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The State of South Carolina



*Opinion No 88-62
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August 23, 1988

The Honorable T. W. Edwards, Jr.
Member, House of Representatives
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Dear Representative Edwards:

Referencing a moratorium on enforcement of certain weight limits imposed by operation of federal law on certain vehicles or combinations of vehicles operating on the interstate highways of the State of South Carolina, which moratorium will expire on September 1, 1988, you have inquired as to the maximum gross vehicular weights and tandem axle weights which may be permissibly operated on the state's interstate highways after expiration of the moratorium.

The five-year moratorium was a result of a Stipulation of Settlement filed on August 26, 1983, with the clerk of the United States District Court, District of South Carolina, in Civil Action No. 83-1475-15, Motor Transportation Association of South Carolina, Inc. v. Paul W. Cobb, et al. Vehicles operating on this state's interstate highway system within a gross weight of 75,185 and 80,000 gross pounds were permitted, under the moratorium, to carry up to 35,200 pounds on a tandem axle or on each tandem axle within a series of tandem axles. The federal bridge formula, established in 23 U.S.C. § 127, would not be enforced during the moratorium so as to reduce the 35,200 pound tandem axle limit otherwise permitted as discussed below. Certain other provisions were also made in the Stipulation of Settlement. The question remaining now is a construction of the "grandfather" clause of 23 U.S.C. §127 and various portions of state law to determine what weights may be permissible for vehicles operating on this state's interstate system after September 1, 1988; following a discussion of the background of the problem, relevant federal and state law will then be examined.

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Background

To fully understand the importance of this issue and the impact upon the trucking industry of the State of South Carolina, this Office provides the following background against which state and federal law will be considered. Since 1949, a weight limit of 35,200 pounds per tandem axle has been permitted on this state's interstate highway system. Coupled with the maximum permissible gross weight of 80,000 pounds under 23 U.S.C. §127, this permits a load of 9,600 pounds on the front or steering axle of the truck; this combination of weights has been in effect since at least the beginning of the five-year moratorium referenced above which will expire next month.

It is our understanding that to enforce the federal limit of 34,000 pounds per tandem axle for trucks weighing from 75,185 to 80,000 pounds gross weight will place about 12,000 pounds on the front or steering axle, thus causing safety problems in the event of a blow-out in one of the front tires. ^{1/} It is questioned that steel-belted radial tires were built to withstand this stress; power steering mechanisms become necessary to maximize control and safe operation of the vehicle. Many trucks are not so equipped; either new trucks would be purchased or existing trucks modified to allow safer vehicle

^{1/} At least some members of the United States Congress have also recognized this safety problem on a national level. In a Senate debate of the Federal-Aid Highway Amendments of 1974, held December 18, 1974, a 10,000-pound front axle weight limitation was deleted from the bill being considered; the following explanation was offered:

The first of these amendments deleted the 10,000-pound front axle weight limitation which has been added at the urging of the Teamsters and other truck drivers. The drivers tell us that weights in excess of 10,000 pounds mean greater steering difficulty in crisis situations and greater likelihood of front tire blowouts. Counter arguments by carrier companies and engineers are less convincing to this Senator than testimony from those who actually drive these vehicles.

Congressional Record, December 18, 1974, p. 40685 (statement of Senator Stafford).

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operations. In addition, modifications of weights and load shifting would be required, thus adding to the costs of shipping by truck. Insurance costs of the trucking industry could well increase as the safety factor decreases.

The economic impact cannot be overlooked. If a truck of 80,000 gross pounds must restrict tandem axle weight limits to 34,000 pounds, more trucks or more trips will be required to carry the same weight of freight or such goods as is presently permitted. If truck capacity should be reduced ten percent, it is our understanding that trucking rates could rise ten percent, or the revenues of the industry could be cut by ten percent. A direct impact on jobs in South Carolina would result. Business of the trucking industry could well be diverted to neighboring states such as North Carolina, which have higher grandfathered weight limits and can thus permit the trucking industry to carry the same load for a reduced cost to, ultimately, the consumer. In light of the foregoing, it is critical to closely examine the issue as stated above.

