

No. 431

SUPERVISOR OF THE HIGHWAY PATROL—MONTANA STATE TRAFFIC ADVISORY COMMITTEE TO WAR DEPARTMENT—ZONING—HIGHWAYS—HIGHWAY PATROL SUPERVISOR

Held: If, from the studies of the Supervisor of the Highway Patrol and from the studies of the Montana State Traffic Advisory Committee to the War Department, of which he is a member, the Supervisor determines the motor vehicle traffic on the highways of Montana is such as to warrant his determining and establishing any speed zones for any public highway or portion of a public highway of this state, he may establish the same and conspicuously post the maximum speed therefor. In the event the Supervisor of the Highway Patrol determines from his studies of the conditions affecting the motor vehicle traffic on the highways of the state, and the facts, circumstances and studies of the Montana State Traffic Advisory Committee to the War Department, that all highways of the state not to be determined and established and posted in zones 1 and 2 should be determined and established in zone 3, he may proceed so to determine, establish and conspicuously post the same.

June 24, 1942.

Mr. H. W. Holmes, Chairman
Montana State Traffic Advisory Committee
to The War Department
Montana Highway Commission
Helena, Montana

Dear Mr. Holmes:

You have submitted the following:

"In order that the Montana State Traffic Advisory Committee to the War Department may cooperate with the National Committee insofar as the laws of the State of Montana will permit, we propose to request the Supervisor of the Montana State Highway Patrol to establish a 45-mile maximum speed limit covering the entire primary system of the state highway system as Zone 3 under Section 4 of said Chapter 198, Laws of Montana, 1939.

"Charles L. Sheridan, Supervisor of the Montana State Highway Patrol, and as a member of the State Traffic Advisory Committee to the War Department, is not certain as to his authority under this act. Will you therefore kindly advise us whether or not he, as Supervisor of the State Highway Patrol, can legally zone the entire primary system of the state highway system as above outlined?"

In advising the above question, we should keep in mind, "The United States is at war, and to assist the United States at war is expressly recognized by our constitution . . ." (Section 12, Article XII.) (State ex rel. Campbell v. Stewart, 54 Mont. 504, 171 Pac. 755.)

"Moreover, this state, as one of the United States, is at war. When aiding the United States, this state but defends itself and thus exercises the highest attribute, as it observes the most solemn duty of sovereignty."

State v. Kahn, 56 Mont. 108, 116, 182 Pac. 107.

It should also be pointed out each state, upon entering the Union, has ratified the authority of the Federal Government to exercise unlimited

power and authority in war time over all persons and property, as conferred by the Federal Constitution, which provides:

"The Congress shall have power to declare war . . . provide for the common defense and general welfare of the United States . . . to make all laws which shall be necessary and proper for carrying into execution the foregoing powers . . ." (Section 8, Article I.)

"This constitution and the laws of the United States which shall be made in pursuance hereof . . . shall be the supreme law of the land; and the judges in every state shall be bound thereof, anything in the constitution of laws of any state to the contrary notwithstanding." (Article VI.)

Therefore, when our country is at war, and exception must be read into every article of every state constitution and every state statute which may be construed as obstructing the exercise of that power and the discharge of that obligation by the Federal government.

Our Federal government under the foregoing war powers has enacted many statutes in the furtherance of defense and the prosecution of the war.

Among these is the rationing of certain products which enter into the prosecution of the war, such as rubber tires for motor vehicles, and, from the stress on distribution, gasoline in certain areas.

Under the powers conferred by Congress upon the President of the United States, a call has been made for a voluntary maximum speed for motor vehicles. The Montana State Traffic Advisory Committee to the War Department, authorized by Chapter 82, Laws of 1941, has made a thorough study which sustains the facts that:

1. As tires become worn, the speed must be decreased in order that hazards in motor transportation be reduced;
2. A maximum speed limit will conserve rubber.
3. A maximum speed limit will conserve gasoline, now at a premium because of the stress on distribution;
4. A maximum speed limit will conserve motor vehicles themselves, as well as manpower lost due to accidents resulting in injury or death;
5. A maximum speed limit will assist in the preservation of the pavement of the highways, and will aid in avoiding a breakdown in our transportation system.

Our legislature, in Section 1 of Chapter 198, Laws of 1939, has provided the policy of the state in regard to the speed of a motor vehicle on the highways of the state as follows:

"No person shall drive a motor vehicle on a public highway of this state at a speed greater than is reasonable and prudent under conditions then existing."

Section 3 of Chapter 198, Laws of 1939, is as follows:

"The supervisor of the highway patrol is authorized and empowered to determine and establish on any public highway of the State of Montana, or any portion thereof, limited speed zones, which speed limits shall constitute the maximum speed at which any person may drive or operate any vehicle upon such zoned highway, or portion thereof so zoned, and on which the maximum speed permissible in said zone has been conspicuously posted. Any speed in the excess of the maximum speed posted shall be prima facie evidence that the speed is not reasonable or prudent and that it is reckless driving by the driver of the vehicle."

In Section 3 of Chapter 198, Laws of 1939, the legislature has granted the power and authority to the Supervisor of the Highway Patrol to

determine and establish on any highway in this state, or any portion thereof, limited speed zones on which the maximum speed permissible in said speed zone has been conspicuously posted.

Section 4 of the act then provides the maximum speed permissible in each of the zones 1, 2, 3 and 4.

The legislature, having established the policy of the state as to the driving of motor vehicles on the highways of the state, then provides for and authorizes the Supervisor of the Highway Patrol to determine and establish the said zones when, in his opinion, "the maximum speed permissible" for such zone is a reasonable and prudent speed under the conditions existing in said zone.

It, therefore, is my opinion that if, from the studies of the Supervisor of the Highway Patrol and from the studies of the Montana State Traffic Advisory Committee to the War Department, of which he is a member, the Supervisor determines the motor vehicle traffic on the highways of Montana is such as to warrant his determining and establishing any such zones for any public highway or any portion of a public highway of this state, he may so establish the same and conspicuously post the maximum speed therefor.

In the event the Supervisor of the Highway Patrol determines from his studies of the conditions affecting the motor vehicle traffic on the highways of the state, and the facts, circumstances and studies of the Montana State Traffic Advisory Committee to the War Department, that all highways of the state not to be determined and established and posted in zones 1 and 2 should be determined and established in zone 3, he may proceed so to determine, establish and conspicuously post the same.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General