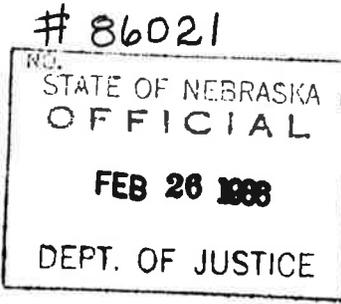


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



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Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: February 19, 1986

SUBJECT: Jurisdiction of county courts for prosecution of traffic infractions, Neb.Rev.Stat. §39-6,184.

REQUESTED BY: Joe C. Steele
Court Administrator

WRITTEN BY: Robert M. Spire
Attorney General

Ruth Anne Evans
Assistant Attorney General

This is in response to your request concerning the jurisdiction of county courts to hear prosecutions for violations of Neb.Rev.Stat. §39-6,184, which provides for penalties in excess of \$10,000 for certain overweight violations. The jurisdiction of the county courts is set forth in Neb.Rev.Stat. §24-517 (Supp. 1984) which provides in part that:

Each county court shall have the following jurisdiction:

. . .

(5) Concurrent original jurisdiction with the district court in any criminal matter when the penalty does not exceed one year imprisonment or a fine over one thousand dollars or both.

Neb.Rev.Stat. §39-6,184 was amended by LB 553 of the 1985 regular session. As a result, it is possible the penalties for violations of that section can exceed \$1,000.

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Section 39-6,184 provides in part that:

Any person operating any motor vehicle, freight-carrying vehicle, bus, truck, truck-tractor, or trailer, when the weight of the vehicle and load is in violation of the provisions of subdivision (1)(c) of section 39-6,179 or section 39-6,180 and the vehicle and load does not qualify for the exceptions permitted by section 39-6,185, shall be guilty of a traffic infraction or traffic infractions and shall, upon conviction thereof, be fined.

The statute then provides for a graduated penalty based upon a percentage of the maximum allowable load. These penalties, in some instances, exceed \$1,000.

A traffic infraction is defined as follows:

As used in Chapter 39, unless the context otherwise requires:

. . .

(107) Traffic infraction shall mean the violation of any provision of sections 39-601 to 39-6,122 or of any law, ordinance, order, rule or regulation regulating traffic which is not otherwise declared to be a misdemeanor or felony and which shall be a civil offense.

Neb.Rev.Stat. §39-602 (Reissue 1984).

The Nebraska Supreme Court has, on several occasions, addressed the statutory definition of traffic infractions and the Legislature's designation that traffic infractions constitute civil offenses. Despite the characterization as a civil offense, the court has repeatedly held that traffic infractions are criminal in nature. "In 1973 the Nebraska Legislature amended the rules of the road to establish three categories of offenses: traffic infractions, misdemeanors, and felonies." State v. Knoles, 199 Neb. 211, 256 N.W.2d 873 (1977).

Other statutory terms found in the rules of the road relevant with respect to the civil-criminal determination are: The "judgment of conviction" with regard to a traffic violation; the citation deemed a complaint for "prosecution" purposes; the allowance of the posting of a "guaranteed arrest bond" when a

bond is required; and the providing of a fine when a person has been found "guilty." As stated in State v. Missouri P. Ry. Co., supra, these words are associated with criminal law, and we think they conclusively show that this violation was a crime and the proceeding criminal, notwithstanding the legislative labeling of a traffic infraction a civil offense.

Id. This position was reaffirmed in Miller v. Peterson, 208 Neb. 658, 305 N.W.2d 364 (1981), where the court held that a traffic infraction was "a criminal offense and that the prosecution of such action is a criminal proceeding."

The statutory language defining felonies and misdemeanors was repealed by LB 748, Laws 1978. However, Neb.Rev.Stat. §28-107 (Reissue 1979) provides as follows:

(1) Any felony or misdemeanor defined by state statute outside of this code without specification of its class shall be punishable as provided in the statute defining it, or as otherwise provided by law outside of this code, except as provided in subsections (2) and (3) of this section.

. . .

(3) A misdemeanor defined by a statute outside this code, the sentence for which exceeds the sentence authorized in this code for a Class I misdemeanor, shall constitute for sentencing purposes a Class I misdemeanor. A person adjudged guilty under such law is deemed to be convicted of a Class I misdemeanor and shall be sentenced for a Class I misdemeanor in accordance with this code.

The question posed is whether or not a traffic infraction is, in fact, a misdemeanor. If so, the limitations set forth in §28-107(3) would appear to be applicable. Therefore, the maximum fine that could be imposed for a violation of §39-6,184 would be \$1,000 despite the language contained therein. Arguably, if traffic infractions are a separate and distinct category of criminal offenses, it is possible that the penalties in excess of \$1,000 provided in §39-6,184 are valid. However, we are doubtful that such a construction of §39-6,184 would prevail.

The Supreme Court reviewed the Nebraska Rules of the Road in Miller v. Peterson, supra.

The Nebraska Rules of the Road, Neb.Rev.Stat. §§39-601 et seq. (Reissue 1978), was the result of a comprehensive revision of motor vehicle traffic laws as expressed by Neb. Laws 1973, L.B. 45, and for the most part was based upon the Uniform Vehicle Code prepared by the National Committee on Uniform Traffic Laws and Ordinances (Rev. 1968). Committee on Public Works, Eighty-third Legislature, Minutes of January 18, 1973, Hearing at 17-20. The notable deviation has to do with the penalty provisions. The uniform code for the most part classifies traffic offenses as misdemeanors and provides for penalties of not more than 10 days in jail or a fine of \$100, with a corresponding increase for the second and third convictions within the same year. Uniform Vehicle Code §17-101. The Nebraska Rules of the Road, as previously mentioned, classify these offenses as "traffic infractions" and, although failing to grant authority for jail sentences, follow the system of progressive fines found in the uniform code.

The issue in Miller concerned the jurisdiction of nonlawyer associate judges to hear prosecutions for offenses that were termed "traffic infractions." Section 24-519 (Reissue 1979) sets forth the jurisdiction of associate county judges to hear "any criminal proceeding which is a misdemeanor under the laws of this state." Miller argued that associate judges were not specifically granted jurisdiction to hear prosecutions for violations of traffic infractions. The court rejected that argument. As a result, traffic infractions are deemed to be misdemeanors.

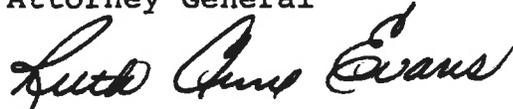
Therefore, it is our conclusion that the county courts are without jurisdiction to hear prosecutions for violations of §39-6,184 when the amount of the fine exceeds \$1,000. Additionally, there is some question as to whether or not the penalties imposed by §39-6,184 which exceed \$1,000 are valid in light of the limiting language of §28-107. We reach this conclusion based upon statutory construction. There does not appear to be any logic in removing prosecutions for violations of §39-6,184 from the county court. The penalties imposed therein are set by statute and are based on the amount of excess weight. We would note that legislation has been

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introduced this session to address this problem. See,
amendments to LB 783, introduced January 8, 1986.

Sincerely,

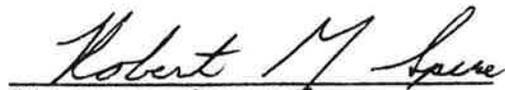
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RAE:cw

APPROVED:


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