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#95078

NO.
STATE OF NEBRASKA
OFFICIAL
OCT 5 1995
DEPT. OF JUSTICE

DATE: October 4, 1995

SUBJECT: Floater Spreaders

REQUESTED BY: Senator W. Owen Elmer
Nebraska State Legislature

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

You have requested our opinion whether the Nebraska Department of Roads has authority, pursuant to Neb. Rev. Stat. § 60-6,298(1)(a)(i)(B) (Supp. 1994), to issue a special permit allowing the operation of overweight fertilizer floater spreaders (floater spreaders) on Nebraska highways. We believe that the Department has authority to issue such a permit if the vehicle is overweight without load. If, however, the vehicle is overweight only because of the load it carries, the Department of Roads has no authority to issue a special permit pursuant to Neb. Rev. Stat. § 60-6,298(1)(a)(i)(b) (Supp. 1994).

You have provided us with a video tape recording showing the operation of a floater spreader, a framed picture of the floater spreader, and a sales brochure showing the specifications of the machine and the applications that can be made with the floater spreader. Further, your letter explains that the floater spreader generally travels to the field loaded and that the vehicle is serviced by a "nursing or tender" truck in the field after the initial load of fertilizer is dispensed. You do not state the weight of the vehicle, loaded or unloaded, and the literature that you have provided does not list this information. You do state that newer equipment is being manufactured that is overweight when unloaded. Officers of the Carrier Enforcement Division of the Nebraska State Patrol, when contacted, stated that the floater spreaders that they had weighed during the last 15 years were overweight only when loaded.

Neb. Rev. Stat. § 60-6,298(1)(c) (1993) provides as follows:

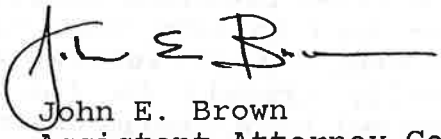
> (c) **No permit shall be issued under subdivision (a)(i) of this subsection for a vehicle carrying a load unless such vehicle is loaded with an object** which exceeds the size or weight limitations, which cannot be dismantled or reduced in size or weight limitations, which cannot be dismantled or reduced 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 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.

(Emphasis added.)

The first sentence of the above-quoted statute limits the issuance of permits by the Nebraska Department of Roads to overweight vehicles that cannot be dismantled or reduced in size without great difficulty. If the floater spreader is made overweight by reason of its load, it can be reduced in size without great difficulty by simply eliminating the load and therefore, cannot qualify for for a special permit from the Department of Roads. If, however, the vehicle is overweight without load, and cannot be easily dismantled to reduce its weight, it would qualify for a special permit from the Department of Roads.

Sincerely,

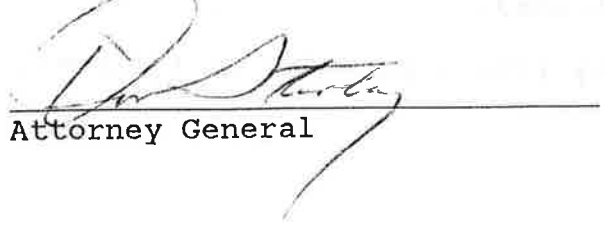
DON STENBERG
Attorney General



John E. Brown
Assistant Attorney General

cc: Patrick J. O'Donnell
Clerk of the Legislature

Approved by:



Attorney General