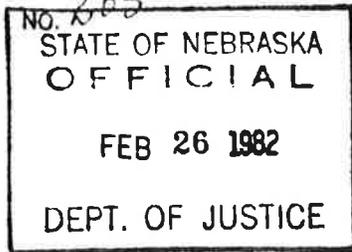


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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



February 24, 1982

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Deputy Attorney General

SUBJECT: Operation of County Road Maintenance Equipment on the Left Side of the Road; Careless or Reckless Driving

REQUESTED BY: L. J. Karel, Colfax County Attorney

OPINION BY: Paul L. Douglas, Attorney General,
John R. Thompson, Deputy Attorney General

QUESTION: Would the operation of county road maintenance equipment on the left side of a public road or highway constitute careless or reckless driving in view of Neb.Rev.Stat. §39-606(2)?

CONCLUSION: It would depend on the facts and circumstances of each case.

Neb.Rev.Stat. §39-606(2) (Reissue 1978) appears to exempt governmental and public utility employees from all of the requirements of Neb.Rev.Stat. §39-601 to 39-6,122 other than the provisions concerning careless and reckless driving, but such exemption applies only when compliance with said statutes would conflict with the performance of their official duties.

In other words, if operating a maintainer on the wrong side of the road is necessary to properly perform the road maintenance functions, the county may do so without violation of any of the rules of the road other than the careless driving and reckless driving statutes. To avoid violation of those statutes the operator must operate the maintainer in a duly cautious manner to avoid endangering others on the road. The facts of each case would determine whether there was a violation of either the careless or reckless driving statutes.

We also refer you to the 1934 Supreme Court decision, Most v. Cedar County, 126 Neb. 54, which held the plaintiff, a motorcyclist, was barred from recovery where he came up over a hill and collided with a maintainer in his lane. The Court held the driver had the duty to operate his vehicle at a speed permitting him to stop within the range of his vision.

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In conclusion, a maintainer may be operated on the left side of the road provided there is a legitimate business reason for doing so and it is operated with due caution. In view of the Most case and subsequent decision it is then unlikely the county would be held liable in negligence.

Very truly yours,

PAUL L. DOUGLAS
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APPROVED:

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