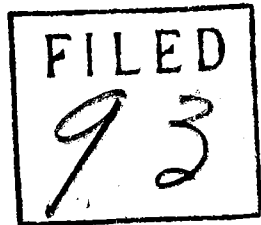


MOTOR VEHICLES: Computation of maximum allowable axle load  
of trucks.



June 4, 1946

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Col. Hugh H. Waggoner, Superintendent  
Missouri State Highway Patrol  
Jefferson City, Missouri

Dear Sir:

Reference is made to your letter requesting an official opinion of this office upon the matters outlined in a letter to you from Capt. Otto L. Viets, which was enclosed therewith, reading as follows:

"1. Section 8406, Missouri Laws, 1945, relates to gross weights of motor vehicles and reads in part: 'Nor shall the total gross weight, with load on any group of axles of a vehicle or combination of vehicles where the distance between the first and last axles of the group is eighteen (18) feet or less exceed the weight in pounds compiled by multiplying the distance in feet between the first and last axles of such group under consideration plus forty (40) by six hundred fifty (650).' This section concludes: 'For the purpose of this section on "axle load" shall be defined as the total load imposed upon the highway through all wheels whose centers are included within two parallel transverse vertical planes not more than forty (40) inches apart.'

"2. Tandem axles which would come under the term 'group of axles' are in common use under semi-trailers. The usual distance between axles on tandems is forty-two inches or more in even inches. The State Highway Commission has prepared a schedule for quick reference by patrolmen

and weight clerks as to the various allowable weights on the various distances between axles. This schedule is graduated by inches and begins with three feet five inches and up to and including eighteen feet. Since the schedule begins with three feet five inches, it has normally been the policy of patrolmen and weight clerks to consider tandem axles with less than forty-one inches distance between centers of axles as one axle.

"3. It is now found that manufacturers are making tandem axles which measure forty inches or a fraction of an inch less by the unusual method of measuring with a tape measure. The makers of the tandems maintain that they measure forty inches plus a fraction of an inch which may be as low as one sixty-fourth of an inch, by measuring with special instruments.

"4. It is requested that an opinion be obtained from the Attorney General to ascertain if a tandem axle measuring a slight fraction of an inch over forty inches should be considered as a tandem or if it must be over forty inches in full inches before it should be considered as a tandem and for the purpose of determining the 'axle load.'"

A determination of the question which you have propounded involves a consideration of a portion of Section 8406, R. S. Mo. 1939, as amended, Laws of Missouri, 1943, p. 667, wherein a definition of "axle load" is found. The pertinent part of the statute mentioned reads as follows:

"For the purpose of this Section an 'Axle load' shall be defined as the total load imposed upon the highway through all wheels whose centers are included within two parallel transverse vertical planes not more than forty (40) inches apart."

The statute is clear and unambiguous and, in the premises, we deem the following rule enunciated in *St. Louis Amusement Co. v. St. Louis County*, 147 S. W. (2d) 667, l. c. 669, applicable:

"We need not conjecture as to the intent of the legislature in creating this exemption because we find the language of the statute is plain. And where the language of a statute is plain and unambiguous it may not be construed. It must be given effect as written."

Applying this rule to the language found in Section 8406, supra, we can arrive at no other conclusion but that when the statute reads "not more than forty (40) inches apart," it must be given the clear and unambiguous meaning which it imports. Therefore, any group of axles the centers of which measure more than forty inches apart must be considered tandem axles, in accordance with the plain terms of the statute.

Further, under the provisions of Section 8410, R. S. Mo. 1939, a violation of the maximum allowable load provisions of Section 8406, R. S. Mo. 1939, is made a misdemeanor. Said section reads as follows:

"Any person, firm, corporation, partnership or association violating any of the provisions of sections 8405 to 8409, inclusive, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than five dollars (\$5.00) nor more than five hundred dollars (\$500.00) or by imprisonment in a county jail for a term of not exceeding twelve (12) months, or by both such fine and imprisonment."

The statute being penal in nature, the following rule of statutory construction found in Anthony v. Kaiser, 169 S. W. (2d) 47, 1. c. 48, must be adopted:

"Penal and criminal statutes, such as the one before us 'are generally "construed strictly as to those portions which are against defendants, but liberally construed in those which are in their favor--that is, for their ease and exemption. No person is to be made subject to such statutes by implication, and, when doubts arise concerning their interpretation, such doubts are to weigh only in favor of the accused.'" State v. Taylor, 345 Mo. 325, 133 S. W. (2d) 336, 341."

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We note that in your letter of inquiry some distinction is purportedly made between measurements made by officers of the Missouri State Highway Patrol and measurements made by the manufacturers of the vehicles. The determination of the true distance is a question of fact which would necessarily be involved in any criminal prosecution under the statute mentioned. However, we might say that inasmuch as distances are capable of exact measurement, there should be no difference in the results obtained.

CONCLUSION

In the premises, it is the opinion of this department that any two axles the centers of which are not included within two parallel transverse vertical planes forty inches or less distant from each other are to be considered tandem axles in determining the maximum allowable load limits.

Respectfully submitted,

WILL F. BERRY, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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