

VOLUME NO. 37

OPINION NO.9

TRAFFIC LAWS - Jurisdiction over forest development roads, size and weight restrictions; SHERIFFS - Jurisdiction to enforce traffic laws on forest development roads, cooperative agreements; MOTOR VEHICLES - Traffic laws of Montana, applicability to forest development roads, proration of license fees and taxes for limited use of highways. REVISED CODES OF MONTANA, 1947 - Sections 16-1001, 16-1027, 16-4904, 32-1122, 32-2114, 32-2124.1, 32-2124.3, 32-2124.4, 32-2124.5, 32-2203, 32-3308, 32-3318, 53-119, 84-1832, 84-802, 84-802.

- HELD: 1. Only the traffic laws of Montana regulating parking, moving, safety and related areas are enforceable by the Highway Patrol and county sheriffs against vehicles operating on U. S. Forest Service development roads as defined in sections 32-2124.3 and 32-2124.4, R.C.M. 1947.
2. The Montana laws governing vehicle size and weight are enforceable upon highways as defined in section 32-2114, R.C.M. 1947, but not upon forest development roads as defined by section 32-2124.4, R.C.M. 1947. The Montana laws governing the special fuels tax, registration and licensing of motor vehicles do not apply to vehicles operating solely upon forest development roads. The property tax on motor vehicles does apply to vehicles operated on forest development roads.
3. There are no provisions in Montana law providing for prorating the fees and restrictions for which the operator of a motor vehicle is liable, based upon limited use of state highways.
4. Neither a sheriff nor a county, by agreement with the federal government, may enlarge the enforcement jurisdiction of the sheriff as limited by sections 32-2124.3 and 32-2124.4, R.C.M. 1947.

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Gentlemen:

With regard to motor vehicle jurisdiction of state and local law enforcement officials on forest development roads, you have requested my opinion on four questions:

I.

As it pertains to this issue, does the term "Montana traffic laws" encompass all state statutes, rules and regulations concerning operation of a motor vehicle? If not, what specific enforcement restrictions are placed upon state and local enforcement officials?

II.

Does enforcement jurisdiction of laws such as those governing size and weight restrictions depend upon ownership of the road or its maintenance?

III.

When natural features such as rivers, cliffs, etc., make "perpendicular crossings" of public roads and highways (as referred to in section 32-2124.1) impractical, and said crossing therefore necessitates limited travel upon a public road or highway, can applicable taxes, fees, and licenses be prorated for those vehicles using a public road or highway for the sole purpose of such a crossing?

IV.

The U.S. Forest Service and Lincoln County Sheriff's Department have a cooperative agreement whereby they contract for patrol or forest development roads by a deputy sheriff. Further, the Kootenai National Forest has adopted Montana GVV

restrictions for forest development roads. Does this require any different enforcement action by that deputy sheriff than he would otherwise use?

I.

Your questions deal basically with the enforcement jurisdiction, on roads within national forests, of the Montana Highway Patrol and the various county sheriffs as it relates generally to the traffic laws of the state. Until 1971, roads traversing national forest lands were not considered streets or highways under state law (section 32-2114, R.C.M. 1947), and thus state and local law enforcement personnel had no jurisdiction over them. In 1971, the Legislature enacted an act "to make Montana traffic laws applicable to forest development roads...and to confer law enforcement jurisdiction upon the Montana Highway Patrol and sheriffs of this state to enforce the traffic laws." That act was codified at sections 32-2124.3, 32-2124.4 and 32-2124.5, R.C.M. 1947.

Section 32-2124.3 defines the terms "forest development roads" and "special service road," and section 32-2124.4, confers jurisdiction:

Forest development roads in the state of Montana, whether or not they meet the definition of a public highway by the laws of this state, are subject to the traffic laws of this state and the Montana highway patrol and county sheriffs of this state shall have jurisdiction thereon to investigate accidents and enforce the Montana traffic laws. (Emphasis added.)

The question to be answered is what the Legislature intended when it made forest development roads subject to state "traffic laws" and gave the sheriffs and highway patrol jurisdiction to "investigate accidents and enforce the Montana traffic laws" thereon. More specifically, the question is whether the state laws regulating licensing, taxation, vehicle length and weight have been made applicable to forest development roads.

