DON STENBERG
Attorney General

[illegible]VE GRASZ
L[illegible]E SMITH CAMP
Deputy Attorneys General

WARREN D. LICHTY
Assistant Attorney General
Chief, Roads Section

OFFICE OF THE ATTORNEY GENERAL
STATE OF NEBRASKA

STATE HIGHWAY BUILDING
PO BOX 94759
LINCOLN NE 68509-4759

Telephone (402) 479-4611
FAX (402) 479-4325

ASSISTANT ATTORNEYS GENERAL

Gary R. Welch
Robert G. Avey
John E. Brown
William J. Orester
Jeffery T. Schroeder
K. Osi Onyekwuluje

#96013
NO. STATE OF NEBRASKA
OFFICIAL
FEB 22 1996
DEPT. OF JUSTICE

DATE: February 20, 1996

SUBJECT: Application of Neb. Rev. Stat. § 60-6,298 (1)(c) (Supp. 1995) to vehicles used in agricultural land treatment.

REQUESTED BY: Colonel Ron Tussing, Superintendent
Nebraska State Patrol

WRITTEN BY: Don Stenberg, Attorney General
John E. Brown, Assistant Attorney General

You have asked our opinion as to whether a vehicle hauling manure and traveling upon a hard-surface highway is exempt from statutory weight limits by the provisions of Neb. Rev. Stat. § 60-6,298(1)(c) (Supp. 1995). We believe that only unloaded vehicles are exempt by the provisions of § 60-6,298(1)(c). Because the vehicles in question are loaded, those vehicles would be required to remove so much of the load as necessary to meet statutorily set weight limits.

You have provided us with two examples of overweight vehicles that have been cited by the State Patrol for weight violations. According to the information that you have provided, both vehicles were loaded with manure to be applied to farm land, and both vehicles were traveling on paved highways. The vehicles involved were four axle dump trucks with a device in the rear that spread the manure as it was dumped from the truck.

Neb. Rev. Stat. § 60-6,298(1)(c) (Supp. 1995) provides as follows:

> No permit shall be issued under subdivision (a)(I) of this subsection for a vehicle carrying a load unless such vehicle is loaded with an object which exceeds the size or weight limitations, which cannot be dismantled or reduced in size or weight without great difficulty, and which of necessity must be moved over the highways to reach its intended destination. No permit shall be required for the

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> temporary movement on highways other than dustless-surfaced state highways and for necessary access to points on such highways during daylight hours of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment when such temporary movement is necessary and for a reasonable distance.

Statutory language, in the absence of anything to the contrary, is to be given its plain and ordinary meaning. ***State v. Quandt***, 234 Neb. 402, 451 N.W.2d 272 (1990). The second sentence of section 60-6,298(1)(c) was interpreted by the Nebraska Supreme Court in ***Quandt***. In that case the court, in dealing with an unloaded overweight vehicle, stated:

> The controlling question thus becomes: When may qualified overwidth and overweight equipment be moved over "dustless-surfaced state highways" without a permit? The answer provided by § 39-6,181(1) is: when the movement is temporary and necessary for "access to points on such highways." The obvious objective of the exemption is to permit the movement of qualified equipment from one situs to another by the most expeditious route. In that context, "access to points on [dustless-surfaced] highways" means that if there is no other route available, one may move the qualified equipment over a dustless-surfaced highway. The remaining relevant language of the exemption limits the movement to that which is temporary and necessary for a reasonable distance. In the absence of any statutory definition and barring any constitutional infirmity, what is temporary and what constitutes a reasonable distance must be determined from the facts at issue.

Quandt at 405, 451 N.W.2d at 275.

We can find nothing in the court's holding that would extend the exemption found in section 60-6, 298(1)(c) to loaded vehicles. Instead the court in ***Quandt*** set forth four requirements for unloaded vehicles of this type traveling overweight without permit on paved roads:

(1) The vehicles must be involved in public construction or land treatment.
(2) The movement must be temporary.
(3) The movement must be for a reasonable distance.
(4) The movement will be allowed only if there is no other route available.

If the overweight vehicles that are the subject of your opinion request were unloaded, they could reasonably be said to be involved with agricultural land treatment (spreading manure on farm land) and thereby meet the first requirement of ***Quandt***. What is temporary and what constitutes a reasonable distance according to the court in ***Quandt***, is determined by the facts in each case. We believe that in addition to considering the availability of unpaved roads for travel,

a court would look to the weight of the vehicle involved, the length of paved road traveled, and the potential damage to that road. For example, it would not be reasonable to allow "cost saving" equipment to damage roads or bridges merely because the overweight vehicle could reach its destination more quickly on a paved road than on a more circuitous route involving an unpaved road.

The last requirement of the Supreme Court in ***Quandt***, is that there be no other available route. That is, the exception applies only when there is no other route available to the overweight vehicle. If an alternate route is available, then the overweight vehicle is required to take that route, regardless of whether it is less direct than the route provided by a paved highway.

The exemption set out in Neb. Rev. Stat. § 60-6,298(1)(c) has been part of Nebraska law since 1963. Since that time, the Nebraska Department of Roads and the Carrier Enforcement Division of the Nebraska State Patrol have always interpreted the section to apply only to unloaded vehicles. We can find nothing in the legislative history of the exemption nor in the plain language of the exemption to question the interpretation of these two agencies that have been charged with the enforcement of the exemption.

Sincerely,

DON STENBERG
Attorney General

John E. Brown
Assistant Attorney General

Approved By:

Attorney General