

MOTOR VEHICLES:  
BRAKES; SUFFICIENCY  
REQUIRED:

Intention of legislature in enactment of Par. 3, Section 304.560, RSMo 1949, is that all motor vehicles except motorcycles be provided at all times with two sets of brakes kept in good working order. When either set is operated independently of the other, must be sufficient to enable driver of moving vehicle to stop same within reasonable distance. Moving vehicle with two sets of brakes that cannot be stopped within reasonable distance when hand or emergency brake is operated, then driver violates said statute.



June 13, 1953

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

Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department, which reads in part as follows:

"Paragraph 3 of Section 304.560, R.S. Mo. 1949, reads as follows: 'All motor vehicles, except motorcycles, shall be provided at all times with two sets of adequate brakes, kept in good working order, and motorcycles shall be provided with one set of adequate brakes kept in good working order.'

"It has been our interpretation that this section required all motor vehicles except motorcycles, to have foot brakes and an emergency or hand brake capable of stopping the vehicle.

"It has recently come to our attention that certain motor vehicles do not have emergency or hand brakes capable of stopping the moving vehicle, but which are capable of holding the vehicle while it is parked.

"Your opinion is respectfully requested on the following questions:

Honorable Hugh H. Waggoner

"1. Is the driver of a vehicle which does not have, in addition to the foot brake, an emergency or hand brake capable of stopping the vehicle in violation of section 304.560?"

Paragraph 3 of Section 304.560, RSMo 1949, referred to in the inquiry reads as follows:

"(3) Brakes: All motor vehicles, except motorcycles shall be provided at all times with two sets of adequate brakes, kept in good working order, and motorcycles shall be provided with one set of adequate brakes kept in good working order."

From the facts upon which the inquiry is based, it appears that motor vehicles are being operated within this state although having two sets of brakes required by above quoted section, the emergency or hand brake are incapable of stopping said vehicle when they are moving, but capable of holding them when they are parked.

As to whether or not the driver of a motor vehicle will be guilty of violating the provisions of Paragraph 3 of Section 304.560, supra, when driving a motor vehicle under the circumstances referred to in the preceding paragraph, thereby subjecting him to criminal prosecution, and the punishment provided by Section 304.570, RSMo 1949, will depend upon the construction given to Section 304.560, supra.

In attempting to arrive at the proper construction of said section, as in every other instance, the primary rule of statutory construction must be borne in mind. That rule was given in the case of *Artophone v. Coale*, 133 S. W. (2d) 343, in which the Supreme Court of Missouri said at l. c. 347:

"\* \* \* The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object and "the manifest purpose of the statute, considered historically," as properly given consideration." *Cummins v. Kansas City Public Service Co.*, 334 Mo. 672, 684, 66 S.W. 2d 920, 925 (7-10)."

Honorable Hugh H. Waggoner

In so far as our discussion is concerned above inquiry resolves itself into these questions:

(1) In the enactment of Section 304.560, supra, did the legislature intend that all motor vehicles, except motorcycles, operated upon the highways of this state should at all times be equipped with two sets of adequate brakes, kept in good working order, and that either set when used independently of the other, should be capable of stopping the vehicle?

(2) In the enactment of said section, was it the intention of the lawmakers that all motor vehicles, while required to be equipped at all times with two sets of adequate brakes kept in good working order, only the foot brakes are required to be capable of stopping the vehicle when in motion, and that the hand or emergency brakes are not required to be capable of stopping the vehicle, but to hold or keep the vehicle still when it is not moving or when it is parked?

(3) What are the meanings of the terms "adequate brakes" "Kept in good working order" as used in said section?

Unfortunately, Section 304.560, supra, nor any of the terms used therein have ever been construed by the appellate courts of this state, therefore, in attempting to construe said section and particularly the terms "adequate brakes" and "kept in good working order," we find it helpful to refer to the decisions of the higher courts of other states which have construed the terms as used in the statutes of other states which are similar to the above quoted section of the Missouri statutes.