The Montana Attorney General has twice held in informal opinions that it was not the intent of the Legislature, in enacting sections 32-2124.3, 32-2124.4 and 32-2124.5, R.C.M. 1947, that all state laws relating to motor vehicles be made applicable on forest development roads. Rather, it was the intent of the Legislature to confer jurisdiction upon the

Montana Highway Patrol and county sheriffs "to investigate accidents and enforce the Montana traffic laws" dealing with parking, moving and safety regulations of motor vehicles. Therefore, only the provisions of Title 32, R.C.M. 1947, regulating parking, moving safety and related areas are enforceable by the highway patrol and county sheriffs against vehicles operating on U. S. Forest Service development roads as defined in section 32-2124.3, R.C.M. 1947.

To eliminate any future confusion in this regard, the following rules should be followed:

1. The Uniform Act Regulating Traffic on Highways, chapter 21, Title 32, R.C.M. 1947, was clearly intended by the Legislature to apply to forest development roads. These provisions directly govern traffic safety, and the provisions extending jurisdiction over forest development roads were codified in chapter 21.
2. Chapter 33, Title 32, Revised Codes of Montana, 1947, pertains to gross vehicle weight. The statutes contained therein provide that a tax shall be paid by any person who operates a motor vehicle upon the public highways of Montana. To determine what constitutes a public highway, one must look at the definition that is set forth in section 32-2203, R.C.M. 1947. It should be noted that a forest development road or special service road is not included within this definition and hence would not be subject to the gross vehicle weight tax.
3. The special fuels tax imposed by section 84-1832, R.C.M. 1947, does not apply to vehicles operated solely upon forest development roads. This tax applies to vehicles operated "upon the highways", and, as discussed above, forest development roads are "highways" subject to state regulation only as defined by section 32-2124.3, R.C.M. 1947.
4. Section 53-119, R.C.M. 1947, states that no person shall operate a motor vehicle on the public highways of the state without a license plate. To determine whether or not a

person is required to purchase a license plate for his vehicle, one must again determine what is meant by "public highways." Chapter 1, Title 53, R.C.M. 1947, does not define the term "public highways." Consequently, one must look to the general definition contained in section 32-2203, R.C.M. 1947. Again, under this section a forest development road or a special service road is not included in the definition. Therefore, the provisions of chapter 1, Title 53, would not apply to vehicles which make use of these forest development roads.

5. Section 32-1122, R.C.M. 1947, makes it unlawful to operate a vehicle which exceeds the weight limitations imposed by the Montana statutes upon a public highway. Forest development roads are built and maintained exclusively by the Forest Service, and no public monies are ever used. It is a fact that often motor vehicles, especially those involved in the logging industry, carry a heavier load than is permissible on the public highways of Montana. The restriction on size and weight limitations would not apply to vehicles using forest development roads. This is a situation in which the Forest Service would have the authority to impose their own restrictions. That enforcement of the higher limit on weight and size would be the responsibility of the Forest Service and would not require any action by state or local agencies. The purpose of weight and size restrictions is to protect the roads, but since forest development roads are maintained by the Forest Service, the theory behind the state traffic laws regarding weight and size limits would not be applicable in this situation.
6. The property tax on motor vehicles, since it is not a traffic law, does apply to vehicles used on forest development roads (section 84-801 and 84-202, R.C.M. 1947).

II.

Your second question asks in effect where the other provisions of Title 32 are enforceable. That question is easily answered by a provision of those statutes, section 32-3318, R.C.M. 1947, which provides:

The highway patrol, and any designated employee of the department of highways, shall enforce chapters 32 and 33 of this title, and those persons shall examine and inspect the motor vehicles operating upon the highways in this state, and regulated by those chapters, to ascertain whether or not those chapters are being complied with. (Emphasis added.)

The term "highways" is defined in section 32-2114, R.C.M. 1947, as follows:

Street or Highways. The entire width between the boundary lines of every street, highway and related structure as have been, or shall be, built and maintained with appropriated funds of the United States and which have been, or shall be, built and maintained with funds of the state of Montana, or any political subdivision thereof, or which have been or shall be dedicated to public use or have been acquired by eminent domain.

Thus, those chapters are enforceable upon those areas described in the above-quoted section, but not on forest development roads described in section 32-2124.3, R.C.M. 1947 and as limited by section 32-2124.4, R.C.M. 1947.

III.

Your third question is whether it is possible to prorate the taxes, fees and licenses to which a vehicle would be subject if it makes only limited use of state highways for the purpose of crossing from one non-public highway to another. Section 32-2124.1, R.C.M. 1947, provides:

The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state...

The section exempts vehicles moving "directly across" state highways, and does not exempt vehicles that are required by natural features to make "limited use" of state highways. Therefore, vehicles not exempt under section 32-2124.1, which make limited use of state highways are operating on the public roads and highways of the state, and are subject to the state laws regulating such operation.

