

Answer by letter-Wieler

October 30, 1970

OPINION LETTER NO. 453



Mr. Robert L. Hyder, Chief Counsel
Missouri State Highway Commission
Jefferson City, Missouri 65101

Dear Mr. Hyder:

This is in response to your request for an opinion from this office concerning the applicability of this state's traffic laws to roads constructed and maintained by the United States in the national forests. Specifically, you have asked the following question:

- "1. Does the Highway Patrol, a local sheriff, or other peace officer have jurisdiction over offenses committed on roads open to the public but situated on land owned in fee by the United States and which said road was constructed and is maintained solely by the United States, . . ."

It is our understanding that the roads involved are known as forest development roads, and are being developed and operated by the Forest Service for the protection, administration, and utilization of the national forests in this state. These roads are constructed and maintained by the United States pursuant to the regulations set forth in Chapter 2, Title 36 of the Code of Federal Regulations. These roads are open to the public, but the Forest Service maintains the right to control or regulate their use, including closing if necessary, to accomplish their primary purpose, that of forest development. The Forest Service takes the position that traffic on these roads is subject to state traffic laws where applicable, except to the extent deemed necessary to prescribe rules in addition thereto or in conflict therewith to accomplish the purposes involved. See 36 C.F.R., Section 212.7, et seq.

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It is clear that the establishment of national forests did not serve to deprive this state of jurisdiction over the lands involved. See Attorney General's Opinion No. 9 issued to Governor Blair on March 6, 1957, and Attorney General's Opinion No. 71 issued to the Honorable George J. Pruneau on April 23, 1969 (copies enclosed). The crucial question then is whether Missouri statutes defining traffic offenses are broad enough to cover acts committed on forest development roads.

Section 301.010(9), RSMo 1969, defines the term "highway" as it is used in Chapter 301 dealing with the licensing of vehicles and as used in Sections 304.010 to 304.040 and 304.120 to 304.570, RSMo 1969, dealing with traffic regulations, as follows:

"(9) 'Highway', any public thoroughfare for vehicles, including state roads, county roads and public streets, avenues, boulevards, parkways or alleys in any municipality;"

Section 304.025, sub. 1, RSMo 1969, defines the term "highway" as it is used in Sections 304.014 to 304.026, RSMo 1969, dealing with traffic regulations, as follows:

"1. The word 'highway' whenever used in sections 304.014 to 304.026 shall mean any public road or thoroughfare for vehicles, including state roads, county roads and public streets, avenues, boulevards, parkways or alleys in any municipality."

Section 302.010(7), RSMo 1969, defines the term "highway" as it is used in Chapter 302, dealing with the licensing of drivers, as follows:

"(7) 'Highway', any public thoroughfare for vehicles, including state roads, county roads and public streets, avenues, boulevards, parkways, or alleys in any municipality;"

The central theme of all these definitions is exactly the same, i.e., a "highway" is any thoroughfare for vehicular traffic used by the public. In construing the term "highway" where it had been defined by the legislature as "any public thoroughfare for vehicles, including state roads, county roads and public streets, avenues, boulevards, parkways or alleys in any municipality," the Missouri Supreme Court has said:

"The evident purpose of the Legislature in enacting this statute was to protect the lives

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and property of persons while on or using the roads of this state where the public are accustomed to travel. It would be giving the statute a strained and narrow construction to hold that the Legislature did not intend to protect the lives and property of persons on or using a highway continuously traveled by the public generally, unless such highway had been legally established by constituted authority or by user for the statutory period of time. Keeping in mind the purpose of the statute, it is reasonable to conclude that the word 'highways' was used in the statute in its popular rather than its technical sense, and was intended to include all highways traveled by the public, regardless of their legal status. . . ." (Phillips v. Henson, 326 Mo. 282, 30 S.W.2d 1065, 1068 (1930))

Even though the Forest Service has reserved the right to restrict the use of these roads by the public under certain circumstances, it is our opinion that they constitute "highways" of this state, as defined in the above-mentioned statutes, inasmuch as they are open to the public generally and are roads whereon the public are accustomed to travel.

Therefore, the highway patrol, a local sheriff, or other peace officers would have jurisdiction over traffic offenses committed on forest development roads open to the public but situated on land owned in fee by the United States and constructed and maintained solely by the United States.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 9
3-6-57, Blair

Op. No. 71
4-23-69, Pruneau