

OPINION NO. 166  
Answered by Letter-Denman

May 3, 1966



Honorable Bob F. Griffin  
Prosecuting Attorney  
Clinton County  
223 East Third Street  
Cameron, Missouri

Dear Mr. Griffin:

This is in answer to your request for an opinion of this office concerning the proper fine for a person who has obtained a permit from the State Highway Department to haul an overweight load upon the highways of this state and is found to be carrying a load in excess of that granted by the permit. Specifically the question is whether the fine imposed pursuant to Section 304.240, RSMo., should be based upon the excess weight over the statutory limit or over that limit authorized by the permit.

It is our understanding that this request was prompted by a pending charge for an overweight violation under these circumstances where an information has been filed charging the offender with carrying excess weight in an amount over the statutory limit.

It is the policy of this office not to issue an official opinion on a legal question in a pending case. However, we feel that the state should take the position that the violator in question should be fined for the overweight in excess of that authorized by statute rather than by the permit.

Honorable Bob F. Griffin

It is our understanding that when an applicant wishes to obtain an overweight or overdimension permit, he delivers an application to the State Highway Department, and on the application requests the exceptions desired. Permits are not granted on loads that are severable; that is, if a portion of the load can be removed to reduce its weight or dimension, no permit is granted. The permit provides that it is invalid if the load is readily reducible either in dimension or weight.

The permit also provides:

"Any misrepresentation in the application for this permit and any attempted operation not made in strict compliance with this permit and in compliance with the laws of Missouri or of the United States, except as specifically exempted herein, is unlawful and renders this permit void. Permits voided by violation must be surrendered to an officer or employee of the commission." (Emphasis Added)

Since Section 304.200, RSMo., states that the State Highway Department may issue special permits, we feel that this authority is discretionary, and those seeking and obtaining such a permit must do so under its terms. Since the Department has specifically stated that the permit becomes voided if its provisions are violated, the permit of any person who carries a load in excess of the weight authorized by the permit becomes void, and the fine should be based upon that amount of weight in excess of the statutory limit.

We were informed by Mr. Hyder, Chief Counsel for the Highway Commission, that this interpretation consistently has been followed by the Commission and the Highway Patrol and been upheld by various magistrate and circuit courts throughout the state. However, we have not received the style or court of any specific such cases.

Very truly yours,

NORMAN H. ANDERSON  
Attorney General

JHD:cw