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DATE: April 17, 1991

SUBJECT: Power of the State to enforce Federal Motor Carrier Safety Regulations against Nebraska domiciled interstate carriers for violations which occur in another state.

91032

STATE OF NEBRASKA
OFFICIAL
APR 22 1991
DEPT. OF JUSTICE

REQUESTED BY: Steven J. Shaw, Chief Legal Counsel
Nebraska State Patrol

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

You have requested our opinion on the following question: Can the State of Nebraska enforce the Federal Motor Carrier Safety Regulations against Nebraska domiciled interstate carriers for violations which occur in another state? We believe the answer to your question is generally "no". However, in some instances, an out-of-state transaction may be considered a violation of Nebraska law. Neb.Rev.Stat. §75-363 (Reissue 1990) adopts, with certain exceptions, the Federal Motor Carrier Safety Regulations (FMCSR) promulgated prior to 1990 by the United States Department of Transportation. The regulations themselves are voluminous with no less than ten parts, and numerous subparts that prescribe driver qualifications, vehicle operation and maintenance and reporting requirements both for motor carriers and the drivers of commercial motor vehicles. These regulations require "on-site" inspections of motor carriers in the form of safety reviews and compliance reviews. Neb.Rev.Stat. §60-1306 (Reissue 1988) and Neb.Rev.Stat. §75-366 (Reissue 1990) provide the Carrier Enforcement Officers of the State Patrol and the State Patrol Officers with the power to enforce the provisions of Section 76-363. Potential for discovery of out-of-state violations of FMCSR during compliance or safety reviews of domiciled interstate carriers appears to be very real. State Patrol Officers and Carrier Enforcement Officers cannot, however, make arrests for violations of the FMCSR that occur outside of Nebraska borders.

> No penalty can be incurred under the laws of this state except for transactions occurring within the State, and our state law has no extraterritorial effect. Likewise, the law of another state cannot make lawful

> in this state an act which would be unlawful under our law, or make it unlawful in this state where it is lawful under the laws of Nebraska.

State v. Hyslop, 131 Neb. 681, 269 N.W. 512 (1936).

> It is a fundamental rule that criminal and penal laws are essentially local in character. Ordinarily, no penalty can be incurred under the laws of this state except for transactions occurring within this state and our law has no extraterritorial effect.

State v. Karsten, 194 Neb. 227, 231 N.W.2d 335 (1975).

The application of this law to the varied factual situations arising under the FMCSR is not easily done. For example, part 391 makes it unlawful for an unqualified driver to operate a commercial motor vehicle. If an unqualified driver of a motor vehicle subject to the FMCSR operates that vehicle within the borders of Nebraska, that driver has violated Nebraska law and is subject to arrest. If that same driver operates the vehicle outside the borders of Nebraska, the only recourse open to the reviewing officer in Nebraska is to notify both the state in which the vehicle was operated, and the office of Motor Carrier Safety for the Federal Highway Administration.

A violation of Nebraska law regarding reporting requirements, part 394, may occur when an out-of-state accident occurs involving a vehicle subject to the FMCSR. The accident must be reported as soon as possible if it involves the death of a person (part 394.7), or within 30 days of knowledge of the accident if the accident does not involve a death (part 394.9). Failure to report an accident occurring outside the borders of the State of Nebraska is a violation of Nebraska law, despite the fact that the accident occurred outside borders of the State.

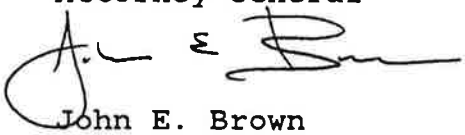
A violation of part 395 could also involve an out-of-state occurrence. Part 395 limits the hours of operation of a driver of a commercial motor vehicle to ten hours per day. If the driver exceeds the daily ten hour limitation while in Nebraska, he has violated Nebraska law, whether or not the trip originated in Nebraska. However, a trip originating in Nebraska which violates the ten hour limitation, is not a violation of Nebraska law if the vehicle is not within Nebraska borders when it exceeds the ten-hour limitation of operation.

We believe that the nature of the out-of-state violation of FMCSR will determine whether or not the occurrence is a violation of Nebraska law. Because of the general nature of your question and the length and complexity of the FMCSR, no attempt is made in

this opinion to determine all factual situations involving out-of-state violations of FMCSR by Nebraska domiciled interstate carriers which could violate Nebraska law. Instead, this office will consider any future opinion requests that you might have involving factual situations that you believe are not answered by this opinion.

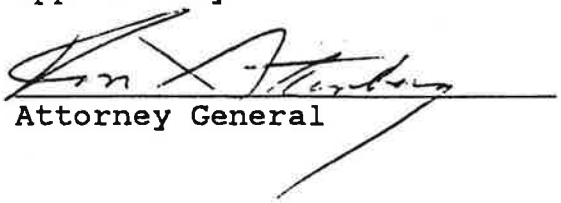
Sincerely,

DON STENBERG
Attorney General



John E. Brown
Assistant Attorney General

Approved By:



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