

Opinion No. 107.

**County Commissioners—Powers of—
Speed Limits — Unincorporated
Towns — County Highways—
Public Highways—High-
way Patrol.**

HELD: County commissioners have the authority to fix speed limits upon public highways in unincorporated towns within their jurisdiction and at any points on county highways where the supervisor of the Highway Patrol has not acted to establish speed zones.

December 11, 1954.

Mr. Cecil N. Brown
County Attorney
Prairie County
Terry, Montana

Dear Mr. Brown:

You have requested my opinion upon the following question:

“Does a Board of County Commissioners have authority to fix speed limits in unincorporated towns and at certain points on county highways?”

Prior to the enactment of Chapter 73, Laws of 1953, it was undisputed that County Commissioners had this power. Section 31-107, R. C. M., 1947, provides in part:

* * * * *

“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 and minimum speed zones. **The boards of county commissioners in the counties in which they have jurisdiction, are authorized and empowered to determine and establish on any road or street without the**

limits of corporate towns in their respective counties limited speed zones and in the absence of action by said supervisor of the Highway Patrol, which speed limits shall constitute the maximum or minimum 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 or minimum speed permissible in said zone has been conspicuously posted.

"* * * *". Emphasis supplied.)

Attorney General Bottomly interpreted the emphasized portion of this statute as granting the county commissioners the power of fixing speed limits. He said, 20 Opinions of the Attorney General 332, No. 260:

"Therefore, it is my opinion that the streets of an unincorporated town or village in Montana, not a part of an arterial highway, are public highways under the provisions of Section 1612, Revised Codes of Montana, 1935, they are subject to the speed restrictions as set forth in Section 7, Chapter 199, Laws of 1943, and the supervisor of the Highway Patrol may regulate the same if he sees fit under the provisions of Section 7. If the supervisor does not so act, the county commissioners of the county wherein such streets are located may so regulate under the authority given them in Section 7 of Chapter 199. If the streets do not come within the provisions of Section 1612, then the county commissioners of the county wherein such streets are located would have exclusive and sole jurisdiction under the powers of Section 7 of Chapter 199."

In 1953, the legislature enacted Chapter 73, Laws of 1953, which read in part as follows:

"The following standards are hereby made applicable to, and shall govern the maximum dimensions, weights and speeds of motor vehicles, and other characteristics and factors thereof, operating over the highways of, and in the State of Montana, to the exclusion of any other standards or any other requirements respecting the subject matter:

"* * * *"

"(4) Speed (a) Minimum Speed. No motor vehicle shall be unnecessarily driven at such slow speed as to impede or block the normal and reasonable movement of traffic. Exception to this requirement shall be recognized when reduced speed is necessary for safe operation or when a vehicle or combination of vehicles is necessarily or in compliance with law or police direction proceeding at reduced speed.

"(b) Maximum Speed. No truck shall be operated at a speed greater than 45 miles per hour. Passenger vehicles may be operated at such speeds as shall be consistent at all times with safety and the proper use of the roads.

"* * * *". (Emphasis supplied.)

The problem is whether or not Chapter 73, supra, repealed Section 31-107 insofar as it relates to the power of the county commissioners, and substituted the exclusive standards stated in that Act. Chapter 73, supra, did not expressly repeal that portion of Section 31-107, and while a later statute repeals an earlier one if inconsistent therewith, the repeal of any of the provisions of the law is not to be presumed unless irreconcilably repugnant to a later statute or unless such later statute revises the entire subject matter of the former. (State ex rel. Esgar v. District Court, 56 Mont. 464, 185 Pac. 157.)

Chapter 73 is an amendment to Section 32-1123, R. C. M., 1947, which is a general statute covering not only speeds upon public highways, but also the weights and dimensions of trucks. Section 31-107, supra, is a specific statute upon the subject of speed limits. A special statute covering a particular subject matter must be read as an exception to the statute covering the same and other subjects in general terms. (State ex rel. Special Road District v. Millis, 81 Mont. 86, 261 Pac. 885.)

Where special and general statutes relate to the same subject matter, the special Act will prevail as far as the particular subject matter comes within its provisions. (In Re Wilson's Estate, 102 Mont. 178, 56 Pac. (2d) 733.)

Section 31-107, supra, is a specific Act upon the subject of speed limits and it is not irreconcilably repugnant

to Section 32-1123, as amended by Chapter 73, Laws of 1953.

It is, therefore, my opinion that county commissioners have the authority to fix speed limits upon public highways in unincorporated towns within their jurisdiction and at any points on county highways where the supervisor of the Highway Patrol has not acted to establish speed zones.