Federal Law

The applicable federal law is found in 23 U.S.C. §127, as last amended in relevant part by P.L. 93-643 (Federal-Aid Highway Amendments of 1974, effective January 4, 1975):

(a) In general. No funds authorized to be appropriated for any fiscal year under provisions of the Federal-Aid Highway Act of 1956 shall be apportioned to any State which does not permit the use of the National System of Interstate and Defense Highways within its boundaries by vehicles with a weight of twenty thousand pounds carried on any one axle, including enforcement tolerances, or with a tandem axle weight of thirty-four thousand pounds including enforcement tolerances, or a gross weight of at least eighty thousand pounds for vehicle combinations of five axles or more. However, the maximum gross weight to be allowed by any State for vehicles using the National System of Interstate and Defense Highways shall be twenty thousand pounds carried on one axle, including enforcement tolerances, and a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances and with an

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overall maximum gross weight, including enforcement tolerances, on a group of two or more consecutive axles produced by application of the following formula:

$$W = 500 \left(\frac{LN}{N-1} + 12N + 36 \right)$$

where W equals overall gross weight on any group of two or more consecutive axles to the nearest five hundred pounds, L equals distance in feet between the extreme of any group of two or more consecutive axles, and N equals number of axles in group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is (1) thirty-six feet or more, or (2) in the case of a motor vehicle hauling an tank trailer, dump trailer, or ocean transport container before September 1, 1989, is 30 feet or more:

Provided, That such overall gross weight may not exceed eighty thousand pounds, including all enforcement tolerances, except for those vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable State laws, or the corresponding maximum weights 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, except in the case of the overall gross weight of any group of two or more consecutive axles on any vehicle (other than a vehicle comprised of a motor vehicle hauling any tank trailer, dump trailer, or ocean transport container on or after September 1, 1989), on the date of enactment of the Federal-Aid Highway Amendments of 1974 [enacted Jan. 4, 1975], whichever is the greater. ... This section shall not be construed to deny

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apportionment to any State allowing the operation within such State of any vehicles or combinations thereof 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 [enacted Jan. 4, 1975]. ...

For purposes of this opinion, the crucial provision of the foregoing is the grandfather clause: "This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof 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 [enacted Jan. 4, 1975]."

To construe this proviso, it is necessary to review legislative history and provisions of South Carolina law to determine what vehicles or combinations thereof could have been lawfully operated in this State on the above dates, taking relevant state and federal law into account. South Dakota Trucking Association, Inc. v. South Dakota Department of Transportation, 305 N.W.2d 682 (S.D. 1981).

State Law Considerations

By an opinion dated May 11, 1983, this Office examined the above-cited grandfather clause and relevant state law to determine that vehicles carrying 35,200 pounds on a tandem axle could have lawfully been operated in this State on July 1, 1956. The South Carolina law in effect on that date, Section 46-664 of the 1952 Code of Laws, imposed a weight limitation of 32,000 pounds on tandem axles. Then Section 46-666 of the 1952 Code permitted a scale tolerance of ten percent, which for 32,000 pounds is 3,200 pounds. Together, then, the maximum permissible weight for tandem axles was determined to be 35,200 pounds gross weight of any group of two axles. This weight limit was thus grandfathered under 23 U.S.C. §127 and was accepted by the United States Department of Transportation, Federal Highway Administration, by letter of David E. Wells to Marvin C. Jones, Assistant Attorney General, dated September 22, 1975. A copy of the opinion of May 11, 1983, is enclosed for your review.

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The question has arisen as to how the 35,200 pound limit for tandem axles correlates with the 80,000-pound gross vehicle weight limit imposed by 23 U.S.C. §127. In particular, the concern is whether the maximum weight limit of 75,185 pounds imposed by state statutes in effect at the time the federal grandfather clause was adopted is so related to tandem axle weight limits that a truck carrying 35,200 pounds per tandem axle is restricted to 75,185 pounds overall gross weight. It is our opinion that the federal weight limitation of 80,000 pounds for gross vehicle weight may be lawfully observed for those trucks carrying 35,200 pounds per tandem axle. See also Act No. 151, Part II, Section 58, 1983 Acts and Joint Resolutions.

