

April 7, 2004

The Honorable Bob Keenan  
President of the Senate  
P.O. Box 697  
Big Fork, Montana 59911-0697

Dear Senator Keenan:

You have requested my opinion for the following question, which I have rephrased as follows:

What is the effect of Congress's recent adoption of public law 108-199, which prohibited the federal Department of Transportation from expending funds appropriated in fiscal year 2004 to "implement or enforce" the federal hours of service regulations as those regulations may apply to utility service vehicles, on Montana's laws and administrative rules relating to motor carrier safety?

It has been determined that a letter of advice, rather than a formal Attorney General's Opinion, provides the appropriate response to your request.

Public law 108-199, the omnibus appropriations bill which contained an appropriation for the Department of Transportation for fiscal year 2004, included this language: "[n]one of the funds appropriated or made available by this Act shall be used to implement or enforce any provision of the Final rule issued on April 16 (Docket No. FMCSA-97-2350) as it may be applied to operators of utility service vehicles as defined in 49 C.F.R. 395.2."

The obvious effect of this provision is that the Federal Motor Carrier Safety Administration (FMCSA) may not use any funds to implement or enforce the new hours of service rules on utility service drivers operating in *interstate* commerce through September 30, 2004, the end of the fiscal year. The less obvious effect is how the provision impacts utility service drivers operating in *intrastate* commerce. To answer

that question, it is instructive to review both the FMCSA regulations and the requirements of the federal Motor Carrier Safety Assistance Program.

Pursuant to FMCSA regulations, states may not “have in effect or enforce any State law or regulation pertaining to commercial motor vehicle safety in interstate commerce” that is incompatible with FMCSA’s regulations. 49 CFR § 355.25. Additionally, in order to receive federal Motor Carrier Safety Assistance Program (MCSAP) funding, states must meet a number of conditions regarding their motor carrier safety laws and enforcement programs. One basic requirement is that states must adopt and enforce state safety laws and regulations that are “compatible” with the regulation of the FMCSA. 49 CFR § 350.201(a). The term “compatibility” in both places is defined to mean laws and regulations that are identical to or have the same effect as the FMCSA regulations. 49 CFR § 350.105.

Montana has adopted Mont. Code Ann. § 44-1-1005, which authorizes the Department of Justice to adopt by rule standards for motor carrier safety. In likely recognition of the federal “compatibility requirements” subsection (2) provides: “[s]tandards of safety adopted under this section must substantially comply . . . to the federal motor carrier safety regulations . . . as applied to motor carriers and vehicles transporting passengers or property in commerce.” Subsection (2) does not distinguish between interstate and intrastate commerce; it simply requires that state safety standards that comply with those adopted at the federal level.

Reading the plain language of section 44-1-1005(2), the intent is clear: Montana’s motor carrier safety regulations must be in compliance with or compatible to those of the federal government. Dahl v. Uninsured Employer’s Fund, 1999 MT 168, ¶ 16, 295 Mont. 173, 901 P.2d 363.

The Montana Supreme Court in, Montana Power Co. v. Mont. P.S.C., 2001 Mont 102, ¶ 23, 305 Mont. 260, 26 P.3d 91, stated “the construction of a statute by the person or agency responsible for its execution should be followed unless there are compelling indications that the construction is wrong.” The same logic applies here, and I would defer to the federal interpretation that FMCSA may not use funds appropriated in fiscal year 2004 to implement or enforce the new hours of service rules on utility service drivers operating in interstate commerce.

As noted above, section 44-1-1005(2) mandates that Montana’s motor carrier safety regulations comply with the federal regulations. Based upon the compatibility requirements found in both Federal and Montana law, it is my opinion that the federal prohibition against using funds to “implement or enforce” the federal hours of service regulations, as those regulations may apply to utility service drivers, also governs regulation of utility service drivers in Montana.

The Honorable Bob Keenan  
April 7, 2004  
Page 3

This letter should not be construed as a formal Opinion of the Attorney General.

Sincerely,

CIVIL SERVICES BUREAU

ALI N. BOVINGDON  
Assistant Attorney General

ans/jym

c: John Fitzpatrick, Northwestern Energy  
Gary Wiens, Montana Electric Cooperatives' Association