

Opinion No. 116**Motor Vehicles—Highway Patrol—Municipal Corporations—Traffic Regulations—Arrest—Statutes.**

Held: The Montana State Highway Patrol and the Municipal Police Officers concurrently exercise authority to regulate motor vehicle traffic within the corporate limits of cities and towns.

June 15, 1950.

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

Dear Mr. England:

In your recent letter you requested my opinion on the following question:

Is the Montana Highway Patrol empowered to enforce traffic regulations within the corporate limits of incorporated cities and towns?

The Legislature of the State of Montana has delegated to the council of incorporated cities and towns the authority to regulate motor vehicles and their speed within the corporate limits of such cities and towns by ordinance. (Section 11-1002, Revised Codes of Montana, 1947).

It is the duty of the police officers of the cities and towns to enforce city ordinances, including traffic regulations, within the corporate limits of such cities and towns. Although the Legislature of Montana has delegated the authority to regulate traffic within the corporate limits of incorporated cities and towns to the town council of such cities and towns, this is not an exclusive grant of power to regulate traffic. As stated in *Public Service Commission vs. City of Helena*, 52 Mont. 527, 159 Pac. 24:

"However positive the terms of the grant of police power to the Municipality, for instance, the State will be held to have retained its original jurisdiction over the same subject and to possess the authority to exercise it concurrently with the Municipality."

Section 83-201, Revised Codes of Montana, 1947, sets forth the rights of sovereignty which the State of Montana has reserved unto itself. It is there provided that:

"The State has the following rights over persons within its limits, to be exercised in the cases and in the manner provided by law:

1. To punish for crime.
2. To imprison or confine for the protection of the public peace or health, or of individual life or safety . . ."

In the exercise of this power, the State Legislature has enacted various statutes which clearly show that the State reserves authority to regulate traffic within the corporate limits of cities and towns.

A public highway has been defined by Section 32-103, Revised Codes of Montana, 1947, as:

"All highways, roads, lanes, streets, alleys, courts, places, and bridges laid out or erected by the public, or now traveled or used by the public, or if laid out or erected by others, dedicated or abandoned to the public, or made such by the partition of real property, are public highways."

Chapter 199 of the Laws of Montana, 1943, as amended by Chapters 94 and 118, Laws of Montana, 1949, provides for the creation of the State Highway Patrol and defines its duties. In defining the acts constituting crimes for the purpose of the State Highway Patrol Act, it is specifically set out that "operating a motor vehicle **in any towns and municipalities, on State and Federal highways at a speed exceeding twenty-five (25) miles per hour**, unless otherwise posted," shall be a crime. (Section 31-108, Sub-section 23, Revised Codes of Montana, 1947). Another section of the same act provides that: "driving or operating an automobile, truck, motorcycle or any other motor vehicle upon or over any highway or street or public thoroughfare within the State of Montana, **whether within or without a Municipality**, while under the influence of intoxicating liquor or any drug or narcotic" is a crime. (Section 31-108, Sub-section 41, Revised Codes of Montana, 1947). These provisions clearly indicate that the Legislature intended that the provisions of the Highway Patrol Act apply to those portions of the public highways lying within the corporate limits of cities and towns as well as those portions of the highways lying in rural areas.

Section 6 of Chapter 185, Laws of Montana, 1935, enumerated the acts which constituted crimes for the purpose of Chapter 185, of the Laws of Montana, 1935, which was the original act creating and establishing the Montana Highway Patrol. Section 6, Chapter 185 of the Laws of Montana, 1935 became Sec. 1741.7 of R.C.M. 1935. In Section 1741.7 Revised Codes of Montana, 1935, it was specifically provided that those acts which constituted crimes for the purpose of the Highway Patrol Act of 1935 must occur "outside of incorporated cities and towns." This section was repealed by Section 8, Chapter 199 of the Laws of Montana, 1943. Chapter 199 of the Laws of Montana, 1943, recreated the Highway Patrol, and in defining those acts which are to be crimes for the purpose of the Highway Patrol Act of 1943 the provision limiting traffic violation to acts occurring outside corporate limits of cities and towns was omitted. It can be presumed that it was the intention of the Legislature to remove the limitation placed on the State Highway Patrol by Section 1741.7, Revised Codes of Montana, 1935, and to give to the State Highway Patrol the authority to enforce traffic regulations within the corporate limits of cities and towns. Chapter 118, Laws of Montana, 1949, which amends Section 8 of Chapter 199, Laws of Montana, 1943,

reaffirms the position that the State Highway Patrol has authority to regulate traffic within the city limits within incorporated towns and goes further in that it repeals all acts in conflict with this position.

In 1937 the Attorney General of Montana issued an opinion to be found in Volume 17, Opinions of the Attorney General, page 53, wherein it was held that a State Highway Patrolman had no authority to arrest an intoxicated automobile driver within the city limits of incorporated cities or towns. This opinion was based on the fact that Section 1741.7, Revised Codes of Montana, 1935, limited the jurisdiction of the State Highway Patrol to certain acts committed "outside incorporated cities and towns". As stated above, Section 1741.7, Revised Codes of Montana, 1935, was repealed by Chapter 199, Laws of Montana, 1943, and Chapter 199, Laws of Montana 1943, recreated the State Highway Patrol and redefined the crimes under the jurisdiction of the Highway Patrol and removed the limitation that acts must occur "outside incorporated cities and towns." Therefore, the opinion of the Attorney General, above mentioned is no longer of any force or effect since the statute upon which it was based has been repealed.

The Supreme Court of Montana has well stated the relation of cities to the State Highways within their limits when it said:

"The streets of a city are public highways and though the city is charged with the duty of keeping them in repair and the cost of maintenance is imposed upon the city, nevertheless jurisdiction over them is primarily in the State, and the city acts with respect to them subject to the general laws of the State."

City of Helena vs. Helena Light and Railway Co., 63 Mont. 108, 207 Pac. 337.

The State traffic regulations are set forth in Section 32-1102, Revised Codes of Montana, 1947, and it is there stated that the rules apply "both in cities and towns and in the country" and "upon a public street or highway." There are also other statutes which indicate that it is the intention of the Legislature that the State Highway Patrol have the power to enforce traffic regulations within the corporate limits of cities and towns, e.g. Section 1, Chapter 94, Laws of Montana, 1949.

It is therefore my opinion that the State Highway Patrol has authority to arrest violators of the State laws regulating the operation of motor vehicles on State and Federal highways within the corporate limits of cities and towns in Montana. The city police officers have authority to enforce city ordinances regulating traffic within the corporate limits of cities and towns and this authority is exercised concurrently with the authority of the State Highway Patrol.

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