

HIGHWAYS - Right of action against operators of trucks for heavy use of highways.

2-2

January 28, 1935.

Hon. Mark W. Wilson,  
Prosecuting Attorney,  
Henry County,  
Clinton, Missouri.



Dear Sir:

A request for an opinion has been received from you under date of January 10, 1935, such request being in the following terms:

"I would appreciate your opinion upon a question that has come before me in this County. That is what action can be taken where the coal trucks of a coal company, by their excessive use, are tearing up a road. The road is neither a highway nor a farm to market road. The expenses of the reconstruction and the upkeep of this road has been shared by the township and the adjacent land-owners.

I will appreciate your reply upon this question as soon as possible."

As a general proposition, a public highway is from its very nature open to members of the public to use either for business or pleasure. Consequently, the basis of any action taken by you would need to be some statute or principle of common law which is being violated by the operators of the coal trucks referred to in your letter.

1. Public Service Commission Law. From the information given in your letter, it does not appear whether the trucks are hauling coal belonging to the owners of such trucks, or whether this coal is being hauled for someone else. If the latter situation exists, the Public Service Commission Law (Art. 9, Chap. 33, Laws of 1931, page 304) imposes certain license and other requirements, and if the operators of the trucks are not complying with all the provisions of this Public Service Commission Law, a remedy under it would be available.

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2. Weight and Dimensions Law. R. S. Missouri, 1929, Sections 7787-7792, as amended by Laws of 1931, page 265, impose certain restrictions on the weight and dimensions of vehicles operated on the highways of this State, and if these provisions are not being complied with, this would furnish a basis for action. We call your attention especially to Section 7789 which is as follows:

"Whenever by reason of thawing of frost, or rains, or due to new construction the roads are in a soft condition, the maximum weights on all vehicles mentioned in the preceding section, including trucks, tractors, trailers and semi-trailers and other vehicles therein mentioned may be limited by the state highway commission to such an amount and in such manner as will preserve the road under such conditions; and said commission shall give due notice thereof by posting notices at convenient and public places along said road or roads or parts thereof which are subject to said regulations and reduction of weights."

3. Mutilation of Roads. We assume from your letter that the damage being done to your highways as described is not wilful or malicious, but in this connection we call to your attention R. S. Missouri, 1929, Section 7936, which is as follows:

"Every person who shall willfully and maliciously break or destroy or remove any mile post, mile stone, guideboard or marker erected by authority of law on any public highway, plank road or turnpike road, or shall willfully and maliciously deface or alter any inscription on any such post, stone, board or marker, or shall plow up, tear up, or injure by rough locking of wheels of any vehicle, or in any other manner mutilate or injure any public road or highway, shall be deemed guilty of a misdemeanor."

In conclusion, it is our opinion that if operators of coal trucks are using the highways of this State in violation of any provision of the Public Service Commission Law, or the Weight and Dimensions Law, or any other law of this State, that legal action may be instituted against such operators for such violation, but that unless some such law is being violated no right of action would exist against such operators merely by virtue of the fact that in the course of their business they are using the highways more than other persons, with the consequently greater wear and tear on such highways than would be occasioned by more infre-

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quent use.

Very truly yours,

EDWARD H. MILLER  
Assistant Attorney General

APPROVED:

ROY McKITTRICK  
Attorney General