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ATTORNEY GENERAL OPINION NO. 87-173

Philip E. Winter
Lyon County Counselor
Lyon County Courthouse
Emporia, Kansas 66801

Re: Counties and County Officers--General Provisions--
Powers Generally; Home Rule

Automobiles and Other Vehicles--Uniform Act
Regulating Traffic; Size, Weight and Load of
Vehicles--Restricting Use of Highways

Synopsis: Pursuant to Kansas law, counties may impose limitations as to the size and weight of vehicles on certain roads. Constitutional restrictions apply to such regulations and require that every classification be reasonable and rest upon a rational basis which serves a valid governmental purpose. The proposed regulation restricting weight on county roads should apply equally to all vehicles under the same circumstances and conditions. Cited herein: K.S.A. 19-101 Fifth; K.S.A. 1986 Supp. 19-101a; K.S.A. 8-1912; K.S.A. 8-2002(f); U.S. Const. Fourteenth Amend.

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Dear Mr. Winter:

As Lyon County Counselor you request our opinion on a proposed county resolution restricting vehicle weight on certain Lyon county roads. You specifically inquire as to

the legalities of the resolution in accordance with the laws of Kansas and the Constitution.

K.S.A. 19-101 Fifth enables each county "to exercise the powers of home rule to determine their local affairs and government authorized under the provisions of K.S.A. 19-101a." K.S.A. 1986 Supp. 19-101a grants counties the authority to "transact all county business and perform all powers of local legislation and administration it deems appropriate," subject to certain enumerated limitations. K.S.A. 8-2002(7) permits local authorities to restrict the use of highways as authorized in K.S.A. 8-1912. Under subsection (f) of K.S.A. 8-1912 local authorities "may prohibit the operation of trucks or other commercial vehicles, or may impose limitations as to the weight or size thereof, on designated highways". Prohibitions and limitations must be designated by appropriate road signs and there must be a satisfactory alternate route provided when the restrictions apply to a street connecting with the state highway system.

Thus, provided procedural dictates are followed, the proposed regulation by Lyon County appears to be authorized by state law. However, state or local legislation cannot abuse federal constitutional rights. Harris v. Anderson, 194 Kan. 302, cert. denied, 382 U.S. 894 (1965). U.S. Const., amend. XIV.

The proposed resolution states in pertinent part:

"F.A.S. Route 151, commonly known as the Olpe/Hartford Road; shall have the following weight restrictions; No vehicle or combination of vehicles shall be moved or operated upon any of the beforementioned roads when the gross weight is in excess of 40,000 pounds.

"EXCEPT THAT a vehicle or combination of vehicles may be moved or operated on the above-mentioned roads when the gross weight does not exceed 85,000 pounds.

"So long as no such vehicle so loaded or operated as authorized by this subsection shall travel more distance than 25 miles from the City limits of the City of Emporia, County seat of Lyon County, Kansas."

The resolution makes a distinction between vehicles having Emporia as their termini and those that do not. The distinction results in a different classification and treatment for vehicles with the same weight. Dual treatment of vehicles based solely on the distance traveled from a city raises an equal protection question.

"The prohibition against denial of equal protection does not preclude a state or municipality from resorting to classification for purposes of legislation or regulation, and confining such provisions to a certain class or classes. Moreover, the classifications may validly prescribe different sets of rules for different classes, or discriminate in favor of, or against, a certain class. The general rule is, however, subject to the qualification that the classification or discrimination be reasonable, rather than arbitrary, and rest on a real and substantial difference or distinction which bears a just, reasonable, or substantial relation to the legislation or the subject or object thereof. Furthermore, in order for a classification to satisfy the dictates of equal protection, the legislation must operate equally, uniformly, and impartially on all persons or property within the same class. As viewed from a different perspective, only those classifications which are invidious, arbitrary, or irrational offend the equal protection clause." 16B C.J.S. Constitutional Law §780 (1985).

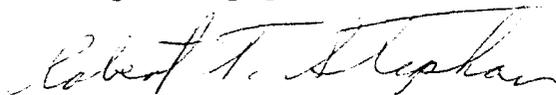
Vehicles weighing in excess of 40,000 pounds belong to the same class. The classification made by the proposed regulation rests upon the distance traveled from Emporia. Classifications are valid when rationally related to a legitimate governmental interest or purpose. Manhattan Buildings, Inc., v. Hurley, 231 Kan. 20, 30 (1982). Several courts have declared laws unconstitutional when the maximum weight limits did not apply to every vehicle. See Lossing v. Hughes, 244 S.W. 556 (C.A. Tex 1922); State ex rel. Parker v. Frick, 7 So.2d 152 (Fla. 1942); Richter Concrete Corp. v. City of Reading, 136 N.E.2d 422

(Ohio 1956); see also 16C C.J.S. Constitutional Law §906 (1985).

Lyon county officials must have a rationale basis for why this regulation serves a valid governmental purpose. The Richter court objected to distinctions based on a vehicle's local origins because "the mere fact of traffic having its termini outside of the municipality is not a valid basis of classification." Richter at 425. In pursuance of valid governmental purposes communities may protect the safety and welfare of their area. This includes protection of the roads contained therein. Brown v. City of Abilene, 93 Kan. 737 (1915). However, regulations concerning weight of vehicles must not be unreasonable, arbitrary, or discriminatory. 7A Am.Jur.2d Automobiles and Highways §197 (1980).

If the purpose of the regulation is to protect roads from excessive weight, the distinction made between vehicles traveling no further from Emporia than twenty-five miles and all other vehicles has no apparent rationale basis. The roads will still be subjected to a weight deemed excessive. If there is another valid governmental purpose that can be accomplished through this distinction, the classification might survive a constitutional challenge. However, it is our opinion that the proposed regulation would not be able to withstand judicial scrutiny as to its constitutionality and therefore weight restrictions should apply equally to all vehicles under the same circumstances and conditions.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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