

1981 WL 158028 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 27, 1981

*1 Mr. E. S. Coffey
State Highway Engineer
South Carolina Department of
Highways and Public Transportation
Post Office Box 191
Columbia, South Carolina 29202

Dear Mr. Coffey:

You have requested an opinion as to whether the Department may allow overweight vehicles to travel across the highways of this State during night hours or weekends pursuant to a permit issued under the authority of [Code of Laws of South Carolina § 56-5-4170](#) (Cum.Supp., 1980). It is my understanding that although the Department has never issued an overweight permit for travel during the night or over weekends, there has never been any regulation prohibiting such action. It is simply that the Department, in its discretion, has chosen not to issue such overweight permits previously. [Code of Laws of South Carolina § 56-5-4170\(b\)](#) provides that the Department 'may exercise its discretion in issuing permits for the movement of all types of vehicles which exceed the legal size and weight limits; provided that: . . . (2) The Department may limit or prescribe conditions of operation of such vehicles, . . .' Under these circumstances the Department would, therefore, be authorized to allow overweight vehicles to travel at night or during the weekend if, after investigation, it is determined that the public safety and welfare would not be jeopardized by such actions.

It is further the opinion of this office that [23 U.S.C. § 127](#) and [Code of Laws of South Carolina § 56-5-4055](#) would not prohibit the issuance of such permits. Those sections generally provide that no oversize load or vehicle which could not be lawfully operated upon the highways of this State pursuant to permit or otherwise on July 1, 1956, can be operated at the present time. The statutes in existence as of July 1, 1956, also authorized the granting of overweight permits in the Department's discretion allowing the Department to prescribe the conditions of operation as long as it was in the public interest to do so.

You have also inquired as to whether the issuance of such permits would constitute the promulgation of a regulation as defined in the Administrative Procedures Act. [Code of Laws of South Carolina § 56-5-4170\(d\)](#) provides that the detailed implementation of the overweight permit section does not have general applicability to the public as prescribed in the Administrative Procedures Act and specifically exempts the Department from having the General Assembly approve such actions. It is the opinion of this office that the granting of such permits is not the promulgation of a regulation as defined in the Administrative Procedures Act. If I can be of any further assistance, please let me know.

Sincerely yours,

Richard D. Bybee
Assistant Attorney General

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