

Opinion No. 62**Corporations, Amenable to Criminal Process—Highway Patrol—Motor Vehicles, Restrictions As To Size, Weight, and Speed—
Criminal Law, Corporations Subject to—**

- Held:**
- 1. When a motor vehicle is driven on any public highway contrary to the restrictions as to size and load limits imposed by Chapter 123, Laws of 1947, and such vehicle is driven by an agent of a firm or corporation, the agent has violated the law and the firm or corporation employing such agent is also guilty of violating the law and both the agent and the firm or corporation employing him shall be charged with a misdemeanor as provided for by the act.**
 - 2. When the charge is violating Chapter 123, Laws of 1947, by excessive speeding, the person operating the vehicle should be charged with the misdemeanor since the act makes the operation of the vehicle the offense and does not provide that one who causes such operation or knowingly permits such operation shall be guilty of an additional offense.**

September 29th, 1949.

Mr. E. H. England, Supervisor
Montana Highway Patrol
Helena, Montana

Dear Mr. England:

You have requested my opinion as to the interpretation of Chapter 123, Laws of 1947. Chapter 123 relates to the regulation of size, weight, and speed of vehicles on public highways and provides for penalties for violations of the limits imposed. Your specific question arises when a vehicle is found to be operated in violation of the restrictions imposed by the act and the vehicle is driven by an individual employee of a firm or corporation. You inquire as to whether the firm or corporation rather than the individual employee may be charged with the misdemeanor in such case.

Section 1 of Chapter 123, *supra*, is as follows:

"It shall be unlawful and constitute a misdemeanor for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any public highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this act, or any vehicle or vehicles which are not so constructed or equipped as required in this act or the rules and regulations of the State Highway Commission, and the maximum size and weight of vehicles herein specified shall be lawful throughout this State, and local authorities shall have no power or authority to alter said limitations or substitute any other limitations or requirements except as express authority may be granted in this act."

Section 2 of Chapter 123 sets forth the standards which must be maintained relative to maximum dimensions, weights and speeds of motor vehicles.

Section 3 of Chapter 123 is as follows:

"(a) It shall be unlawful and constitute a misdemeanor for any person, firm or corporation to violate any of the provisions of this act.

"(b) Any person, firm or corporation convicted of a misdemeanor for a violation of any of the provisions of this act shall, for a first conviction thereof be punished by a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) or by imprisonment in the County or Municipal jail for not less than five (5) days nor more than twenty-five (25) days; for a second such conviction within one (1) year thereafter such person, firm or corporation shall be punished by a fine of not less than fifty dollars (\$50.00), nor more than two hundred dollars (\$200) or by imprisonment in the County or Municipal jail for not less than twenty-five (25) days nor more than one hundred (100) days, or by both such fine and imprisonment; upon a third or subsequent conviction within one (1) year after the first conviction such person, firm or corporation shall be punished by a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) or by imprisonment in the County or Municipal jail for not less than one hundred (100) days nor more than six (6) months, or by both such fine and imprisonment."

It should be noted that Section 1 of Chapter 123 provides that the misdemeanor may be committed by the owner of a vehicle if such owner causes or knowingly permits a vehicle of a size or weight exceeding the limitations of the act to be moved on any public highway. In other words, an owner need not be actually driving the vehicle at the time the offense is discovered. That the act contemplates that a firm or corporation as owner may be guilty of a violation of the act is apparent by the wording of Section 3 of Chapter 123, wherein the act specifically mentions that persons, firms and corporations are subject to the act.

The question of whether or not corporations are amenable to the criminal laws has given some trouble to the courts in the past. However, the general rule is now well settled, and as stated in 19 C.J.S., Corporations, Section 1358, Page 1073, is as follows:

"Except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process although the criminal act is committed through its agents."

Although a corporation cannot be imprisoned for a crime, it may be made to pay the penalty prescribed in lieu of imprisonment, and since the statute under consideration sets for the penalty in the alternative, either fine or imprisonment, a corporation may be held responsible.

The Legislature has set forth the procedure to be followed in criminal proceedings brought against corporations in Sections 12230 through 12239, Revised Codes of Montana, 1935. Such specific statutory provisions leave no doubt but that corporations may be amendable to the criminal laws of the State of Montana.

The language of Section 1 of Chapter 123, *supra*, is definite as to when a firm or corporation can be guilty of violating the act. When a vehicle that does not comply with the restrictions of the act as to size or loading is driven or moved on a public highway by an agent of a firm or corporation, there are two offenses committed, one by the agent and one by the firm or corporation. Section 1 of Chapter 123 provides for separate and distinct offenses. One for moving or driving and the second for causing or knowingly permitting the moving or driving of a vehicle which does not comply with the regulations. Thus when the charge is either a violation of allowable size or of overloading, the act provides that both the agent and the firm or corporation owning the vehicle shall be guilty of a misdemeanor and shall be separately charged therewith.

When an agent of a firm or corporation drives a vehicle on a public highway at a rate of speed prohibited by the act, the criminal offense as distinguished from the civil liability, in such case is chargeable solely to the agent and not to the firm or corporation employing

him. Section 2 of Chapter 123 merely provides that vehicles may not be operated in excess of certain speeds. Its provisions make the operation of the vehicle the offense and do not provide the one who causes such operation or knowingly permits such operation shall be guilty of an additional offense. I believe that the Legislature drew the distinction because of the very nature of the acts involved. A corporation can and should control the size and weight of their vehicles, but once an agent is out on the highway, there is very little the corporation can do about controlling his speed. Thus in the latter case the criminal offense committed, as distinguished from civil liability, is that of the agent and the criminal act cannot be imputed to the firm, or corporation owning such vehicle so as to make them liable criminally.

Therefore, it is my opinion that when a motor vehicle is driven on any public highway contrary to the restrictions as to size and load limits imposed by Chapter 123, Laws of 1947, and such vehicle is driven by an agent of a firm or corporation, the agent has violated the law and the firm or corporation employing such agent is also guilty of violating the law and both the agent and the firm or corporation employing him shall be charged with a misdemeanor as provided for in the act.

When the charge is violating Chapter 123, Laws of 1947, by excessive speeding, the person operating the vehicle should be charged with the misdemeanor since the act makes the operation of the vehicle the offense and does not provide that one who causes such operation or knowingly permits such operation shall be guilty of an additional criminal offense.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.