As noted above, Section 46-664 of the 1952 Code, in effect since 1949, set a maximum weight for tandem axles at 32,000 pounds; the same statute also established a maximum gross vehicle weight of 68,350 pounds. With the ten percent scale tolerances permitted by Section 46-666 of the 1952 Code, the maximum weight for tandem axles became 35,200 pounds and for gross vehicle weight, 75,185 pounds. The adoption of the Federal-Aid Highway Act of 1956 set forth maximum weights for operation of vehicles on interstate highways but grandfathered the operation of vehicles at higher weights in those states which had higher weights as of July 1, 1956. Thus, the weights permitted under Sections 46-664 and 46-666 of the 1952 Code were grandfathered under federal law. 2/

The Federal-Aid Highway Amendments of 1974, effective January 4, 1975, again established various weight categories and maximum weights therefor for vehicles operating on the interstate highway system. Again, as cited above, the grandfather clause continued to permit the different maximum weights permitted by the states at the time of adoption of the new federal law.

Section 107 of P.L. 93-643 added 23 U.S.C. §141 to the United States Code and required each state to certify to the Secretary of Transportation annually that it is enforcing all state laws with respect to maximum vehicle size and weights on the state's interstate highways, among other items of enforcement. In response to this newly-imposed requirement, the South Carolina Highway Department was authorized by Joint Resolution (Act No. 315 of 1975) of the General Assembly to adopt whatever regulations would be in the best interest of the State, to insure compliance with the Federal-Aid Highway Amendments of 1974

2/ Also grandfathered but not at issue here was a weight limit of 20,000 pounds per single axle. This limit is currently permitted under 23 U.S.C. §127.

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and to further insure that no federal funds authorized for South Carolina would lapse.

Regulations were promulgated by the Highway Department pursuant to Act No. 315 of 1975. These regulations were submitted to the Federal Highway Administration by Assistant Attorney General Marvin Jones on September 4, 1975; by letter of David E. Wells, Chief Counsel of the Federal Highway Administration, dated September 22, 1975, the State of South Carolina was assured that "After careful review of these regulations, there appears in them no deviation from the requirements of 23 U.S.C. §127 with respect to either axle weights, or weights of groups of axles." The regulations then filed with the Secretary of State on September 29, 1975, contained the following in Section 2:

Notwithstanding the provision of Code of Laws of South Carolina Section 46-664 (1974 Cum. Supp.) the gross weight allowed on any group of two axles shall not exceed 35,200 pounds including the enforcement tolerance of Code of Laws of South Carolina Section 46-666 (1962).

Other provisions established, in separate sections, the maximum gross weight of vehicles or combinations of vehicles. See Section 3 of the regulations, which contains no reference to tandem axle weights. 3/

Because the regulations were set to expire on the sooner of an enactment by the General Assembly of an appropriate statute or July 1, 1976, the General Assembly adopted Act No. 569 of 1976 to establish by statute various permissible weight limits of vehicles or combinations of vehicles operating on this State's interstate highway system. Maximum gross weights of certain vehicles were established. In Section 1(2)(a), the following was provided:

The gross weight imposed upon the highway by any one axle of a vehicle shall not exceed 20,000 pounds, and the gross weight imposed upon the highway by any group of two axles shall not exceed 35,200 pounds.

3/ Interestingly, permissible maximum weights of 80,000 pounds are established for certain five- and six-axle vehicles within this regulation.

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The same statute established in another provision a maximum of 80,000 pounds gross weight for certain vehicles of five and six axles, but left in place the 75,185 pound gross vehicle weight limit for other vehicles. In both the 1975 regulations and the 1976 legislation, the continuing limit of 35,200 pounds for tandem axles was recognized, while poundage for overall gross vehicle weight was increased from 75,185 pounds to 80,000 pounds for certain vehicles. Applying the reasoning of South Dakota Trucking Association, Inc. v. South Dakota Department of Transportation, supra, it appears that as of January 4, 1976, a truck with a tandem axle weight of 35,200 pounds could lawfully operate in South Carolina, without regard to the gross vehicle weight.

