

HIGHWAY PATROL:  
WEIGHT:  
TESTIMONY:

Members of the Missouri State Highway Patrol may stop upon the highway a motor vehicle which the patrolman has reason to believe is in excess of the weight limit allowed by the laws of this state; may direct the driver of such vehicle to proceed with the vehicle to the nearest weight station; may cause the vehicle to be weighed; and if it be found to be in excess of the weight limit aforesaid, the patrolman may file charges against the driver of the vehicle and testify in court regarding the weight.



August 30, 1955

Honorable Edward W. Garnholz  
Prosecuting Attorney  
St. Louis County  
Courthouse  
Clayton, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"In recent months our office has encountered difficulty in aiding the State Highway Patrol in the enforcement of the Road Laws provided in Section 304.180 and 304.190 of the Missouri Statutes. We are losing these cases on Motions to Suppress evidence of the weight involved, where the Patrol Officer arrests a driver and leads him to a weight station.

"The argument raised is that this is an unlawful seizure as the search and seizure powers of the Highway Patrol are expressly defined in Section 43.200. Such powers allow only a search and seizure for dangerous weapons. Along with this it has been argued that enforcement of those laws is given exclusively to Sheriffs, Peace Officers and Maintenance Men at the State Highway Department as provided in Section 304.230.

"The question of lawful arrest also arises when a Patrol Officer stops a truck on mere suspicion of a violation, such load violations being only misdemeanors.

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"The Highway Patrol as well as our Office is greatly concerned over the enforcement of these laws and, therefore, we are hereby requesting an official Opinion from your Office as to these matters."

Unless otherwise indicated, all references are to RSMo 1949.

Sections 304.180 and 304.190, to which you refer, were amended and reenacted as amended in 1951 (Laws, 1949, p. 695). These sections set forth the maximum weight which a motor vehicle may have upon any one axle or group of axles on the highways (Section 304.180) and in or within two miles of the corporate limits of a city of seventy-five thousand or over (Section 304.190).

Section 304.240 makes violation of these two above sections a misdemeanor.

There can be no question but that the highway patrol is vested with authority to enforce Sections 304.180 and 304.190, supra.

Section 43.160 specifically so states. That section reads in part:

"It shall be the duty of the patrol to police the highways constructed and maintained by the commission; to regulate the movement of traffic thereon; to enforce thereon the laws of this state relating to the operation and use of vehicles on the highways; to enforce and prevent thereon the violation of the laws relating to the size, weight and speed of commercial motor vehicles and all laws designed to protect and safeguard the highways constructed and maintained by the commission.\* \* \*" (Underscoring ours).

We also note Section 43.180 which reads:

"The members of the state highway patrol, with the exception of the director of radio and radio personnel, shall have full power and authority as now or hereafter vested by law in peace officers when working with and at the special request of the sheriff of any county, or the chief of police of any city, or under the direction of the superintendent of the state highway patrol, or in the arrest of anyone violating any law in their presence or in the apprehension and arrest of any fugitive from justice on any felony viola-

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tion. The members of the state highway patrol shall have full power and authority to make investigations connected with any crime of any nature. The expense for the patrol's operation under this section shall be paid monthly by the state treasurer chargeable to the general revenue fund, provided, however, the amount appropriated from the general revenue fund shall not exceed ten per cent of the total amount appropriated for the Missouri state highway patrol."

Also Section 43.190, which reads:

"The members of the patrol, with the exception of the director of radio and radio personnel, are hereby declared to be officers of the state of Missouri and shall be so deemed and taken in all courts having jurisdiction of offenses against the laws of this state. The members of the patrol shall have the powers now or hereafter vested by law in peace officers except the serving or execution of civil process. The members of the patrol shall have authority to arrest without writ, rule, order or process any person detected by him in the act of violating any law of this state. When a member of the patrol is in pursuit of a violator or suspected violator and is unable to arrest such violator or suspected violator within the limits of the district or territory over which the jurisdiction of such member of the patrol extends, he shall be and is hereby authorized to continue in pursuit of such violator or suspected violator into whatever part of this state may be reasonably necessary to effect the apprehension and arrest of the same and to arrest such violator or suspected violator whenever he may be overtaken."

