only those cases which are fairly within the terms of the proviso"
Id. at 336, 337.

With this maxim in mind, it is clear that the general legislative mandate is that oversize, overweight or overloaded vehicles must obtain a permit to use the public highways. Thus, the statutory proviso affording exemptions from this requirement must be strictly construed; and in this instance, to construe "other farm machinery" so as to include only those vehicles intended primarily for agricultural operations, and only incidentally moved or operated upon the highways, is consistent with this principle.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk

Enclosure: Attorney General Opinion No. 79-308