

HIGHWAYS:  
MOTOR VEHICLES:  
SPEEDING, CARELESS AND  
IMPRUDENT DRIVING:

Drivers using completed, but as yet unopened portions of a highway may be prosecuted for speeding or careless and imprudent driving.

February 24, 1961



Honorable Robert P. C. Wilson, III  
Prosecuting Attorney  
Platte County  
Platte City, Missouri

Dear Mr. Wilson:

This is in reply to your letter of January 4, 1961, requesting an opinion as to whether persons using a highway which had been completed as to its construction, but which as yet was unopened for public use, are subject to prosecution under our criminal statutes for driving violations such as speeding. Your inquiry reads:

"I respectfully request the opinion of your office on the following question. New Interstate Highway 29 is presently under construction through Platte County, Missouri. Some portions of it have been opened for use by the general public, and some portions have not been so opened. There have been instances of speeding and careless and imprudent driving on those portions of Interstate 29 not opened for use by the general public. The question is whether our criminal statutes would apply to such instances."

There is no statutory charge as such of "careless and imprudent driving", but rather it is a violation of the statutory requirements imposed by Section 304.010 RSMo 1957 Cum. Supp. that operators of motor vehicles "shall drive the same in a careful and prudent manner, and shall exercise the highest degree of care, and at a rate of speed so as not to endanger the property of another or the life and limb of any person". A violation of this provision in Section 304.010, supra, can

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support a charge of careless and imprudent driving where there is sufficient evidence of such a law violation through violation of the speeding provisions of Section 304.010, supra, or through violations of the other provisions of Chapter 304 RSMo which establish the proper standards of vehicle operation on our highways.

For an excellent discussion of the rule governing this charge see either *State v. Ball*, Missouri Appeals, 171 S.W. 2d 787 or *State v. Reynolds*, Missouri Appeals 274 S.W. 2d 514.

We therefore assume that your inquiry pertains to violations of the provisions of Chapter 304, supra, and in particular to Section 304.010, supra. Section 304.010, supra, as amended reads:

"1. Every person operating a motor vehicle on the highways of this state shall drive the same in a careful and prudent manner, and shall exercise the highest degree of care, and at a rate of speed so as not to endanger the property of another or the life or limb of any person.

"2. Except as otherwise provided by law no vehicle shall be operated in excess of

(1) Seventy miles per hour on any divided federal highway or, when lighted lamps are not required by law, on any other federal highway;

(2) Sixty-five miles per hour on any other road or highway in the state when lighted lamps are not required by law;

(3) Sixty-five miles per hour on any undivided federal highway when lighted lamps are required by law;

(4) Sixty miles per hour on any other road or highway in the state when lighted lamps are required by law.

"3. In any city, town or village where the speed limit is not set by local authority, no vehicle shall be operated at a speed in excess of forty-five miles per hour. All

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ordinances of cities, towns or villages, regulating the speed of vehicles on major state highways shall be designed to expedite the flow of traffic thereon to the extent consistent with public safety.

"4. The limits on speeds set by this section do not apply to the operation of any emergency vehicle as defined in section 304.022. Nothing in subsections 2 and 3 shall make the speeds prescribed therein lawful in a situation that requires lower speed for compliance with the basic rule declared in subsection 1.

"5. Any person violating this section is guilty of a misdemeanor.

"6. Violation of the provisions of sections 304.010 and 304.011, specifying speed limitations shall not be construed to relieve the parties in any civil action or any claim or counterclaim from the burden of proving negligence or contributory negligence as the proximate cause of an accident or as the defense to a negligence action."

Note that Section 304.010, supra, Paragraph 1, requires that violations of that section be occasions through the operation of a motor vehicle "on the highways of this state". This phrase is clarified somewhat as to the instant situation by the definition given to the term "highway" in Section 304.025 RSMo Cum. Supp. 1957, which section reads in part:

"2. 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."

