

VOLUME NO. 44

OPINION NO. 30

HIGHWAYS - Department of Transportation employees: authority to enforce speed limit as condition of special permit;
 MOTOR VEHICLES - Department of Transportation employees: authority to enforce speed limit as condition of special permit;
 PEACE OFFICERS - Department of Transportation employees: authority to enforce speed limit as condition of special permit;
 TRAFFIC - Department of Transportation employees: authority to enforce speed limit as condition of special permit;
 TRANSPORTATION, DEPARTMENT OF - Employees: authority to enforce speed limit as condition of special permit;
 MONTANA CODE ANNOTATED - Title 61, chapter 10, part 1; sections 61-10-101 to 61-10-109, 61-10-121, 61-10-122, 61-10-146, 61-12-201, 61-12-206.

HELD: Department of Transportation Motor Carrier Services Division compliance officers have authority to issue a citation for violation of a special permit condition when the special permit condition violated is a speed limit imposed upon the permitted vehicle.

March 16, 1992

John Rothwell, Director
 Department of Transportation
 2701 Prospect Avenue
 Helena MT 59620-9726

Dear Mr. Rothwell:

You have requested my opinion on the following question:

Do Department of Transportation Motor Carrier Services Division compliance officers have authority to issue a citation for violation of a special permit condition when the special permit condition violated is a speed limit imposed upon the permitted vehicle?

Sections 61-10-101 to 108, MCA, generally define the maximum size, weight and load specifications for vehicles operating on Montana highways. Section 61-10-109, MCA, provides that no vehicle may be operated in excess of these size, weight and load specifications without obtaining a special permit from the

Department of Transportation or the Montana Highway Patrol. Section 61-10-121, MCA, specifically authorizes the issuance of such special permits.

Section 61-10-122, MCA, describes the discretionary nature of the process by which individual conditions are attached to these special permits. It provides in relevant part:

The department of transportation or local authority may issue or withhold a special permit at its discretion or, if the permit is issued, limit the number of trips or establish seasonal or other time limitations within which the vehicle, combination of vehicles, load, object, or other thing described may be operated on the public highways indicated, *or otherwise limit or prescribe conditions of operation of the vehicle, combination of vehicles, load, object, or other thing when necessary to assure against damage to the road foundation, surfaces, or structures or safety of traffic*, and may require an undertaking or other security considered necessary to compensate for injury to a roadway or road structure. [Emphasis added.]

I understand that various speed limits, as dictated by the nature of the vehicle and the intended route of travel, are routinely made a condition of these special permits. Such a practice is consistent with the expressed intent of the statute that special permit conditions be designed to protect public safety and property. Section 61-10-146, MCA, makes the violation of any special permit condition a misdemeanor.

I also understand that this controversy has arisen because only recently have Department of Transportation Motor Carrier Services Division compliance officers placed extra emphasis on the enforcement of speed limit conditions attached to size, weight and load special permits. Previously, such enforcement was often left with the Highway Patrol and local law enforcement agencies.

Department of Transportation compliance officers are peace officers under section 61-12-201, MCA, and pursuant to section 61-12-206, MCA, have the power of arrest for violations of Title 61, chapter 10, part 1. There can thus be no doubt that such a compliance officer is acting within his or her statutory authority when issuing a citation under section 61-10-146, MCA, for the violation of a speed limit-related condition of a special permit. The fact that the permitted vehicle may also be subject to other statutory speed requirements does not diminish this explicit authority, although any issuance of more than one citation for the same criminalized conduct would certainly raise double jeopardy questions.

THEREFORE, IT IS MY OPINION:

Department of Transportation Motor Carrier Services Division compliance officers have authority to issue a citation for violation of a special permit condition when the special permit condition violated is a speed limit imposed upon the permitted vehicle.

Sincerely,

MARC RACICOT
Attorney General