

MOTOR VEHICLES:

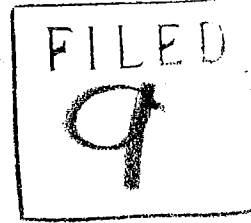
TRUCKS:

WEIGHT REGULATIONS:

1. If the weight on a tandem axle does not exceed thirty-two thousand (32,000) pounds but the weight on one of the axles in the tandem group exceeds eighteen thousand (18,000) pounds there is a violation of Section 304.180, RSMo Cum. Supp. 1967. 2. Any one axle, however, positioned or attached, may not exceed the weight of eighteen thousand (18,000) pounds prescribed for a single axle. 3. A weight limitation of eighteen thousand (18,000) pounds on a single axle of a tandem group is not in conflict with or in excess of that permitted under the provisions of Section 127 of Title 23 of the United States Code (public law 85-767, 85th Congress). 4. A holding that, under Section 304.180, the weight of any one axle of a tandem group can lawfully exceed eighteen thousand (18,000) pounds would render the State of Missouri ineligible for apportionment of future interstate funds under Section 108(b) of the Federal Aid Highway Act of 1956.

OPINION NO. 9

March 18, 1969



Colonel E. I. Hockaday
Superintendent
Missouri State Highway Patrol
Waggoner Building
Jefferson City, Missouri 65101

Dear Colonel Hockaday:

This is to acknowledge receipt of your request for a formal opinion from this office which reads as follows:

"An opinion is requested from your office as to whether under Section 304.180, one axle of a tandem axle may exceed the single axle weight of 18,000 pounds."

The pertinent provisions of Section 304.180, RSMo Cum. Supp. 1967, in relation to the opinion request are as follows:

"1. No vehicle or combination of vehicles shall be moved or operated on any highway in this state having a greater weight than eighteen thousand pounds on one axle and no vehicle shall be moved or operated on the highways of this state having a greater weight than thirty-two thousand pounds on any tandem axle; the term 'tandem axle' shall mean a group of two or more axles, arranged one behind another, the distance between the extremes of which is more than forty inches and not more

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than ninety inches apart and further provided, however, that when any vehicle or combination of vehicles with six axles which include a tandem axle group as above defined and a group of three axles which are fully equalized, automatically or mechanically, and the distance between the center of the extremes of which do not exceed one hundred ten inches, the chief engineer of the Missouri state highway department shall issue a special permit for the movement thereof, as provided in section 304.200, for eighteen thousand pounds for each axle of the tandem axle group and for sixteen thousand pounds for each axle of the group of three fully equalized axles which are equalized, automatically or mechanically, when said vehicle or combination of vehicles is used to transport excavation or construction machinery or equipment, road-building machinery or farm implements over routes in the primary system and other routes that are not a part of the interstate system of highways; provided, further, that the chief engineer of the Missouri state highway department may issue such permits on the interstate system.

"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.

* * * *

"4. Nothing in this section shall be construed as permitting lawful axle loads, tandem axle loads or gross loads in excess of those permitted under the provisions of section 127 of title 23 of the United States Code (public law 85-767, 85th Congress)." As amended Laws 1965, p. 489, Sec. 1; Laws 1967, p. _____, S.B.No. 90, Sec. 1.

In addition to the above Missouri legislation, Section 127 of Title 23 of the United States Code (public law 85-767, 85th Congress) reads as follows:

"No funds authorized to be appropriated for any fiscal year under section 108(b) of the Federal-Aid Highway Act of 1956 shall be apportioned to any State within the boundaries of which the

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Interstate System may lawfully be used by vehicles with weight in excess of eighteen thousand pounds carried on any one axle, or with a tandem-axle weight in excess of thirty-two thousand pounds, or with an over-all gross weight in excess of seventy-three thousand two hundred or eighty pounds, or with a width in excess of ninety-six inches, or the corresponding maximum weights or maximum widths permitted for vehicles using the public highways of such State under laws or regulations established by appropriate State authority in effect on July 1, 1956, whichever is the greater. Any amount which is withheld from apportionment to any State pursuant to the foregoing provisions shall lapse. This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof that could be lawfully operated within such State on July 1, 1956. With respect to the State of Hawaii, laws or regulations in effect on February 1, 1960, shall be applicable for the purposes of this section in lieu of those in effect on July 1, 1956. Pub.L. 85-767, Aug. 27, 1958, 72 Stat. 902; Pub.L. 86-624, § 17(e), July 12, 1960, 74 Stat. 416."

