

48 Op. Att'y Gen. No. 6

HIGHWAYS - Permits for oversize/weight vehicles carrying reducible loads;
HIGHWAYS - Compliance with federal law regarding oversize/weight permits;
TRANSPORTATION, DEPARTMENT OF - Permits for oversize/weight vehicles carrying reducible loads;
TRANSPORTATION, DEPARTMENT OF - Compliance with federal law regarding oversize/weight permits;
MONTANA CODE ANNOTATED - Sections 61-10-109, 61-20-121;
REVISED CODES OF MONTANA, 1947 - Sections 32-1123(5)(f), 32-1127;
UNITED STATES CODE - 23 U.S.C. § 127.

HELD:

The Montana oversize/weight vehicle permit provisions of title 61 of the Montana Code Annotated, as applied to reducible loads, comply with federal law and regulations because they became grandfathered exceptions after July 1, 1956.

August 31, 1999

Mr. Marvin Dye, Director
Department of Transportation
2701 Prospect Avenue
P.O. Box 201001
Helena, MT 59620-1001

Dear Mr. Dye:

You have requested my opinion on the following question:

Do the Montana oversize/weight vehicle permit provisions of title 61 of the Montana Code Annotated comply with federal law and regulations as applied to reducible loads because they became "grandfathered" exceptions after July 1, 1956?

The Federal Highway Administration has questioned Montana's statutory compliance with federal law as it pertains to issuing permits for oversize/weight vehicles carrying "reducible loads." You have asked my opinion on whether Montana's statutes comply with federal law.

Reducible loads can be decreased in size to avoid being transported by oversize/weight trucks.

The 1958 Congress enacted Public Law 85-767, which is codified as amended at 23 U.S.C. § 127. That law established weight and size limits for vehicles driven on interstate roads, subject to state limits existing as of July 1, 1956:

No funds authorized to be appropriated for any fiscal year under section 108(b) of the Federal-Aid Highway Act of 1956 shall be apportioned to any State within the boundaries of which the Interstate System may lawfully be used by vehicles with weight in excess of eighteen thousand pounds carried on any one axle, or with a tandem-axle weight in excess of thirty-two thousand pounds, or with an over-all gross weight in excess of seventy-three thousand two hundred and eighty pounds, or with a width in excess of ninety-six inches, or the corresponding maximum weights or maximum widths permitted for vehicles using the public highways of such State under laws or regulations established by appropriate State authority in effect on July 1, 1956, whichever is greater. . . . This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof that could be lawfully operated within such State on July 1, 1956.

Pub. L. No. 85-767. Despite numerous amendments and additions to 23 U.S.C. § 127, the provisions recognizing and grandfathering state limits, with certain additions, continue today. See Pub. L. No. 100-17 (1989); 23 U.S.C. § 127 (1999).

As of July 1, 1956, two Montana statutes addressed the issue of special permits for oversize/weight vehicles. The Revised Codes of Montana 1947, § 32-1123 (1947), contained tables of maximum weights per axle combinations which exceeded federal maximum weights and provided:

(f) The operation of vehicles or combinations of vehicles having dimensions or weights in excess of the maximum limits herein recommended shall be permitted only if and when authorized by special permit issued by the state highway commission or its officers, supervisors or agents acting pursuant to duly delegated authority from said commission, including the state highway patrol.

Rev. Codes Mont. 1947 § 32-1123(5)(f).

In contrast, Rev. Codes Mont. 1947, § 32-1127 (1955), provided that "no permits are to be issued for movement of vehicles carrying built-up or reducible loads in excess of nine (9) feet in width or exceeding the length, height, or weight specified in this act." Thus, one statute contained no limitation on the issuance of special permits to oversize/weight vehicles while the other statute barred the issuance of special permits to oversize/weight vehicles with reducible loads.

You have indicated that prior to December 1973, the Montana State Highway Commission believed it could issue special permits to oversize/weight vehicles only if they carried a nonreducible load. This position was questioned in December 1973, in the midst of a nation-wide fuel shortage. The Montana Department of Highways initially determined that permits could be issued whether or not the load could be reduced, then reconsidered and determined permits could not be issued to vehicles carrying reducible loads. The reconsideration was prompted by the Federal Highway Administration's disagreement with the Department's interpretation of Montana law.

Thereafter, two truck companies requested the Montana Supreme Court to issue a declaratory judgment regarding oversize/weight permits. The Court analyzed the two conflicting statutes discussed above and ruled as follows:

We find the interpretations placed upon these Montana statutes by the federal highway administration, and since acquiesced in by respondents, if concurred in by this Court, would constitute a repeal of the provisions of sub-paragraph (5)(f) of section 32-1123, R.C.M. 1947. This sub-paragraph, which was in effect July 1, 1956, and which has been repeatedly reenacted into law each time other provisions of the section were changed, clearly provides the authority which is now denied by the Commission and further grants such authority exclusively to the State Highway Commission and its agents. We find the only reasonable resolution of the conflict between this sub-paragraph and section 32-1127, R.C.M. 1947, is by a construction of these statutes together, to the effect that sub-paragraph (5)(f) of section 32-1123 is an expansion of the powers granted in section 32-1127.

.....

We hold the State Highway Commission had the authority to issue such permits on July 1, 1956, for either non-reducible or reducible loads and, accordingly, it has the power to do so now, without jeopardizing the right of the State of Montana to receive federal funds for highway purposes.

State ex rel. Dick Irvin, Inc. v. Anderson, 164 Mont. 513, 523, 524, 525 P.2d 564, 570 (1974).

Anderson remains good law. Sections 32-1123(5)(f) and 32-1127, Rev. Codes Mont. 1947, are recodified and continue to exist, as amended, at Mont. Code Ann. §§ 61-10-109 and -121, respectively. Additionally, Mont. Code Ann. § 61-10-107(3) provides that current maximum gross weight limits do not apply to interstate highways if application would result in the failure to receive federal funds for highway purposes.

The federal law has been amended several times, but continues to recognize, with two additions, the grandfathering of state limits which existed on July 1, 1956. Federal law now states:

This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof, other than vehicles or combinations subject to subsection

(d) of this section which the State determines could be lawfully operated within such State on July 1, 1956, except in the case of the overall gross weight of any group of two or more consecutive axles, on the date of enactment of the Federal-Aid Highway Amendments of 1974.

23 U.S.C. § 127(a) (1999).

Subsection (d) governs "longer combination vehicles" and grandfathers longer combination vehicle state limits in existence on or before June 1, 1991. 23 U.S.C. § 127(d)(1)(A). Thus, with the exception of any Montana laws regarding "longer combination vehicles," which are subject to 1991 law, and groups of two or more consecutive axles, whose overall gross weight is subject to state law in existence on the date of enactment of the Federal-Aid Highway Amendments of 1974, Montana's oversize/weight vehicle permit provisions in effect July 1, 1956, may be applied to vehicles carrying reducible loads.

THEREFORE, IT IS MY OPINION:

The Montana oversize/weight vehicle permit provisions of title 61 of the Montana Code Annotated, as applied to reducible loads, comply with federal law and regulations because they became grandfathered exceptions after July 1, 1956.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/mas/bjh