This definition would seem at first glance to indicate that the as yet officially unopened highway was not sufficiently opened to the public to constitute a "highway" within the meaning of Section 304.010 and Section 304.025, supra. There are no Missouri

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cases directly concerning the question of completed but as yet unopened highways which are in use by certain segments of the public. It is our view that we must look to the evident intent of the legislature to determine whether the purpose of the statute or the evil sought to be remedied would be thwarted by a literal interpretation of the definition given in Section 304.025, supra. In a prior Missouri Case, Phillips v. Hinson 326 Mo. 282 30 S.W. 2d 1065, our Supreme Court had occasion to consider a statute defining the term "highway" in almost the same language as the quoted definition of the term given in the present Section 304.025, supra. It was determined in that case that the purpose of the predecessor statute to Section 304.010, supra, and the other provisions of Chapter 304, supra, governing the operation of motor vehicles on our highways are for the safety of the public, to protect lives and as such should not be narrowly construed, the court discussed the meaning of the word "highway" as follows 30 SW 2d 1.c. 1068:

"The statute requires that every person operating a motor vehicle on the highways of this state shall drive the same in a careful and prudent manner, and shall exercise the highest degree of care, and at a rate of speed so as not to endanger the property of another or the life or limb of any person. Section 19, p. 91, Laws of Missouri 1921 (First Extra Session). Section 3 of the same act defines the word 'highway' as 'any public thoroughfare for vehicles, including state roads, county roads and public streets, avenues, boulevards, parkways or alleys in any municipality.' Defendant's contention on this point is that the statute requiring persons driving motor vehicles on the highways of this state has no application to this case, because there was no evidence that the street on which defendant was driving his truck was a public highway.

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

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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." (Emphasis ours.)

Views substantially similar to the quoted portion of the court's opinion in Phillips v. Hinson, supra, have been frequently expressed by our courts in situations involving protection of the motoring public. See in this regard Crocker v. Jett, Missouri Appeals 93 S.W. 2d 74, 76; Kelley v. Lahey, Missouri Appeals 232 S.W. 2d 177, 181; Koff v. Senter, Missouri Appeals 317 S.W. 2d 666, 671.

Courts of other states have considered factual situations in which the public has used a highway not officially opened and has determined that there was tort liability in such situations. In these cases it was determined that the rules of the road enacted in the statute were for the protection of the public and they are not to be narrowly construed. To better understand these cases let us briefly consider the facts and circumstances surrounding each of them.

In Savoie v. Littleton Construction Company 95 New Hampshire 67, 57 Atlantic 2d 772, the contractor permitted travel on a highway before construction was completed though there were barricades erected. One of the barricades had been partially opened to allow the contractors trucks to enter and leave. The court held that the contractor was liable in tort, and that it was bound to conduct operations as though the highway was open and so held that the rules of the road applied.

Likewise in Beasley v. O'Connor Inc., 163 Nebraska 565 80 N. W. 2d 711, the court in similar circumstances found liability in tort. There were no barricades erected, but construction signs were erected with warnings not to drive on the highway. The court again held that the rules of the road were applicable to persons using the highway.

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Also in conformity with the holdings in the above mentioned cases and in a similar factual situation is *Pestotnik v. Balliet* 233 Iowa, 1047 10 N.W. 2d 99, wherein the plaintiffs were driving on a newly paved cutoff which avoided a city and though as not yet opened there were no closed signs, but only construction warning signs in the vicinity. Again the court indicated that the rules of the road applied.

On the basis of the foregoing cases it is our view that Section 304.010, supra and the other statutes constituting the rules of the road for the operation of motor vehicles on the highways of the state as found in Chapter 304 RSMo, should be given a liberal interpretation to promote the evident purpose of those statutes. In enacting these laws, the legislature had in mind the protection of the motoring public and with such an objective the evident purpose of the enactment, it logically follows that those using a highway which is as yet unopened to the public should observe the rules of the road or they may be prosecuted for violations taking place on this portion of the highway as on any portion officially opened to the public.

#### CONCLUSION

Therefore, it is the opinion of this office that drivers using the completed portion of a highway which is as yet officially unopened, but being used by the public, may be prosecuted for speeding or careless and imprudent driving.

This opinion was prepared by my assistant Jerry B. Buxton.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General

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