

Opinion No. 77

**County Commissioners—Montana State
Highway Commission—Highways—
Load Limits—Power to Regulate—
Statutes R.C.M. 1947, 32-1122,
32-1128, 32-302.**

Held: Local Boards of County Commissioners may post load limits on the highways for which they are responsible for maintenance, whenever, in their discretion, reasonable restrictions are necessary to preserve the road from unwarranted damage due to the general deterioration of the road, or climatic conditions.

April 19, 1952.

Mr. Michael J. O'Connell
County Attorney
Gallatin County
Bozeman, Montana

Dear Mr. O'Connell:

You have submitted the following question to my office for an official opinion:

"Does the Board of County Commissioners have the right to set the load limits on secondary or county roads within the county?"

Section 32-1122, Revised Codes of Montana, 1947, states that the State Highway Commission shall regulate the load limits on public highways within the State and that local authorities shall have no power or authority to alter said limitations or substitute any other limitations except as express authority shall be granted in this act.

The latter portion of Section 32-1122, Revised Codes of Montana, 1947, refers to Chapter 171, Session Laws of 1931. Section Seven (7) of that act, which is now codified as Section 32-1128, Revised Codes of Montana, 1947, provides:

"State or local authorities may by ordinance or resolution prohibit the operation of vehicles upon any public highway under their respective jurisdictions or impose restrictions as to the weight of vehicles, when operated upon any public highway under the jurisdiction of and for the maintenance of which such authorities are responsible, whenever any

such highway by reason of deterioration, rain, snow or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced . . . ”

Although both of these sections have been amended since their original enactment, it would appear that the amendments do not negative the powers of the respective commissions. The amendment to section 32-1122 did not change the latter part of that section, “except as express authority shall be granted in this act.” To contend otherwise would violate a cardinal rule of statutory construction that every word, phrase and provision of an act must be considered in order to determine the legislative intent. See *Stadler v. City of Helena*, 46 Mont. 128, 127 Pac. 454.

This conclusion is also in harmony with Section 32-302, Revised Codes of Montana, 1947, which enumerates the specific powers of the local boards of county commissioners respecting highways. Subsection eight and nine of that section provide:

“The board of county commissioners of the several counties of the state have general supervision over the highways within their respective counties.”

8. “They may in their discretion, cause to be done whatever may be necessary for the best interest of the roads and road districts of their several counties.”

9. “They may limit or forbid, temporarily, any traffic or class of traffic, on the public highways or any part thereof, when in their discretion it is necessary that traffic be restricted in order to repair or preserve such highways.”

In rendering this opinion I direct your attention to Volume 23, Opinions of the Attorney General, Opinion number 137 at page 366, which discusses at length the relative duties of the state highway commission and the local board of county commissioners. There a distinction is drawn between a “state” highway and a “county” highway. This opinion draws the same distinction and should not be construed to extend the jurisdiction of the county commissioners to highways for which they are not responsible for maintenance.

It is therefore my opinion that there is no conflict between Section 32-1122 and 32-1128, and that the local boards of county commissioners may post load limits on the highways for which they are responsible for maintaining, whenever in their discretion, reasonable restrictions are necessary to preserve the road from unwarranted damage due to general deterioration of the road, or climatic conditions.

Very truly yours,
ARNOLD H. OLSEN
Attorney General