

Opinion No. 52

COUNTY COMMISSIONERS; Powers; speed limits on State Highways, may establish—HIGHWAYS; maximum speed limits on state highways, establishment of—Sections 32-2125; 32-2146; 32-21-157, R.C.M., 1947; Section 43, Chapter 263, Laws of 1955

- Held:**
- 1. County Commissioners may set maximum speed limits on state highways within their jurisdiction, where such speed limits are established in the statutory manner.**
 - 2. Speed limits established by local authorities are enforceable by the penal provisions of Section 32-21-157.**

February 10, 1960

Mr. H. L. McChesney
County Attorney
Granite County
Philipsburg, Montana

Dear Mr. McChesney:

You have requested my opinion on the following questions:

1. Does the Board of County Commissioners of a County have the power to fix a daytime speed limit upon a State Highway within the boundaries of said County?
2. If such power exists, is such speed enforceable by any penal provisions of the Montana Law now in force?

Section 32-2146, R.C.M., 1947, provides in part:

“(a) Whenever local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the speed permitted under this act is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe limit thereon which:***

3. Decreased the limit outside an urban district, but not to less than thirty-five (35) miles per hour.***
 - (c) Any altered limit established as hereinabove authorized shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.
 - (d) Any alteration of speed limits on state highways or extensions thereof in a municipality by local authorities shall not be effective until such alteration has been approved by the commission."

Section 32-2146, R.C.M., 1947, is Section 43 of the Uniform Act Regulating Traffic on Highways, and was enacted as Section 43, Chapter 263, Laws of 1955. It is evident that this section grants the power to Boards of County Commissioners to regulate the speed of traffic on state highways within their jurisdiction, if such regulation is accomplished pursuant to the statutory requirements. Moreover, the title to Chapter 263, Laws of 1955, clearly indicates the intent of the Legislature to authorize local authorities to regulate speed restrictions on state highways, as the title provides in part:

"An act regulating traffic and the operation of vehicles upon the public highways of the state of Montana, * * * Defining the power of local authorities to enact or enforce ordinances, rules, or regulations in regard to matters embraced within the provisions of this act; * * * Establishing speed restrictions, limitation of speed, and speed zones; * * *"

The statute is clear: Boards of County Commissioners have the authority to set maximum speed restrictions on state highways within their respective counties. It is also clear that authority conferred by this statute is not infinite. Local authorities may establish valid speed limits only if the statutory procedure is complied with: speed limits must be based upon an engineering and traffic investigation, which has determined that the existing speed limit is excessive for the road conditions involved; speed limits for rural highways cannot be set at less than thirty-five miles per hour; speed limits are not effective until they have been approved by the Montana State Highway Commission, and appropriate signs have been erected on the highway.

The Legislature, by the enactment of this act in 1955, granted co-existent power to local authorities and to the Montana State Highway Patrol Board to establish speed limits. The procedure for establishing maximum daylight speed limits differs, in that a speed limit promulgated by the Highway Patrol Board does not need the approval of the Highway Commission, but the effect is the same. The establishment of a speed limit by either of these authorities is dependent upon engineering and traffic surveys of the area where the restriction is to be imposed.

In answer to your second interrogation concerning the enforcement of speed limits established by local authorities, Section 32-212, R.C.M., 1947, provides:

"It is unlawful and, unless otherwise declared in this act with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this act."

Section 32-21-157, R.C.M., 1947, provides the penalties for the violation of the provisions of this act.

Therefore, it is my opinion that Boards of County Commissioners may set maximum speed limits on the state highways within their respective counties where such enactments are prescribed in the statutory manner.

Furthermore, it is my opinion that where speed limits are legally enacted by local authorities such restrictions are enforceable by the penal provisions of Section 32-21-157, R.C.M., 1947.

Very truly yours,
FORREST H. ANDERSON
Attorney General