

HIGHWAY COMMISSION: Regulation of highway commission with reference to Section 7787 merely declares policy of commission and does not have the effect of a judicial decision.

See 7787 Laws 21

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**Mr. E. M. Casteel, Superintendent
Missouri State Highway Patrol
Jefferson City, Missouri**

Attention: Mr. Lewis B. Howard.

Dear Sir:

This department is in receipt of your letter of July 26th in which you request an opinion on the following state of facts:

***2. In a letter of September 27, 1932, under the caption 'Maintenance': 1932-#35, Policy of Overlength Movements, written to all Division Engineers, the second paragraph states 'It is the policy of the Commission not to permit any over-length movements regardless of the commodity being transported except through special permit authorized in this section and then only from the nearest shipping point to the job.'

3. In Section 7787 a part of it states, 'These restrictions as to length shall not apply to vehicles temporarily transporting agricultural implements or road making machinery, or road materials, or towing for repair purposes, cars that have become disabled upon the highways.'

4. I wish the opinion to cover the exemptions in a section on agricultural implements, road machinery or materials and find out if there is any law which prohibits the movement of such implements or materials."

Section 7287 Laws of Mo. 1931, p. 265, provides for the regulation of motor vehicles as to width, height and length, and is set out so far as it is pertinent as follows:

"* * * These restrictions as to length shall not apply to vehicles temporarily transporting agricultural implements or road making machinery, or road materials or towing for repair purposes cars that have become disabled upon the highway. Provided, however, that the state highway commission may, when in its opinion the public safety so justifies, issue special permits for the temporary operation of a vehicle or combination of vehicles which, including load, shall be greater than the lengths herein specified for transporting property the nature of which will not permit of such limitation of length, but such permit shall be issued only for a single trip or for a definite period of not to exceed 60 days and shall designate the highways and bridges which may be used under the authority of such permit." * * *

It is obvious from the reading of the above statute that the policy of the highway commission as set out in your letter to us does not in any way conflict Section 7787 supra, but in fact finds its authority in the above section of the statute.

In a very recent case of Park Transportation Company v. Missouri State Highway Commission, the Supreme Court of Missouri, No. 32699 (not yet reported), Judge Hayes in discussing the question here before us said:

"And in the varying situations which must necessarily arise therein, the law has properly provided and clothed with a reasonable discrimination and administrative body to determine, in the first instance and upon a factual investigation the applicability of the exception as occasions may arise."

In other words, the highway commission is a fact finding body that may hear and determine whether certain facts do or do not exist. However, whether these facts as found by the highway commission come with the exception provided in section 7787 supra, is a matter for judicial inquiry, and consequently is a matter over which the highway commission has no power.

Mr. B. M. Casteel.

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Therefore, it is the opinion of this department that the policy of the highway commission not to permit any over-length movements regardless of the commodity being transported except through special permit authorized in this section and then only from the nearest shipping point to the job, indicates the policy of the highway commission and does not in any sense of the word overrule the provisions of section 7787 supra. If in fact a factual situation should arise that clearly came within the exception provided by Section 7787, then it is the opinion of this department that the regulations as to length would not apply regardless of the policy of the highway commission and that no special permit from the highway commission would be needed in order to make such transportation.

Yours very truly,

JOHN W. HOFFMAN, JR.,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

JWH:MM