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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 29, 1997

William E. Gunn, Interim Director
SC Department of Public Safety
5410 Broad River Road
Columbia, South Carolina 29210-4026

Dear Mr. Gunn:

You have asked whether the 1988 Opinion of this Office correctly addresses the State's treatment of tandem axle limits as separate and distinct from gross weight limits and, therefore, whether the State presently complies with federal law regarding tandem axle limits under the grandfathering provisions in the federal law? In conjunction with your inquiry, you provide the following background information for review:

> Section 56-5-4140(1)(a) of the South Carolina Code of Laws, as last amended by Act No. 461, § 5, effective July 3, 1996, provides that the "... gross weight on a tandem axle operated on the interstate may not exceed 35,200 pounds, including all enforcement tolerances ...." At least on its face, this statute seems to conflict with 23 U.S.C. § 127(a) which restricts "... use of the National System of Interstate and Defense Highways within [a State's] 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 ..."
>
> Prior to the 1996 amendment to § 56-5-4140, the most recent guidance on gross weight on a tandem axle could be found in the settlement agreement from Civil Action NO. 83-1475-15, <u>Motor Transportation Association of South Carolina,</u>

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Inc. v. Paul W. Cobb, et al. dated August 25, 1983. This agreement, between the Motor Transportation Association of South Carolina (now, the South Carolina Trucking Association), the South Carolina Department of Highways and Public Transportation, and the Federal Highway Administration, provided for a moratorium on the enforcement of the federal 34,000 pound maximum tandem axle weight limitation. The moratorium left in place the 35,200 pound tandem axle weight limit that had been in place by South Carolina statute prior to the enactment of 23 U.S.C. § 127(a). The moratorium in the settlement agreement in Motor Transportation Assoc. expired on September 1, 1988.

There have been two Attorney General's Opinions, one Governor's Executive Order, and two Concurrent Resolutions of the South Carolina General Assembly issued proclaiming this State's ability to determine and to grandfather the maximum tandem axle weight limit of 35,200 pounds.

Law / Analysis

23 U.S.C. § 127(a) provides in pertinent part as follows:

> No funds shall be apportioned in any fiscal year under section 104(b)(1) to any State which does not permit the use of the Dwight D. Eisenhower 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 Dwight D. Eisenhower System of Interstate and Defense 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 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 (LN / (N-1) = 12 N + 36)

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 (1) is thirty-six feet or more, or (2) in the case of a motor vehicle hauling any 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, whichever is the greater. Any amount which is withheld from apportionment to any State pursuant to the foregoing provisions shall lapse if not released and obligated within the availability period specified in section 118(b)(1) of this title. 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 two or more

> consecutive axles, on the date of the enactment of the Federal-Aid Highway Amendments of 1974. (emphasis added).

In an Opinion of this Office, which you have referenced, dated August 23, 1988, we stated that "the crucial provision of the foregoing [statute] is the grandfather clause: '[t]his 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 January 4, 1975].'" We noted in this regard that a previous Opinion of the Attorney General dated May 11, 1983 examined the above-referenced grandfather clause as well as the relevant state law to determine whether vehicles carrying 35,200 pounds on a tandem axle could have lawfully been operated in this State on July 1, 1956; our conclusion there was in the affirmative. Reaffirming that conclusion in the 1988 Opinion, we opined that

> [t]he South Carolina law in effect on that date [July 1, 1956], 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 per cent, 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 .... (emphasis added).

The 1988 and 1983 Opinions are herein reaffirmed as to the conclusion therein concerning the federal law's "grandfathering" of South Carolina law with respect to tandem axles. In other words, it continues to be our opinion today that on July 1, 1956, under South Carolina law, vehicles "carrying 35,200 pounds on a tandem axle" were deemed to be operating lawfully in this State, and that this tandem axle weight provision of South Carolina law is "grandfathered" by the Federal-Aid Highway Amendments of 1974.

The 1988 Opinion also addressed "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." Particularly, the issue was posed "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 axles that a truck carrying 35,200 pounds per tandem axle is restricted to 75,185 pounds overall gross weight." We rejected such a limitation, however, concluding instead, 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." Our analysis of this issue was fully stated in the 1988 Opinion as follows:

> [On] ... July 1, 1976, the General Assembly adopted Act No. 569 of 1976 to establish by statute various permissible weight limits of vehicles or combination 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.
>
> 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 form 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 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. ...
>
> 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. (emphasis added).

Precisely this same analysis and reasoning was applied in an Opinion issued by the New York Attorney General, Op. No. 89-F6 (July 7, 1989). There, New York law as of

July 1, 1956, limited "gross weight to no more than 71,000 pounds." Nevertheless, the New York Attorney General found that the Federal grandfather provision

> ... in its key clause "whichever is greater," allows a maximum overall gross weight of 80,000 pounds within New York State. This is so because the State's pre-1956 weights are grandfathered only to the extent that they are greater than the Federal weight limitations. Thus, to the extent that a state's pre-1956 weight limitations are lower than the Federal weight limitations, the federal gross weight limits should apply. Therefore, the fact that New York State had an overall gross weight limit of 71,000 pounds in 1956 is of no consequence inasmuch as federal statute provides a gross weight limitation of 80,000 pounds.
>
> This statutory interpretation is supported by the legislative history of 23 U.S.C. § 127. In 1982, Congress intended to deal with the so-called barrier states, i.e., those few states having stricter weight requirements than the vast majority of other states, by requiring all states to allow vehicles complying with the Federal limits while permitting the higher state limits grandfathered by Federal law. As stated in congressional report during passage of the Federal-Aid Highway Act of 1982 (Pub L 97-424):
>
>> "No funds authorized to be appropriated under the 1956 Highway Act may be apportioned to a State which does not permit the operation of such vehicles at such [Federal] maximum weights on the Interstate System within that State. Amounts so withheld will lapse. This provision would eliminate the problem of the three remaining so-called 'barrier States' which have not adjusted their weight laws in conformity with the other States and which thus impose an undue burden on interstate commerce" (1982 US Cong Admin. News [97th Cong 2d Session], 3642 at 3661).