To briefly summarize the above legislation, Section 204.180, supra, provides that a motor vehicle shall not be operated on any highway of this state with a weight on one axle in excess of eighteen thousand (18,000) pounds. It further provides that no motor vehicle shall be operated on any highway of this state having a greater weight than thirty-two thousand (32,000) pounds on a tandem axle. A tandem axle is defined as one where the distance between the axles is forty (40) to ninety (90) inches. Lastly nothing shall be construed as permitting lawful (axle loads on) tandem axle loads in excess of those permitted under the provisions of Section 127 of Title 23 of the United States Code. In this connection, the federal legislation provides that no funds authorized to be appropriated for any fiscal year under section 108(b) of the Federal Aid Highway Act of 1956 shall be apportioned to any state allowing motor vehicles to operate on the federal interstate system of highways with weight in excess of eighteen thousand (18,000) pounds carried on any one axle, or with a tandem axle weight in excess of thirty-two thousand (32,000) pounds.

It is submitted that there are two issues for determination: (1) Whether there is a violation of Section 304.180, supra, if one of the axles in a tandem group exceeds eighteen thousand (18,000) pounds, but the total weight on the tandem axle does not exceed

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thirty-two thousand (32,000) pounds; and (2) Whether the interpretation of Section 304.180, supra, is in conflict with or in excess of the weight provisions provided for in Section 127 of Title 23 of the United States Code. We will first direct our attention to the former issue.

In the consideration of this problem, an argument has been made in support of the contention that there is no violation of Section 304.180, supra, if one of the axles in a tandem group exceeds eighteen thousand (18,000) pounds. Briefly, the argument is as follows: "the legislature intended to set up an axle weight limit, a tandem axle weight limit and a gross weight limit. The gross weight limit was set expressly subject to the limit on any one axle or any tandem axle. The law does not say that the weight on any tandem axle is subject to the weight on one axle in the tandem combination or group; had the legislature meant to make the tandem axle subject to the weight limit on a single axle it would have said so." As further support for such an argument, it has been stated that criminal statutes are to be construed strictly, liberally in favor of the defendant, and strictly against the state. Consequently, since Section 304.180, supra, is penal in nature, a strict interpretation should be favored so that a tandem axle is not subject to the eighteen thousand (18,000) pound single axle limitation. Although the above contention is a valid argument, we are not persuaded that this is the proper interpretation of Section 304.180, supra.

It is a cardinal rule, universally accepted that in the exposition of a statute, the intention of the lawmaker will prevail over the literal sense of the terms; its reason and intention will prevail over the strict letter. See *State v. Schwartzmann Service, Inc.*, 40 S.W.2d 479. While it is also true that a criminal statute is to be strictly construed since it is penal in nature, it is not to be given its narrowest meaning, if such is directly contrary to the intention of the legislature, or out of harmony with its manifest purpose and intent. *State v. Chadeayne*, 313 S.W.2d 757. In this connection, the argument made that the intent of the legislature was to allow thirty-two thousand (32,000) pounds on either axle of the tandem group is not persuasive. It is inconceivable that the legislature intended such a result where the statute specifically states that no vehicle shall be operated on any highway in this state having a greater weight than eighteen thousand (18,000) pounds on one axle. In addition the legislative history of the statute reveals that since 1925 the General Assembly has never approved more than eighteen thousand (18,000) pounds on a single axle. (RSMo 1939 Sec. 8406, A.L. 1943, p. 663, A. 1949 S.B. 1113, A.L. 1951, p. 695, A.L. 1957, p. 624, A.L. 1963, p. 417, A.L. 1965, p. 489, A.L. 1967, S.B. 90). Instead, it is our belief that the purpose of the statute was to prevent injury to public property in the form of damage to roads, bridges, etc., and to insure the safety of persons traveling over the highways by prohibiting the use of public highways by motor vehicles of excessive weight. See *Commonwealth v. Burall*,

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22 A.2d 619, 146 Pa. Super. 525. A similar viewpoint is expressed in the Missouri case of State v. Schwartzmann Service, Inc., supra, where the court in referring to Section 304.180, stated on page 480: "The purpose of the statute, manifestly, is to protect the highways of the state from the damage that may be done by vehicles of excessive weight. * * *" Therefore, it is our opinion that in keeping with the intent of the General Assembly, the proper construction of Section 304.180 requires a limitation of eighteen thousand (18,000) pounds on a single axle of a tandem axle group in order to spread the weight over as large a surface of the highway as practicable. It should be noted that any argument made that this result is achieved with "equalizers" which in our understanding are devices attached to tandem axles to equalize weights in connection with both axles, is without merit as not all motor vehicles are equipped with such devices and there is no legislation requiring the use of "equalizers." Finally, it is submitted that this holding is not unreasonable in view of Section 304.230, RSMo Cum. Supp. 1967, which provides that when only an axle or a tandem axle of a vehicle is overloaded on roads other than the federal interstate system of highways, the operator is permitted to shift the load provided this does not overload some other axles or axle without being charged with a violation. (For similar interpretation, see Op. Atty. Gen. No. 213, Lance, 4-27-66). Also Section 364.230 provides that when only an axle or tandem axle group of a vehicle traveling on the federal interstate system of highways is overloaded, a court may find that no violation has been committed, if 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.

