

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

ROBERT M. SPIRE
Attorney General

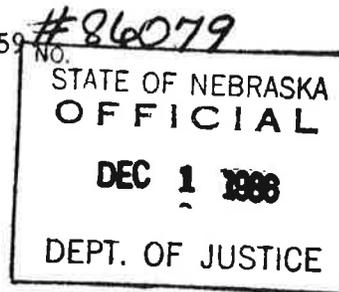
A. EUGENE CRUMP
Deputy Attorney General

WARREN D. LICHTY, JR.
Assistant Attorney General
Chief Counsel
Department of Roads

State Highway Building
P.O. Box 94759
Lincoln, Nebraska 68509-4759
Telephone (402) 479-4611

ASSISTANT ATTORNEYS
GENERAL

GARY R. WELCH
JOHN P. REGAN
ROBERT G. AVEY
JOHN E. BROWN
WILLIAM J. ORESTER
EFFERY T. SCHROEDER



DATE: November 26, 1986

SUBJECT: Weight restrictions on slow moving vehicles.

REQUESTED BY: Boyd W. Strobe
Holt County Attorney

WRITTEN BY: Robert M. Spire, Attorney General
John E. Brown, Assistant Attorney General

In your letter of October 27, 1986, you request the opinion of this office regarding whether vehicles operated at speeds of twenty miles per hour or less, are excepted from the weight restrictions of Neb.Rev.Stat. §39-6,180 (Supp. 1986). You also ask whether the exception set out in subsection (1) of §39-6,180 applies only to vehicles that are not capable of exceeding speeds of twenty miles per hour. We have concluded that vehicles operated at speeds of twenty miles per hour or less, are not excepted from the weight restrictions set forth in §39-6,180 and that the exception set out in subsection (1) of §39-6,180 includes vehicles that are operated at twenty miles per hour or less, whether they would be capable of exceeding that speed.

Neb.Rev.Stat. §39-6,180 (Supp. 1986) provides in pertinent part as follows:

(1) The wheels of all vehicles, including trailers, except those operated at twenty miles per hour or less shall be equipped with pneumatic tires.

(2) No wheel of a vehicle or trailer, referred to in subsection (1) of this section, equipped with pneumatic, solid rubber, or cushion tires shall carry a gross load in

excess of ten thousand pounds on any road or highway nor shall any axle carry a gross load in excess of twenty thousand pounds on any road or highway. An axle load shall be defined as the total load transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle.

(Emphasis added.)

Subsection (2) of §39-6,180 applies weight restrictions to vehicles which are "referred in to subsection (1) of this section" and "equipped with pneumatic, solid rubber or cushion tires." If the Legislature intended to refer only to vehicles operated at speeds of twenty miles per hour or less when it used the phrase "vehicles which are referred to in subsection (1) of this section", there would have been no need to refer to vehicles with "solid rubber or cushion tires". Those tires are permitted only on vehicles operated at speeds of twenty miles per hour or less. The Legislature obviously intended to refer to vehicles operated at speeds greater than twenty miles per hour (those vehicles using pneumatic tires) and those operated at speeds of less than twenty miles per hour (those vehicles using solid rubber or cushion tires) within the weight limits set out in subsection (2) and (4) of §39-6,180.

We have examined the legislative history of this section and we are of the opinion that it supports our conclusion that vehicles traveling at speeds of less than twenty miles per hour are not exempt from the weight restrictions of §39-6,180.

The phrase "referred to in subsection (1) of this section" was added to §39-722 (now §39-6,180) by LB 114 of the Sixty-Fifth Session of the Nebraska Legislature. The Public Works Committee Statement on LB 114 states as follows:

LB 114, the bill to provide that it shall be unlawful for any person operating any motor trucks, truck-tractor or trailer to carry a load in excess of the carrying capacity on any wheel, on any axle, or on a group of axles as provided by section 39-722 and to provide a penalty therefor; ect. [sic], was advanced to General File with amendments.

(Emphasis added.)

Boyd W. Strope
November 26, 1986
Page Three

It is apparent from the Committee Statement that the intent was to clarify, not change, existing law and that the weight limits set out in §39-722 (now §39-6,180) were to be applied to any truck, bus or trailer.

There is a further reason why we feel that vehicles operated at speeds of twenty miles per hour or less are subject to the statutory weight restrictions.

Although construction of a statute by the department charged with enforcing it is not controlling, considerable weight will be given to such construction, particularly when the Legislature has failed to take any action to change such interpretations. McCaul v. American Savings Co., 213 Neb. 841, 331 N.W.2d 795 (1983).

We are informed that the Nebraska Department of Roads, the State agency charged with enforcing the provisions of §39-6,180 has, since 1953, without exception, applied the weight limits of §39-6,180 to all vehicles, without regard to whether or not they are operated at speeds of twenty miles per hour. Obviously, we feel that the actions of the Nebraska Department of Roads are proper and that the weight restrictions of §39-6,180 should apply to vehicles whether or not they are operated at speeds of twenty miles per hour or less.

Your second question concerns whether the exception set out in subsection (1) of §39-6,180 applies only to vehicles that are not capable of exceeding speeds of twenty miles per hour. We believe that the language of the exception is clear and not open to interpretation. It is stated in Spilnek v. Spilnek, 215 Neb. 35, 337 N.W.2d 122 (1983):

No interpretation is needed to ascertain the meaning of plain and unambiguous statutes; in the absence of anything to indicate the contrary, words used in statutes will be given their ordinary meaning.

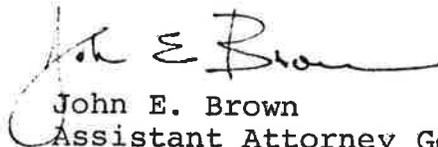
The exception, "except those operated at twenty miles per hour or less" obviously refer to the speed at which vehicles are operated without regard to the speeds at which such vehicles are capable of being operated. We

Boyd W. Strobe
November 26, 1986
Page Four

believe that the plain words of the Legislature need no interpretation and therefore, that vehicles being operated at speeds of twenty mile per hour or less need not be equipped with pneumatic tires.

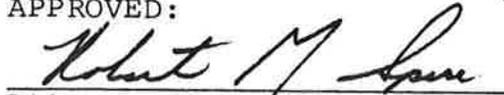
Very truly yours,

ROBERT M. SPIRE
Attorney General


John E. Brown
Assistant Attorney General

JEB/ta

APPROVED:


Attorney General