In this connection we first call attention to the case of *Turrell v. State*, 51 N. E. 359, in which the defendant had been convicted of the criminal offense of reckless homicide by means of a motor vehicle. In construing the terms "good working order" and "adequate brakes" as used in a statute of the State of Indiana, the Supreme Court of that state said at l. c. 361:

"The affidavit alleges that the brakes of appellant's car 'were not maintained in good working order and were inadequate to control the motion of and to stop and hold the movement of said automobile.' This language was doubtless obtained from Secs. 47-2228, Burns' 1940 Replacement, Secs. 11189-157, Baldwin's Supp. 1939, prescribing a general standard of brake capacity for motor vehicles 'when operated upon a highway.' 'Good working order' and 'adequate' are relative terms. A brake adequate to 'stop and hold' on a level road

Honorable Hugh H. Waggoner

might be inadequate on a 15 percent grade. Pleasure car brakes would be inadequate for heavy trucks. The brakes of a Model T Ford in 'good working order' would not adequately stop and hold a Cadillac. The statute must be construed as requiring that brakes shall be in good working order and adequate for the particular type of vehicle in ordinary reasonable use on the highway. This is common sense. \* \* \*

Again in the case of People v. Circado, 250 N.Y.S. 477, the defendant was convicted of violating a statute which required all motor vehicles driven upon the state highways to be provided with adequate brakes in good working order and sufficient to control the vehicle at all times it was being used.

It was contended that since defendant's vehicle was equipped with an adequate foot brake, defendant was not guilty of violating the statute, and that under the provisions of said statute the emergency brake was intended to be used only for holding the vehicle when parked. In passing upon these contentions of the defendant the court at l. c. 479 said:

"The contention that as defendant's car was equipped with an adequate foot brake, he did not violate the statute because his emergency brake was not in good condition, is untenable. The statute reads: 'Brakes' plural, not 'brake' singular. If it were the intention of the Legislature to use the word 'brake' singular, it could very easily have been said that every motor vehicle operated or driven upon the public highways of the state shall be provided with an adequate foot brake (or an adequate emergency brake) in good working order and sufficient to control such vehicle at all times while in use. This the Legislature did not do, and in my opinion the statute means just what it says, that the brakes of the motor vehicle must be adequate, which means that both the foot brake and the emergency brake must be in good working order and sufficient to control the car at all times when in use.

Honorable Hugh H. Waggoner

"As to counsel for defendant's second contention, subdivisions 3 and 4 of section 87 of the Vehicle and Traffic Law have no application to the present case, but are provisions of law for the protection of the public where a car is parked and left unattended in the street to prevent same from rolling.

"The word 'emergency' is defined in the Standard Dictionary as follows: 'A sudden or unexpected occurrence or condition calling for immediate action.' The emergency brake (as the name implies) is for the purpose of bringing the car to a stop in a sudden or unexpected occurrence or condition, to be used in addition to the foot brake and also in case the foot brake should be out of order or unable to bring the car to a stop.

"The emergency brake in defendant's car when applied by defendant, while his car was being operated at a speed of twenty miles per hour, stopped the car in a distance of 87 feet. The officer testified that had the emergency brake been adequate, it would have stopped the car within 37 feet. This shows conclusively that the emergency brake is not for parking purposes only, but as above noted to be applied in an emergency to bring the car to a stop."

It appears that the words used in Paragraph 3, Section 304.560; supra, were intended to be given their plain and ordinary meaning, since there is no indication that some other or different meaning was intended.

Applying the reasoning given in the New York case to the facts before us, and in construing above quoted statute, it appears that each of the two sets of brakes with which all motor vehicles except motorcycles, must be provided at all times shall be kept in the same condition, that is, "adequate" and "in good working order." Had it been the intention of the lawmakers that only one set of brakes, for example, the foot brakes were to be kept in such condition and capable of stopping the vehicle within a

Honorable Hugh H. Waggoner

reasonable distance, and that the hand or emergency brake was to be used exclusively for the purpose of holding the vehicle after it had been stopped, then they would have specifically provided such in this or some other section of the statute. Since they have not seen fit to do so, we are not at liberty to supply missing statutory provisions or to construe it in a manner which appears to be contrary to the intention of said lawmakers.

