

VOLUME NO. 35

Opinion No. 83

HIGHWAYS—Speed upon, regulation of; MOTOR VEHICLES—Speed restrictions, nighttime; MOTOR VEHICLES—Speed restrictions, resource conservation measures. Sections 32-2144, 32-2144.1 through 32-2144.7, and 32-21-157, R.C.M. 1947.

HELD: 1. The operation of a motor vehicle upon completed sections of interstate highway, in the nighttime, at speeds in excess of sixty-five (65) miles per hour, constitutes a violation of section 32-2144 (b) (3), R.C.M. 1947, and subjects the operator upon

conviction to the penalty provisions of section 32-21-157, R.C.M. 1947.

2. The operation of a motor vehicle upon the highways of this state, other than completed sections of interstate highway, in the nighttime, at speeds in excess of fifth-five (55) miles per hour, constitutes a violation of section 32-2144 (b) (3), R.C.M. 1947, and subjects the operator upon conviction to the penalty provisions of section 32-21-157, R.C.M. 1947.

May 14, 1974

Mr. Thomas F. Dowling
 Lewis & Clark County Attorney
 County Courthouse
 Helena, Montana 59601

Dear Mr. Dowling:

You have requested my opinion on the following questions:

1. Does section 32-2144, R.C.M. 1947, apply to speeding violations during the nighttime on interstate highways, or are sections 32-2144.1 through 32-2144.7, R.C.M. 1947, applicable?
2. Does a violation of the 55 m.p.h. speed limit at night on interstate highways carry a \$5 penalty as provided for in section 32-2144.6, R.C.M. 1947, or a penalty as provided for in section 32-21-157, R.C.M. 1947?

Section 32-2144 (b), Revised Codes of Montana, 1947, provides in part:

3. ... [T]he nighttime speed limit on ... completed sections of interstate highways shall be sixty-five (65) miles per hour, ...

House Bill 846, enacted in 1974 by the second legislative session of the forty-third legislative assembly and codified as sections 32-2144.1 through 32-2144.7, R.C.M. 1947, provides in part:

The attorney general shall declare by proclamation ... a speed limit for all motor vehicles on all public streets and highways of the state whenever the establishment of such a speed limit ... is required by federal law as a condition to the state's continuing eligibility to receive funds authorized by the Federal Aid Highway Act of 1973 ... or any other federal statute.

A speed limit imposed pursuant to this act is an **exception to the basic rule requirements of section 32-2144** and a speed in excess of the speed limit established pursuant to this act is unlawful notwithstanding any provisions of that section. (Emphasis supplied)

Acting pursuant to section 32-2144.1, R.C.M. 1947, I issued a proclamation on March 2, 1974, proclaiming:

... that the maximum speed limit day and night, for all motor vehicles on all public streets and highways in the state of Montana is fifty-five (55) miles per hour, effective midnight, March 2, 1974.

Any person violating the fifty-five (55) miles per hour speed limit imposed by this proclamation shall be:

... guilty of the offense of unnecessary waste of a resource currently in short supply ... Section 32-2144.6, R.C.M. 1947.

It is significant to note that section 32-2144.7, R.C.M. 1947, provides:

This [resource conservation] **act in no way affects traffic control statutes and violation of existing statutes shall be prosecuted solely as provided therein.** (Emphasis and bracketed material supplied)

Upon conviction under an existing traffic control statute, a fine ranging from ten dollars (\$10.00) to one hundred dollars (\$100.00) or up to ten (10) days imprisonment may be imposed for a first offender. Section 32-21-157, R.C.M. 1947.

Upon conviction of unnecessarily wasting a resource currently in short supply, a fine of five dollars (\$5.00) only may be imposed. Section 32-2144.6, R.C.M. 1947.

It is apparent that sections 32-2144.1 through 32-2144.7, R.C.M. 1947, are resource conservation measures and that anyone exceeding the fifty-five (55) miles per hour speed limit imposed thereby, either in the daytime or nighttime, upon conviction shall be subject to a five dollar (\$5.00) fine.

However, section 32-2144.1, R.C.M. 1947, provides that House Bill 846 is "an **exception to the basic rule** requirements of section 32-2144". The "basic rule" of section 32-2144, R.C.M. 1947, provides:

Every person operating or driving a vehicle of any character on a public highway of this state shall drive the same in a **careful and prudent manner**, and at a rate of speed no greater than is **reasonable and proper** under the conditions existing at the point of operation, ... (Emphasis supplied)

But section 32-2144, R.C.M. 1947, contains more than just the basic rule requirement. It also sets speed limits, including a sixty-five (65) miles per hour nighttime speed limit on completed sections of interstate highways, and a fiftyfive (55) miles per hour nighttime speed limit on all other highways, with certain exceptions.

The language of House Bill 846, through section 32-2144.7, supra, commands that all violations of traffic control statutes, other than the basic rule provision contained in section 32-2144 (a), R.C.M. 1947, "shall be prosecuted solely as provided" for in Title 32, R.C.M. 1947. Prior to the enactment of House Bill 846, speeding violations were prosecuted as misdemeanors under the provisions of section 32-21-157, R.C.M. 1947. Since the enactment of House Bill

846, speeding violations as enumerated in section 32-2144 (b), R.C.M. 1947, shall continue to be prosecuted as misdemeanors under the provisions of section 32-21-157, R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

1. The operation of a motor vehicle upon completed sections of interstate highway in the nighttime, at speeds in excess of sixty-five (65) miles per hour, constitutes a violation of section 32-2144 (b) (3), R.C.M. 1947, and subjects the operator upon conviction to the penalty provisions of section 32-21-157, R.C.M. 1947.
2. The operation of a motor vehicle upon the highways of this state, other than completed sections of interstate highways, in the nighttime, at speeds in excess of fifty-five (55) miles per hour, constitutes a violation of section 32-2144 (b) (3), R.C.M. 1947, and subjects the operator upon conviction to the penalty provisions of section 32-21-157, R.C.M. 1947.

Very truly yours,
ROBERT L. WOODAHL
Attorney General