It will be noted that the above section 43.190 states that "members of the patrol shall have the power now or hereafter vested by law in peace officers. \* \* \*"

Section 304.230 reads in part as follows:

"1. It shall be the duty of the sheriff of each county or city to see that the provisions of sections 304.170 to 304.240, are enforced and any

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peace officer or police officer of any county or city shall have the power to arrest on sight or upon a warrant any person found violating or having violated the provisions of said sections.

"2. The sheriff or any peace officer is hereby given the power to stop any such conveyance or vehicle as above described upon the public highway for the purpose of determining whether such vehicle is loaded in excess of the provisions of sections 304.170 to 304.240 and if he finds such vehicle loaded in violation of the provisions hereof he shall have a right at that time and place to cause the excess load to be removed from such vehicle.\* \* \*"

Since Section 43.190 gives members of the patrol the power of peace officers, and since Section 304.230 gives peace officers the power to stop any vehicle on the highway to determine whether said vehicle is overloaded, it, of course, follows that members of the patrol can stop any vehicle on the highway to determine whether it is overloaded. We believe that the above disposes of the contention that enforcement of the weight laws is not vested in members of the highway patrol.

You call our attention to Section 43.200, which reads:

"The members of the patrol shall not have the right or power of search nor shall they have the right or power of seizure except to take from any person under arrest or about to be arrested deadly or dangerous weapons in the possession of such person."

Inasmuch as the express duty is imposed upon the Highway Patrol by Section 43.160, supra, to enforce and prevent violation of laws relating to the weight of commercial motor vehicles, we do not believe that the Legislature, by its prohibition against "search" and "seizure" by the Highway Patrol, as stated in Section 43.200, supra, meant to prohibit a reasonable direction by a member of the patrol to the driver of a commercial motor vehicle to take his vehicle to the nearest weighing facilities in order that the patrolman might carry out the duty imposed upon him by the aforesaid Section 43.160, supra.

In the third paragraph of your letter you state:

"The question of lawful arrest also arises when a Patrol Officer stops a truck on mere suspicion of a violation, such load violations being only misdemeanors."

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In this regard we direct your attention to the case of State v. Collins, 172 S.W.(2d) 284. At l.c. 291, the court said:

"Except for situations where the right is specially given by statute, a peace officer has no authority, without a warrant, to arrest a person charged with the commission of a misdemeanor unless the offense was committed in the officer's presence. Greaves v. Kansas City Junior Orpheum Co. 229 Mo. App. 663, 80 S.W.2d 228; Wehmeyer v. Mulvihill, 150 Mo. App. 197, 130 S.W.681. The offense of which relator was suspected was of course a misdemeanor - the crime of petit larceny growing out of the theft of a grease gun shown to have been worth from twelve to fifteen dollars. Sec. 4469, R.S.Mo. 1939, Mo. R.S.A. sec. 4469. \* \* \*"

In your situation the offense was committed in the presence of the peace officer, and the right to arrest without a warrant is "specifically given by statute" to-wit, Section 43.190, supra. Furthermore, in answer to this, we refer back to an earlier part of this opinion in which we pointed out that a member of the patrol is given the power (except to serve civil process) of peace officers (43.180) and that peace officers are given the power (304.230) to stop any vehicle "for the purpose of determining whether said vehicle is loaded in excess of the provisions of Sections 304.170 to 304.240, and if he finds such vehicle loaded in violation of the provisions hereof he shall have a right at that time and place to cause the excess load to be removed from such vehicle.\* \* \*"

#### CONCLUSION

It is the opinion of this department that members of the Missouri State Highway Patrol may stop upon the highway a motor vehicle which the patrolman has reason to believe is in excess of the weight limit allowed by the laws of this state; may direct the driver of such vehicle to proceed with the vehicle to the nearest available weighing facilities and may cause the vehicle to be weighed; and if it be found to be in excess of the weight limit aforesaid, that the patrolman may file charges against the driver of the vehicle and testify in court regarding the weight.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON  
Attorney General

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