While the statute does not provide that brakes shall be sufficiently maintained that when applied, they shall stop the vehicle at the will of the driver, yet, the plural of the word "brake" has been used, and it appears that all brakes were intended to be kept in the same condition and intended to be used for the same purpose. It is believed that the purpose for which such brakes were intended, when applied by the driver, that vehicle operated by him will be retarded, or the vehicle will come to a complete stop within a reasonable distance, and that the application of either set of brakes will assist the driver in having the proper control of his vehicle at all times.

When the brakes are applied for the purpose of stopping the vehicle within a reasonable distance, the inquiry might arise as to what is meant by "reasonable distance." No statutory construction of this term has been given and we make no attempt to give any definition or to lay down any rule applicable to every situation which might arise when the meaning or use of the term might become material.

The fact that no definition or general rule has been established for determining what should be a reasonable distance for stopping a moving motor vehicle in every instance does not indicate that the term "reasonable distance" is vague and meaningless, but that it may be explained or interpreted by use of ordinary words or terms which adequately convey the meaning intended. Such was held to be the rule in the case of *Sproles v. Binford*, 52 S. Ct., 581, in which the court at l. c. 587 said:

"Appellants urge that this provision, by reason of the use of the terms 'nearest practicable common carrier receiving or loading point' and 'shortest practicable route to destination,' and 'common carrier receiving or loading point equipped to transport such load,' is so uncertain that it affords no standard of conduct that it is possible to know. We cannot agree

Honorable Hugh H. Waggoner

with this view. The 'common carrier receiving or loading points,' and the unloading points, described seem quite clearly to be points at which common carriers customarily receive shipments, of the sort that may be involved, for transportation, or points at which common carriers customarily unload such shipments. 'Shortest practicable route' is not an expression too vague to be understood. The requirement of reasonable certainty does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding. \* \* \*The use of common experience as a glossary is necessary to meet the practical demands of legislation. In this instance, to insist upon carriage by the shortest possible route, without taking the practicability of the route into consideration, would be but an arbitrary requirement, and the expression of that which otherwise would necessarily be implied, in order to make the provision workable, does not destroy it."

It is believed that under such circumstances that no definition or general rule can be given, but that the facts of each particular case must be considered in determining whether or not the moving vehicle had been stopped within a reasonable distance.

It is common knowledge that the foot brake is ordinarily used for the purpose of lessening the speed of a moving vehicle or to bring it to a stop, and that the hand or emergency brake is ordinarily used for the purpose of holding it after it has been stopped. The emergency brake is not often used for the purpose of stopping the vehicle, however, as was pointed out in the opinion of People v. Circado, supra, the purpose of the emergency brake is to bring the car to a stop in a sudden or unexpected occurrence or condition, to be used in addition to the foot brake and also when the foot brake is out of order or unable to bring the car to a stop.

In view of the foregoing, we construe Paragraph 3, Section 304.560, supra, in accordance with what is believed to be the intention of the legislature, that all motor vehicles, except motorcycles, must be provided with two sets of adequate brakes, kept in good working order and that when either set is operated independently of the other such brakes must be sufficient to

Honorable Hugh H. Waggoner

retard and lessen the speed of the vehicle, or to bring it to a complete stop within a reasonable distance at the will of the driver.

Therefore, in answer to the inquiry of the opinion request, it is our thought that the driver of the motor vehicle, which vehicle does not have, in addition to the foot brakes, an emergency or hand brake capable of stopping the vehicle within a reasonable distance, violates the provisions of Section 304.560, Paragraph 3.

#### CONCLUSION

It is therefore the opinion of this department that in the enactment of Paragraph 3, Section 304.560, RSMo 1949, it was the intention of the legislature that all motor vehicles, except motorcycles, shall at all times be provided with two sets of adequate brakes kept in good working order and that either set of which, when operated independently of the other shall be sufficient to enable the driver of a moving motor vehicle to stop said vehicle within a reasonable distance.

It is further the opinion of this department that when a moving motor vehicle, although provided with two sets of brakes required by above cited statute, cannot be stopped within a reasonable distance after the driver has operated only the hand or emergency brake, then said driver will have violated the provisions of said statute.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Very truly yours,

JOHN M. DALTON  
Attorney General

PNC:hr