There are no provisions in Title 32, R.C.M. 1947, providing for the pro-ration of the fees and restrictions imposed upon vehicles which use state highways. However, there are provisions such as section 32-3308, R.C.M. 1947, which allow for the payment of gross vehicle weight charges for three month periods.

IV.

Your last question concerns the enforcement jurisdiction of a county sheriff as a result of cooperative agreements between the sheriff's office and the U.S. Forest Service, specifically as to Montana GVW restrictions adopted administratively by the Forest Service. In essence, the issue is whether an agreement with the Forest Service gives the sheriff jurisdiction to enforce GVW restrictions when such jurisdiction is not granted by statute.

As discussed above, section 32-2124.3, R.C.M. 1947, defines the term "forest development road" and section 32-2124.4 makes the Montana traffic laws relating to parking, moving and safety enforceable thereon by the sheriffs and the highway patrol. Section 32-2124.3 also defines a second classification of roads called "special service" roads. When the Forest Service designates "special service" roads and thereby makes them subject to traffic rules in addition to or in conflict with the Montana traffic laws, then section 32-2124.5 specifically provides:

Neither the additional nor conflicting traffic rules so prescribed by the forest service nor the Montana traffic law with which they conflict shall be within the jurisdiction of law enforcement officers of this state as to such special service road.

If a forest development road is designated as a special service road and is by that designation made subject to Montana GVW restrictions, then a sheriff has no jurisdiction to enforce those laws. Such jurisdiction is specifically excluded by statute and cannot be acquired by the sheriff by agreement with the Forest Service.

The same would be true even if the road is not specifically designated by the Forest Service as a special service road. The evident legislative intent in section 32-2124.4 and 32-2124.5 is that the county sheriffs are to have enforcement jurisdiction only over traffic laws, as discussed above, and that any additional regulations or statutes adopted administratively by the Forest Service were not to be enforced by the sheriffs.

Neither a sheriff nor the county commissioners may enlarge the sheriff's jurisdiction which has been granted by state law in an agreement with the Forest Service. The duties of a sheriff are only those "provided by law." Constitution of Montana, Art. XI, section 3. Counties themselves have only such powers as are provided or implied by law. Constitution of Montana, Art. XI, section 4; sections 16-1001 and 16-1027, R.C.M. 1947.

As to intergovernmental cooperation, the Montana Constitution provides (Art. XI, section 7):

- (1) Unless prohibited by law or charter, a local government unit may
 - (a) cooperate in the exercise of any function, power, or responsibility with,
 - (b) share the services of any officer or facilities with,
 - (c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.
- (2) The qualified electors of a local government unit may, by initiative, or referendum, require it to do so.

This provision does not confer the power sought here, since it is expressly conditioned upon the act not being "prohibited by law." It further allows a local government unit to "cooperate in the exercise of any function, power, or responsibility." However, in view of the limited power of counties (Franzke v. Fergus County, 76 Mont. 150 (1926)), this clause must be read to mean "any function, power, or responsibility conferred by or implied from law." Since the sheriff, as a county officer, has only limited enforcement jurisdiction on forest development roads, an extension of that jurisdiction by agreement cannot be said to be a power conferred by or implied from law.

Similarly, section 16-4904, R.C.M. 1947, is of no help. While it allows interlocal agreements, it is specifically limited to a "political subdivision, including municipalities, counties, school districts and any agency or department of the state of Montana." An agreement between a county and the federal government is thus not covered.

THEREFORE, IT IS MY OPINION:

1. Only the traffic laws of Montana regulating parking, moving, safety and related areas are enforceable by the highway patrol and county sheriffs against vehicles operating on U.S. Forest Service development roads as defined in sections 32-2124.3 and 32-2124.4, R.C.M. 1947.
2. The Montana laws governing vehicle size and weight are enforceable upon highways as defined in section 32-2114, R.C.M. 1947, but not upon forest development roads as defined by sections 32-2124.3 and 32-2124.4, R.C.M. 1947. The Montana laws governing the special fuels tax, registration and licensing of motor vehicles do not apply to vehicles operating solely upon forest development roads. The property tax on motor vehicles does apply to vehicles operated on forest development roads.
3. There are no provisions in Montana law providing for prorating the fees and restrictions for which the operator of a motor vehicle is liable, based upon limited use of state highways.
4. Neither a sheriff nor a county, by agreement with the federal government, may enlarge the enforcement jurisdiction of the sheriff as limited by sections 32-2124.3 and 32-2124.4, R.C.M. 1947.

Very truly yours,

MIKE GREELY
Attorney General