

Date Issued: February 29, 1984 (AGO 84-14)

Requested by: Lieutenant Governor Ernest M. Sands

- QUESTIONS PRESENTED -

I.

Whether a sheriff has the authority to cause a motor vehicle to be weighed to determine if the vehicle's weight is in excess of the posted weight limits.

II.

Whether counties have the authority to provide for a criminal penalty to be imposed upon the operator of an overweight motor vehicle.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a sheriff has the authority to cause a vehicle to be weighed to determine if the vehicle's weight is in excess of the posted weight limits.

II.

It is my further opinion that counties do not have the authority to provide for a criminal penalty to be imposed upon the operator of an overweight motor vehicle.

- ANALYSES -

I.

Section 39-12-01 of the North Dakota Century Code, expressly grants to the county commissioners the authority to establish vehicle weight restrictions for the highways under their jurisdiction. The method of enforcement of such vehicle weight restrictions is established by section 39-12-07, N.D.C.C., which states:

39-12-07. PEACE OFFICERS MAY WEIGH VEHICLE TO DETERMINE LOAD - DECREASING GROSS WEIGHT OF VEHICLE. Every police officer, including members of the state highway patrol, having reason to believe that the weight of a vehicle and the load carried thereon is unlawful, may weigh such vehicle and load or have the same weighed either by means of portable or stationary scales, and for that purpose he may require the driver of such vehicle immediately to unload such portion of the load as may be necessary to decrease the gross weight to the maximum allowed by the provisions of this chapter.

The term "police officer" as used in the statute quoted above must be liberally construed and is intended as encompassing all peace officers. See section 1-02-01, N.D.C.C. To conclude otherwise would permit counties, for example, to establish weight restrictions on their highway systems, but restrict their means of enforcement to the

highway patrol.

Therefore, it is my opinion that a sheriff and his deputies have the authority to use portable or stationary scales to weigh motor vehicles to determine if those vehicles exceed weight limitations established by the county, and to further enforce the provisions of section 39-12-07, N.D.C.C.

II.

Counties are enabled to exercise only those governmental powers conferred upon them by the State Constitution and legislative enactment. The North Dakota Supreme Court, in *Divide County v. Baird*, 212 N.W. 236 (N.D. 1926), held that a county:

. . . is a political subdivision of the state, and that it may "speak and act only in the manner and on the matters prescribed by the Legislature in statutes enacted pursuant to constitutional authority". 212 N.W. 236, 243.

Neither the State Constitution nor State statutes grant to the counties the authority to enact an ordinance defining a crime and providing for the criminal punishment for a violation thereof. However, the county, if it desires, may cite, and through the state's attorney, prosecute the owner or the operator of an overweight vehicle under the provisions of section 39-12-09, N.D.C.C., as a noncriminal traffic violation.

Section 39-12-17, N.D.C.C., provides for the imposition of a civil assessment of a fee for the extraordinary use of highways by an overweight vehicle. The process leading to the assessment of the extraordinary use fee would be similar to a civil action, except that the owner of the truck must post security with the district court in the form of a cash bond or in lieu thereof the impoundment of the overweight vehicle. After the matter has been reduced to a judgment, the moneys from the cash bond or the sale of the vehicle are disbursed pursuant to section 39-12-20, N.D.C.C. That section provides as follows:

39-12-20. PROCEEDS OF SALE. The proceeds of sale shall be applied first to the payment of the costs of the proceedings and next to the payment of the charges assessed. Such charges shall be remitted to the state treasurer to be credited to the highways construction fund, and the moneys so collected are hereby appropriated for use by the state highway department in the construction or reconstruction of highways, roads, and streets of this state. The balance of the proceeds of any sale after the payment of costs and charges shall be paid over by the sheriff to the person entitled thereto as determined by the court, or shall be deposited with the clerk of court for such payment.

Section 39-12-20, N.D.C.C., would be controlling as to the disposition of any moneys received by a county for a violation of the weight restrictions placed on a county road.

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts or the applicable provisions of law are amended or repealed.

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