Having decided that under Missouri law, a single axle of a tandem axle group is subject to the eighteen thousand (18,000) pounds limitation required for single axles, we now consider whether such decision is in conflict with Section 127 of Title 23 of the United States Code. In this connection, we have requested the assistance of the United States Department of Transportation. We were consequently advised that while there was no federal requirement that the weight of individual axles within a tandem axle group be measured singly, the requirement of 23 U.S.C. 127 were taken from policy recommendations by the American Association of State Highway Officials which made the following proposal as to the maximum permissible weight for a tandem axle:

"2.08.02 Tandem-axle weight: The total gross weight imposed on the highway by two or more consecutive axles in tandem articulated from a common attachment to the vehicle, and spaced not less than 40 inches nor more than 96 inches apart, shall not exceed 32,000 pounds, and no one axle of any such group of two consecutive axles shall exceed the weight permitted for a single axle. Further, the weight imposed on the highway by two or more consecutive axles, individually attached to the vehicle and

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spaced not less than 40 inches or more than 96 inches apart, shall not exceed 32,000 pounds. No one axle of any such group of two or more consecutive axles shall exceed the weight permitted for a single axle." (emphasis added)

Therefore, it was the advice of the United States Department of Transportation that in order for two axles of a vehicle to meet the requirements of being a tandem axle, the axles must be so attached or articulated as to equalize substantially the load between them and that a ruling by this office, holding that there was no violation of Section 304.180 if one of the axles in a tandem group exceeded eighteen thousand (18,000) pounds but the total weight on the tandem axle did not exceed thirty-two thousand (32,000) pounds would be inconsistent with the AASHO policy and with 23 U.S.C. 127. (Copy of letter of May 28, 1968 attached).

Subsequent to receiving the above letter from the United States Department of Transportation, this office requested clarification in regard to the following: whether that portion of the AASHO policy as quoted therein: "* * *no one axle of any such group of two consecutive axles shall exceed the weight permitted for a single axle.", meant that no one axle of any two consecutive axles as distinguished from a tandem axle group should exceed the weight permitted for a single axle or whether the underlined phrase applied only to a weight limitation on a tandem axle group. We were then informed by the United States Department of Transportation in part as indicated below:

"* * *The words 'such group' clearly relate back to phrase 'two or more consecutive axles in tandem articulated from a common attachment,' meaning that neither of two axles considered together as a tandem group may exceed 18,000 pounds. The wording of the next sentence, separately relating to axles 'individually attached', further confirms this view. Thus, in no event may any one axle, however positioned or attached, exceed the weight prescribed for a single axle by 23 U.S.C. 127." (emphasis added)

In addition, this office requested further clarification by specifically requesting the opinion of the United States Department of Transportation as to whether the State of Missouri would be ineligible to receive an appropriation of federal funds under the Federal Highway Act of 1956 if a ruling was made by this office that there was no violation of Section 304.180, RSMo Cum. Supp. 1967, if one of the axles in a tandem group exceeded eighteen thousand (18,000) pounds. but the total weight of the tandem axle did not exceed thirty-two thousand (32,000) pounds. We were informed by the United States Department of Transportation that a ruling by this

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office permitting one axle of a tandem group to exceed eighteen thousand (18,000) pounds would render Missouri ineligible for apportionment of future interstate funds under Section 108(b) of the Federal Aid Highway Act of 1956. (Copy of letter of July 15, 1968 attached).

CONCLUSION

In conjunction with the advice of the United States Department of Transportation, the opinion of this office is as follows:

1. If the weight on a tandem axle does not exceed thirty-two thousand (32,000) pounds but the weight on one of the axles in the tandem group exceeds eighteen thousand (18,000) pounds there is a violation of Section 304.180, RSMo Cum. Supp. 1967.

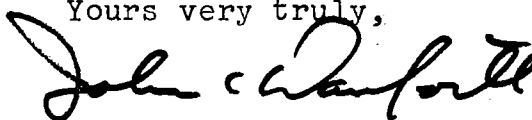
2. Any one axle, however, positioned or attached, may not exceed the weight of eighteen thousand (18,000) pounds prescribed for a single axle.

3. A weight limitation of eighteen thousand (18,000) pounds on a single axle of a tandem group is not in conflict with or in excess of that permitted under the provisions of Section 127 of Title 23 of the United States Code (public law, 85-767, 85th Congress).

4. A holding that, under Section 304.180, the weight of any one axle of a tandem group can lawfully exceed eighteen thousand (18,000) pounds would render the State of Missouri ineligible for apportionment of future interstate funds under Section 108(b) of the Federal Aid Highway Act of 1956.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, B. J. Jones.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 213
4-27-66, Lance

Let. to Jones
5-28-68

Let. To Jones
7-15-68