

MOTOR VEHICLES: Section 304.220, RSMo 1949, is constitutional, in  
HIGHWAYS: allowing county courts to limit maximum weight of  
COUNTY COURTS: motor vehicles on roads other than highways when  
roads are in soft condition.

FILED  
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October 7, 1952

10-14-52

Honorable John M. Cave  
Prosecuting Attorney  
Callaway County  
Fulton, Missouri

Dear Sir:

This office is in receipt of an opinion request from  
you, as follows:

"Your opinion is requested on the  
following question: May the County  
Court pursuant to authority contained  
in Section 304.220, RSMo 1949, limit  
the maximum weight of vehicles using  
improved roads or highways, other than  
State Highways, when the roads are in  
soft condition; or is such action in-  
valid as a delegation of legislative  
authority or a violation of Section 16  
of Article IV of the Constitution of  
1945, or invalid for any other reason?"

Section 304.220, RSMo 1949, provides for the limitation  
by official bodies having charge of highways other than state  
highways of maximum weight in order to preserve the road.

In the case of Ashland Transfer Co. v. State Tax Com-  
mission, 274 Ky. 114, 56 S.W. (2d) 691, 87 A.L.R. 534, l.c.  
541, 542, the Court stated:

"\* \* \* The same question was made in  
the case of Union Bridge Company v.  
United States, 204 U.S. 365, 27 S. Ct.  
367, 373, 51 L. ed. 523, in which the  
universal rule is recognized that  
neither Congress nor a state Legislature  
may delegate legislative powers to an

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administrative or executive officer. But at the same time it was most emphatically asserted that it is competent for a legislative body in framing a statute to delegate to such executive or administrative officers regulatory powers by which they are authorized and empowered to find facts and determine conditions to which the law may or may not apply. In that (last cited) case Judge Harlan, speaking for the court, stated the rule as taken from Locke's Appeal, 72 Pa. 491, 13 Am. Rep. 716, thus: "To assert that a law is less than a law because it is made to depend on a future event or act is to rob the legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know." The proper distinction, the court said, was this: "The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the lawmaking power, and must, therefore, be a subject of inquiry and determination outside of the halls of legislation." "

Not only is this the Kentucky rule but in *Sproles v. Binford*, 286 U.S. 374, 76 L. Ed. 1167, 1.c. 1184, the Court stated:

"Appellants also urge that section 2 is invalid as a delegation of power to the State Highway Department in violation of section 28, Article I. of the Texas Constitution and of the 14th Amendment of the Federal Constitution. We think that the objection is untenable. We agree with the District Court that the authority

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given to the department is not to suspend the law, but is of a factfinding and administrative nature, and hence is lawfully conferred. See *Trimmer v. Carlton*, 116 Tex. 591, 296 S.W. 1070. Under Section 2, special permits may be granted by the department, for limited periods, for the transportation 'of such overweight or oversize or overlength commodities' when it is found that they 'cannot be reasonably dismantled,' or for the operation of super-heavy and oversize equipment for the transportation of commodities ascertained to be of that character. This authorization, in our judgment, does not involve an unconstitutional delegation of legislative power.  
\* \* \*

In *Ex Parte Williams*, 139 S.W. (2d) 485, 345 Mo. 1121, *Certiorari Denied*, *Williams v. Goldman*, 61 S. Ct. 42, 311 U.S. 675, 85 L. Ed. 434, 1.c. S.W. 491, the Court stated:

"(12) 'A legislative body cannot delegate its authority, but alone must exercise its legislative functions. 12 C.J. 839; 6 R.C.L. 175. It may empower certain officers, boards, and commissions to carry out in detail the legislative purposes and promulgate rules by which to put in force legislative regulations. It may provide a regulation in general terms, and may define certain areas within which certain regulations may be imposed, and it may empower a board or a council to ascertain the facts as to whether an individual or property affected come within the general regulation or within the designated area.' *Cavanaugh v. Gerk*, 313 Mo. 375, 280 S.W. 51, loc. cit. 52."

These above cited cases all show that the Legislature may delegate authority to enforce the law made by it to administrative bodies which it has created to determine facts upon which the action of the law depends. The statute under consideration is considered not to be a legislative authority to suspend the law or make a new law but in reality, to enforce the law as the Legislature has made it; in this case,

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the road condition at the time of the promulgation of the county court's order. It is obvious that the Legislature cannot determine weather conditions in advance for the period covered by a statute which it enacts. It must leave the determination of road conditions to some other authority and we feel that this is what has been done by the enactment of Section 304.220, supra.

CONCLUSION

It is therefore the opinion of this office that Section 304.220, RSMo 1949, is not an invalid delegation of legislative authority but is a delegation of regulatory powers within the authorization of the Legislature under the Constitution of Missouri.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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