It also appears that, due to the Federal-Aid Highway Amendments of 1974, the same truck with a tandem axle weight of 35,200 pounds per tandem axle could also lawfully operate with an overall gross vehicle weight of 80,000 pounds as of January 4, 1975. The above quoted provision of 23 U. S. C. §127 authorizes a maximum of 80,000 pounds gross vehicle weight while also grandfathering tandem axle weight limits permitted under state law as of January 4, 1975. That the various maximum permissible weight limits were not dependent upon each other is clear from such evidence as an explanation of the conference committee amendments to the Federal-Aid Highway Amendments, provided on the Senate floor:

The second amendment "grandfathers in" truck axle weight loadings permitted by States prior to enactment of this legislation. Thus, rather than having a uniform national formula designed to protect bridges, as the Senate bill provided, the conference committee perpetuates numerous variations which may not assure maximum bridge life and safety.

Congressional Record, December 18, 1974, p. 40685 (statement of Senator Stafford).

The Joint Explanatory Statement of the Committee of Conference of P.L. 93-643 explained the grandfather clause quoted above from 23 U. S. C. §127 as follows:

The added language makes it clear that any vehicle or combination of vehicles that could lawfully operate in a State on the date of enactment of the Federal-Aid Highway

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Amendments of 1974 may be permitted to continue to operate on the Interstate System in such State even though the overall gross weight of any group of consecutive axles may exceed that permitted by the formula in this section.

1974 U. S. Code Cong. & Ad. News (93d Congress, 2d Session) 8031. While P. L. 93-643 as codified at 23 U.S.C. §127 permitted a maximum overall gross vehicle weight of 80,000 pounds, state law as to tandem axle weight limits was nevertheless grandfathered at 35,200 pounds; the Explanatory Statement expresses this intent of Congress that such be the case.^{4/}

The Code of Federal Regulations further clarifies the weight limits established by 23 U. S. C. §127 and the grandfather clause quoted above, in 23 C.F.R. §658.17. Part (b) establishes a maximum gross vehicle weight of 80,000 pounds except where a lower gross weight is dictated by use of the bridge formula in 23 U.S.C. §127 and 23 C.F.R. §658.17 (e). In 23 C.F.R. §658.17(d), the maximum gross weight on tandem axles is established to be 34,000 pounds. The "grandfather" provision of the regulation is 23 C.F.R. §658.17 (h):

The provisions of paragraphs (b), (c), and (d) of this section shall not apply to single, or tandem axle weights, or gross weights legally authorized under State law on July 1, 1956. The group of axles requirements established in this section shall not apply to vehicles legally grandfather [sic] under State groups of axles tables or formulas on January 4, 1975.

The plain and literal language of the regulation, which must be construed in the absence of ambiguity (Worthington v. Belcher, 274 S. C. 366, 264 S. E. 2d 148 (1980); State v. Goolsby, 278 S. C. 52, 292 S. E. 2d 180 (1982)), indicates that any one or more of single axle, tandem axle, or gross weight limitations under state law could have been grandfathered by federal law. Nowhere within the regulation is gross weight of 80,000 pounds made dependent upon the federal maximum weight of 34,000 pounds per tandem axle, nor is there a requirement that if state law is grandfathered as to tandem axle limits, state law in existence at the time as to overall gross vehicle weight also be followed.

^{4/} In construing a statute, the primary function of a court or this Office is to ascertain and effectuate legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980).

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Conclusion

Based on the foregoing, it is the opinion of this Office that since at least 1949, the maximum permissible weight per tandem axle has been 35,200 pounds, or a limit of 32,000 pounds in addition to a ten percent tolerance of 3,200 pounds. This state tandem axle weight limit was grandfathered by federal law in 1956 and again on January 4, 1975 by the Federal-Aid Highway Amendments of 1974. The 1974 federal law also established a maximum overall gross vehicle weight limit of 80,000 pounds, which weight limit was adopted in South Carolina as to certain trucks without regard to the tandem axle weight limit previously established. In short, vehicles or combinations of vehicles carrying a tandem axle weight of 35,200 pounds per axle would be permitted to have an overall gross vehicle weight of 80,000 pounds. This opinion is in accordance with the intention of the United States Congress that certain weights be grandfathered if in excess of those permitted by 23 U. S. C. § 127, while permitting vehicles or combinations of vehicles with a maximum overall gross weight of 80,000 pounds to operate on a state's interstate highway system.

With kindest regards, I am

Sincerely,



T. Travis Medlock
Attorney General

TTM:sds

Enclosure