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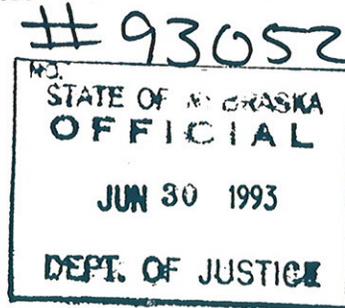
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DATE: June 28, 1993

SUBJECT: Whether a vehicle known as a fertilizer-floater spreader is properly classified as a "truck" or as an "implement of husbandry."

REQUESTED BY: Senator Rex Haberman
Nebraska State Legislature

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

You have asked whether a fertilizer-floater spreader is a truck as that term is defined by Neb. Rev. Stat. § 39-602(111) (1992 Cum. Supp.) or whether it is an "implement of farm husbandry." We believe that for purposes of motor vehicle registration, a fertilizer-floater spreader is an implement of husbandry. (See Opinion No. 190, January 8, 1980). We further believe that for purposes of the Rules of the Road, Chapter 39, Article 6, of the Nebraska Revised Statutes, a fertilizer-floater spreader is not a "truck" as that term is defined by Neb. Rev. Stat. § 39-602(111) (Cum. Supp. 1992). That statute provides as follows: "Truck shall mean any motor vehicle designed, used, or maintained primarily for the transportation of property." As we stated in our January 8, 1980, opinion, we do not feel that the primary design or use of a fertilizer-floater spreader is for the transportation of property.

We do not wish to imply, however, that a fertilizer-floater spreader is not required to adhere to the Nebraska Rules of the Road because it does not meet the definition of the term "truck." On the contrary, a fertilizer-floater spreader conforms to the definition of the term "vehicle" and accordingly, is required to adhere to limitations as to size and weight imposed on all vehicles traveling on Nebraska highways.

Your letter of April 27, 1993, to Senator Doug Kristensen regarding proposed legislation to clarify the powers of carrier enforcement officers has been provided to us in explanation of

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the purpose of your April 15, 1993, opinion request. In that letter you suggest that there may be some question as to whether a carrier enforcement officer could "check" a floater spreader because of the limited enforcement powers granted to carrier enforcement officers by Neb. Rev. Stat. § 60-1306 (1992) Cum. Supp.). Section 60-1306 provides:

The carrier enforcement officers shall have the power (1) of peace officers solely for the purpose of enforcing the laws relating to the trip permits provided for in section 66-492 and the Interstate Motor Carriers Base State Fuel Tax Compact Act and the laws relating to the size, weight, load, and registration of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles, (2) when in uniform, to require the driver thereof to stop and exhibit his or her operator's license and registration issued for the vehicle and submit to an inspection of such vehicle, the plates, the registration thereon, and licenses and permits required under the motor fuel laws, and (3) to make arrests upon view and without warrant for any violation committed in their presence of the laws referred to in subdivisions (1) and (2) of this section and of sections 60-305.12, 60-1308, 60-1309, and 75-363 to 75-368.

Obviously, a fertilizer-floater spreader is not a bus, motor truck, truck-tractor, semitrailer, trailer or towed vehicle. If the grant of authority to carrier enforcement was limited to the grant of authority contained in § 60-1306 set out above, the authority of carrier enforcement officers to "check" floater spreaders would be in question. However, the authority of carrier enforcement officers has been expanded by other statutes. Neb. Rev. Stat. § 39-6,186 (1988) provides as follows:

Any officer having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the same. When an officer upon weighing a vehicle and load as herein provided determines that the weight on any axle exceeds the lawful weight or when the weight on any group of two consecutive axles exceeds their lawful weight and in all cases when the weight is unlawful on any axle or group of consecutive axles on any road restricted in accordance with section 39-6,180, he or she may require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of such vehicle to such limit as permitted under section 39-6,180. All

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aterial so unloaded shall be cared for by the owner or driver of such vehicle at the risk of such owner or driver. Lawful weight as used in this section shall mean the maximum weight permitted by section 39-6,180.

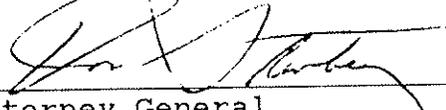
Sincerely,

DON STENBERG
Attorney General


John E. Brown
Assistant Attorney General

cc: Patrick O'Donnell
Clerk of Legislature

Approved by:



Attorney General