Hence, the imposition of an overall maximum weight limit of 71,000 pounds for New York State would clearly abrogate Congress' intent that states allow operation of vehicles within the Federal weight limits.

The bridge formula added to 23 U.S.C. §127 in 1975 did not affect the grandfather clause applicable to axle weights and gross weight. Thus, the axle weights grandfathered under New York law were unaffected. New York law is consistent with the federal bridge formula pertaining to the overall weight of two or more consecutive axles.

Indeed, a separate grandfather clause was added for the bridge formula which indicates an intent that it is a gross weight measurement apart from axle weight limits. As stated in a Senate Conference Report to the Highway Amendment of 1974:

> "Because of inclusion in the Senate passed bill of a new and additional weight limitation on any group of two or more consecutive axles of vehicles operating on the Interstate System, clarifying language was added by the Conference Committee to express the intent of the Senate as stated by the floor 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 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 US Cong Admin. News [93rd Cong, 2d Session], 8011 at 8031).

Although nothing in the Federal bridge formula indicates that it abrogates the grandfathered axle weight limitations, under State law the New York bridge formula limits the weight of two consecutive sets of tandem axles to

> 34,000 pounds each (Vehicle and Traffic Law, § 385 [10]). ... This provision is consistent with Federal law (23 U.S.C. § 127). In summary, the Federal bridge formula does not abrogate grandfathered weight limitations. State law, however, establishes a 34,000 pound weight limit for each set of consecutive tandem axles.

Thus, the New York Attorney General concluded that state law would govern the tandem axle limit, but that federal law would be deemed to control in terms of gross weight because in one instance the state law limit was higher and, in the other, federal law limitations were greater. Clearly, the analysis of the New York Attorney General -- just as was that of Attorney General Medlock in 1988 -- found nothing in federal law to require that state law must necessarily govern with respect to gross weight limits merely because such state law was grandfathered with respect to tandem axle limits. In other words, the New York Attorney General concluded that New York law as grandfathered in 1956 established a 34,000 weight limit for each set of consecutive tandem axles; but that federal law permitted a gross limit of 80,000 pounds even though New York law in 1956 only permitted 71,000 pounds. Therefore, the Attorney General saw no need to amend state law because the 80,000 federal limit maximum was applicable and New York law <u>was deemed completely consistent with federal law</u>.

The <u>South Dakota Trucking</u> case likewise sets forth the appropriate guidelines in this area. There, the Supreme Court of South Dakota enunciated the "following criteria for determining permitted sizes and weights on the interstate system:

> a. <u>The state laws in effect on July 1, 1956, must be examined for the purpose of determining whether the maximums prescribed in the federal code or the maximums prescribed by state law apply. If the state law permitted greater maximums as of July 1, 1956, these are controlling, otherwise, the federal maximum prevails</u>.
>
> b. If the state law in effect on July 1, 1956, authorized variations from the maximums, by special permit or otherwise, such variations are also permitted by the federal statutes to be authorized over the interstate system. Furthermore, a state statute passed after July 1, 1956, setting forth procedures or limitations with respect to such variations may also apply to the interstate system, if the state statutes in effect on July 1, 1956, were broad enough to allow such operations. This is

made clear by the following provisions of Title 23, Section 127, U.S.C.:

> "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."

305 N.W.2d at 682. (emphasis added). Applying this analysis, the South Dakota Supreme Court concluded that the adoption of rules by the South Dakota State Transportation Board allowing for vehicles with a gross weight of over 80,000 pounds to be valid under federal law. The Court construed the grandfather clause contained in 23 U.S.C. § 127 as meaning not that vehicles were operating within the State as of July 1, 1956, "but only that they could have been." Id. at 686.

Thus, there is ample support in the federal statutes, the case law interpreting such statutes as well as opinions of other Attorneys General to substantiate the 1988 Opinion of this Office. The law has not changed appreciably since that time. The principal difference between now and the time the 1988 Opinion was written is the enactment of Act No. 461 of 1996; there, the General Assembly officially recognized the 35,200 pound tandem axle limit and the 80,000 pound gross weight limit. Such statute, in essence, codifies the conclusion reached in the 1988 Opinion. In other words, the 1988 Opinion is, in our view, a correct statement of the law and is fully consistent with federal law.

Conclusion

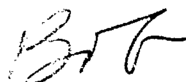
It is our Opinion that the August 23, 1988 Opinion of this Office correctly addresses the State's treatment of tandem axle limits as separate and distinct from gross weight limits. Therefore, in our opinion the State presently fully complies with federal law regarding tandem axle limits under the grandfathering provisions in the federal law. Moreover, the conclusion expressed in the 1988 Opinion that the federal gross vehicle weight limit of 80,000 pounds is applicable in South Carolina is fully supported by the authorities herein referenced. Thus, we reiterate the following conclusion of the August 23, 1988 Opinion as continuing to represent the Opinion of this Office:

> [b]ased 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 kind regards, I am

Very truly yours,



Robert D. Cook
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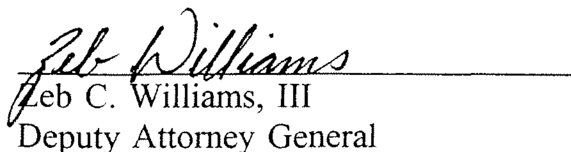
REVIEWED AND APPROVED BY:



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