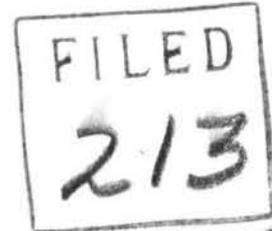


MOTOR VEHICLES: Pursuant to Section 304.230, RSMo. Cum. Supp.
TRUCKS: 1965, on roads other than the federal interstate
TRAFFIC REGULATIONS: system of highways, a truck operator is permitted
WEIGHT REGULATIONS: to shift the weight on an overloaded axle or axle
group in such a way as not to overload any axle or
axles without being charged with a violation, even
though this be accomplished without removing or redistributing any part of
the cargo on the truck; provided that an operator is guilty of a violation
who thereafter intentionally shifts the weight in any manner so as to over-
load any axle or axles.

OPINION NO. 213

April 27, 1966

Honorable Alden S. Lance
Prosecuting Attorney of Andrew County
415 West Main Street
Savannah, Missouri 64485



Dear Mr. Lance:

This is in response to your request for an official opinion of this office regarding Section 304.230, RSMo. Cum. Supp. 1965.

You state that when one or more axles of a truck have been found to be overloaded, the operators have been shifting this overload to other axles without removing any of the freight from the truck by the following procedures:

1. By moving the position of the fifth wheel which couples the trailer to the tractor on semi-trailer combination rigs.
2. Placing part of the load on an extension of the cargo-carrying part of the rig built over the cab portion of the truck.

You inquire whether such procedures comply with the law and avoid violations as provided in Section 304.230, supra.

Said Section 304.230, RSMo. Cum. Supp. 1965, states:

"1. It shall be the duty of the sheriff of each county or city to see that the provisions of sections 304.170 to 304.230 are enforced and any peace officer or police officer of any county or city or any highway patrol officer 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 or any highway patrol 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 304.230 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; and provided further, that any regularly employed maintenance man of the state highway department shall have the right and authority in any part of this state to stop any such conveyance or vehicle upon the public highway for the purpose of determining whether such vehicle is loaded in excess of the provisions of sections 304.170 to 304.230, and if he finds such vehicle loaded in violation of the provisions thereof he shall have the right at that time and place to cause the excess load to be removed from such vehicle. When only an axle or a tandem axle group of a vehicle is overloaded the operator shall be permitted to shift the load, if this will not overload some other axle or axles, without being charged with a violation; provided, however, the privilege of shifting the weight without being charged with a violation shall not extend to or include vehicles while traveling on the federal interstate system of highways. When only an axle or tandem axle group of the vehicle traveling on the federal interstate system of highways is overloaded and a court authorized to enforce the provisions of sections 304.170 through 304.230 finds that the overloading was due to the inadvertent shifting of the load changing axle weights in transit through no fault of the operator of the vehicle and that the load thereafter had been shifted so that no axle had been overloaded, then the court may find that no violation has been committed. The operator of any vehicle shall be permitted to back up and re-weigh, or to turn around and weigh from the opposite direction. Any operator whose vehicle is weighed and found to be within five per cent of any legal limit may request and receive a weight ticket, memorandum or statement showing the weight or weights on each axle or any

combination of axles. Once a vehicle is found to be within the limits of section 304.180 after having been weighed on any state scale and there is no evidence that any cargo or fuel has been added, no violation shall occur but a presumption shall exist that cargo or fuel has been added if upon re-weighing on another state scale the total gross weight exceeds the applicable limits of Section 304.180 or 304.190. The highway commission of this state may deputize and appoint any number of their regularly employed maintenance men to enforce the provisions of said sections, and the maintenance men herein delegated and appointed shall report to the proper officers any violations of sections 304.170 to 304.230 for prosecution by said proper officers.

"3. Any part of this section which shall be construed to be in conflict with the axle or tandem axle load limits permitted by the Federal-Aid Highway Act, section 127 of title 23 of the United States Code (public law 85-767 85th Congress) shall be null, void and of no effect." (Emphasis supplied)

By Section 304.240, RSMo., violations of the load law are declared to be misdemeanors.

Pursuant to the quoted statute, except on the Federal Interstate system of highways, when "only an axle or a tandem axle group of a vehicle is overloaded the operator shall be permitted to shift the load, if this will not overload some other axle or axles without being charged with a violation." The clause in the statute next following the part last quoted uses the term "shifting the weight" synonymously with shifting the load.

The word "load" is defined as "that which is, or is to be, laid on or put in anything for conveyance . . . a cargo; lading; pack." Webster's Second International Dictionary, P 1447. The same work defines the word "load" as meaning in mechanical terminology the "amount of pressure due to superimposed weight, whether stationary or moving;" id.

The question involved in your inquiry is whether, under the above quoted statute, shifting the load applies to the weight or pressure produced by the cargo or to the cargo itself. The fact that the statute equates "load" with "weight" is some indication that emphasis is upon the force applied to an axle as distinguished from the heavy objects producing such force.

In Section 304.180, RSMo. Cum. Supp. 1965, referred to in Section 304.230, supra, subsection 2 reads:

"2. An 'axle load' is defined as the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle."

It is clear from the quoted definition that the legislature had in mind the force acting on the axle as distinguished from the objects exerting such force. "Total load transmitted to the road" does not mean freight or cargo transmitted to the road, but means weight or force transmitted to the road.

Thus in permitting truck operators to shift the load, the legislature by enacting Section 340.230, supra, intended to permit such operators to redistribute the weight or force exerted on an axle or axle group, without reference to any actual removal or redistribution of cargo.

Since this interpretation is a reasonable one, we adopt it in view of the rule of statutory construction that criminal statutes should be strictly construed against the state and liberally in favor of the defendant. *State v. Getty, Mo.*, 273 SW2d 170.

Please note, however, that once an operator has been permitted to so shift the weight on the axles, the vehicle may not again be altered so as to create an overloading on any axle. Otherwise the purpose of the overload law would be thwarted in many instances and the preposterous result would be that overloading would occur on the road where the damage is done, but not at the weight station where no harm ensues. Statutes should not be so construed as to take the life out of the law, *Murphy v. Wabash Railroad Co., Mo.*, 128 SW 481, but with a view to effectuate the legislative purpose, *In re Gartside's Estate, Mo.*, 207 SW2d 273, promoting the meaning of the statute and not giving it any absurd construction, *Rector v. Tobin Construction Co., Mo. App.*, 351 SW2d 816.

CONCLUSION

It is the opinion of the Attorney General that pursuant to Section 304.230, RSMo. Cum. Supp. 1965, on roads other than the federal interstate system of highways, a truck operator is permitted to shift the weight on an overloaded axle or axle group in such a way as not to overload any axle or axles without being charged with a violation, even though this be accomplished without removing or redistributing any part of the cargo on the truck; provided that an operator is guilty of a violation who thereafter intentionally shifts the weight in any manner so as to overload any axle or axles.

Honorable Alden S. Lance

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donald L. Randolph.

Very truly yours,



NORMAN H. ANDERSON
Attorney General