MOTOR VEHICLES:
OPERATORS' LICENSES:

Operation of overweight, overlength, or overwide vehicle upon the highway is not a nonmoving traffic violation.

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JOHN M. DALTON

FILED
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March 5, 1953

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J. C. Johnsen

Honorable H. M. Long, Assistant Supervisor
Department of Revenue
State of Missouri
Jefferson City, Missouri

Dear Sir:

We are in receipt of a request from you for an opinion of this office. Your request reads as follows:

> "We would appreciate your official opinion on question as follows, as relates to the new Drivers' Law enacted by the 62nd General Assembly. Namely, 'Is an over weight, over length or over wide vehicle to be considered a moving traffic violation?'"

Since you refer to the "new Drivers' Law", we will assume for the purpose of this request that you refer to the amended Senate Committee Substitute for House Committee Substitute for House Bills No. 22, 49, 56, and 114 of the 66th General Assembly. Hereafter we will call this bill by its assigned statute numbers. However, they are not to be found in the Revised Statutes of Missouri, 1949.

Reference to nonmoving traffic violations is found to have been made in Section 302.010, in the definition of "Habitual violator of traffic laws", as follows:

> "(8) 'Habitual violator of traffic laws', a person who has been adjudged guilty at least five times within one year of violating any traffic laws or ordinances other than nonmoving traffic violations;"

Again, in paragraph (13) of Section 302.010:

> "(13) 'Nonmoving traffic violation', that character of traffic violation

> where at the time of such violation the motor vehicle involved is not in motion;"

In order to determine whether or not the operation upon highways of overweight, overlength, or overwide vehicles constitute nonmoving traffic violations as to come within the exceptions contained in the above quoted Section 302.010, paragraph (8), it is necessary to consult certain parts of the statutes describing the offenses.

Section 304.170, RSMo 1949, contains the following prohibition:

> "1. No motor-drawn or propelled vehicle shall be operated on the highways of this state the width of which, including load, is greater than ninety-six inches, except clearance lights, rear view mirrors, or other accessories required by a federal, state, or city law or regulation; or the height of which, including load, is greater than twelve and one-half feet, or the length of which, including load, is greater than thirty-five feet; and no combination of such vehicles coupled together of a total or combined length, including coupling, in excess of forty-five feet shall be operated on said highways."

Section 304.180, RSMo 1949, contains the following prohibition:

> "1. No motor-drawn or propelled vehicle, or combinations thereof, shall be moved or operated on the highways of this state when the gross weight thereof, in pounds shall exceed the weight * * *."

In addition to the definition of "operator" in the House Bills referred to above, the words "driving" and "operating" are used to designate the same thing; the Legislature in the law itself having treated driving and operating as interchangeable in reference to a motor vehicle.

From the very nature of the statutes referred to above, it may be concluded that although the overweight, overlength

or overwidth of a vehicle could, under some circumstances, constitute a violation of the law when the vehicle was standing still, there is the essential element to the commission of an offense that the vehicle be operated upon the highways.

In State v. Schwartzmann Service, 40 S.W. (2d) 479, in regard to a similar statute concerning vehicular weight, the Court said, l.c. 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. It is inconceivable that the Legislature intended to protect the highways from damage from overloaded trucks and other self-propelled vehicles, while permitting the same mischief to be done by trailers drawn by such self-propelled vehicles."

It is common knowledge that it is necessary for the care and preservation of the highways and for the safety of the public that there should be limits fixed by statute as to what can be moved over public roads.

In Daniel v. State Farm Mutual Insurance Co., 130 S.W. (2d) 244, at l.c. 249, the Court defines "operate" as follows:

> "The word 'operate' according to Webster's dictionary is to 'produce an effect, to cause to effect, to bring about.' * * *"

Absent an express and declared intent within the law itself to the effect that an overweight, overlength or an overwide vehicle is a nonmoving traffic violation, there seems to be no conclusion but that the operation of such a vehicle over the highways of this state in violation of the law in regard thereto is not a nonmoving traffic violation.

CONCLUSION

It is therefore the opinion of this department that the operation of a motor drawn or propelled vehicle on the high-

Honorable H. M. Long

ways of this state over the width, length, or weight as prescribed in Section 304.170, supra, is not a nonmoving traffic violation and therefore does not come within the exception of nonmoving traffic violations of Section 302.010 as enacted in 1951.

The foregoing opinion which I hereby approve was prepared by my Assistant, James W. Faris.

Very truly yours,

JOHN M. DALTON
Attorney General

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