

THE MINUTES OF THE HIGHWAYS AND TRANSPORTATION COMMITTEE MEETING
JANUARY 29, 1981

The House Highways and Transportation Committee convened at 12:30 p.m. on Thursday, January 29, 1981, in Room 437 of the Capitol Building with CHAIRMAN PAUL KROPP presiding and thirteen members present (absent were REPS. ANDERSON, KANDUCH, and STOBIE).

The hearing was opened on HB 421.

HOUSE BILL 421 REP. STEVE WALDRON, sponsor, presented the bill which has been requested by the Motor Vehicle Division of the Department of Justice. This bill would make it unlawful for a motor vehicle dealer to issue more than one 20-day sticker per vehicle sale.

Speaking as a proponent was CAPTAIN WALT MILLER of the Montana Highway Patrol who said this bill would benefit law enforcement efforts and help to eliminate the abuse of the 20-day sticker concept. People quite often use more than one sticker to avoid paying the taxes on the vehicle.

JERRY RAUNIG of the Montana Automobile Dealers Association also supported the bill.

WILLIAM ROMINE, representing the Montana Automotive Dismantlers Association, spoke as a proponent also. See Exhibit 1. This bill would help out the junkyard people who are asked to issue additional stickers.

There were no OPPONENTS.

During questions from the committee, REP. ZABROCKI asked who is fined, the person who uses the sticker or the one who issues it? CAPTAIN MILLER said the dealer would be fined.

REP. WALDRON closed on HB 421. The hearing closed on HB 421 and opened on HB 384.

HOUSE BILL 384 REP. PAUL PISTORIA, chief sponsor, presented the bill which would prohibit the use by governmental entities of chlorides as deicing agents on paved public highways, roads, and streets in Montana. See Exhibit 2. REP. PISTORIA used a pamphlet to illustrate the effects the chlorides have on concrete. Some areas now have switched back to sand instead of using salt products. The salt products are hard on streets and vehicles. Also causing problems with sewer systems and polluting streams and rivers. He said he would want the bill to go into effect after cities were given some time to use up the salt products they have on hand so as not to waste taxpayer money.

Speaking as a proponent was R. A. ELLIS of the Helena Valley Irrigation District. He explained the problems occurring in the

Highways and Transportation

January 29, 1981

Page 2

Helena valley with the irrigation canal with salt washing off of the streets and highways into the canal. Nothing will grow near the edges of the canal because of the pollution caused by the salt products.

Opponents included DON GRUEL of the Montana Department of Highways. MR. GRUEL is the maintenance supervisor for the department. They use about 3,500 tons of salt annually. They mix the salt with sand to help keep the sand piles from freezing. It is used mainly to combat freezing rains when sand is not effective. They use mainly salt products in Missoula because of the pollution problems caused by sand. He felt if salt is used properly, the benefits outweigh the problems. Also believed that the department should have the option of whether or not to use salt products.

JIM MANION of the Montana Automobile Association spoke in opposition also. He said salt has proven better from a safety standpoint than sand. He would like to see the highway people have the option to use what is needed.

During questions from the committee, REP. FABREGA asked why the highway people switched from one type to another. Is it more expensive to use sand? REP. PISTORIA replied that in the long run money would be saved on repairs to vehicles, streets, etc.

GREG PETESCH, staff attorney, asked if the intent of this bill is to eliminate both types of chloride. REP. FABREGA stated that the way the bill reads both types would be eliminated. REP. PISTORIA said he would prefer to see sand used.

REP. FABREGA asked if there is something other than chlorides that can be used. MR. GRUEL said there is nothing as economical as rock salt.

REP. BRAND asked who determines how much is used. MR. GRUEL said they use what is needed with a ratio usually of 60 parts of sand to one part of salt. REP. BRAND asked if cities use the same ratio. MR. GRUEL replied that there are no guidelines. They use what is effective. Also stated that sand is not effective in some situations.

REP. PISTORIA closed on the bill. The hearing closed on HB 384.

EXECUTIVE SESSION HOUSE BILL 421 REP. HEMSTAD moved DO PASS. It was seconded by REP. WINSLOW and PASSED with REP. HARP opposing.

HOUSE BILL 384 The committee decided to hold this bill until a fiscal note could be obtained indicating the cost of using items other than salt products.

Highways and Transportation
January 29, 1981
Page 3

MR. PETESCH, staff attorney, has researched some of the rule making procedures of the Department of Highways per the request of the committee. He felt the department does not have expressed rule making authority and that implied rule making authority is more advisory.

REP. FABREGA asked if the department uses rules under the A. P. A. MR. PETESCH replied that all rules from agencies should be the same. REP. FABREGA stated then if it is implied, they do not have rule making authority. MR. PETESCH said that is true in the GVW section of the code. But, they do have the authority to issue special permits for excess size and weight.

REP. BRAND asked if they are allowed to do that, why is the bill needed. MR. PETESCH answered to authorize them to use the rules.

REP. OBERG stated he would obtain a statement of intent on the triple trailer issue and the committee decided to discuss the problem again at a later time.

HOUSE BILL 322 REP. MEYER moved DO PASS with a second from REP. WINSLOW. It was PASSED unanimously and moved to the CONSENT CALENDAR.

The meeting was adjourned at 1:45 p.m.

Respectfully submitted,



PAUL KROPP, CHAIRMAN

Ellen Engstedt, Secretary

NAME: William L. Romine DATE: 1-29-81

ADDRESS: P.O. Box 1691 Helena

PHONE: 442-2220

REPRESENTING WHOM? Mont. Automotive Disassemblers & Recyclers Assoc.

APPEARING ON WHICH PROPOSAL: H.B. 421

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? _____

COMMENTS: The association has a problem with this bill, in that it does not have any exception in the event of unresolvable delays. If the documents required under sub section (1) (b) are not available then no fault of the dealer, the twenty days may expire, but the new owner would not have any way to get an extension of time within which to register the vehicle. There should be some way for the owner to get a new sticker to carry him over until the documents are secured.

Folz H/B. 384 Jan 16 1978

EXHIBIT 2

Dear Mr. Fistoria,

I am providing you the attached narrative for use at the City Council meeting Tues Jan 17. I hope you will get their attention - I know you have in the past. I will be at the meeting and I will second any motion you make against this issue. I have provided two motions. I look forward to meeting you.

Respectfully yours,

Laurel Statham
1117 Adobe

Great Falls.

Lt. Col. Laurel L. Statham
761-7158

~~Dec.~~ 16, 1978
Jan

①

CITIZENS OF GREAT FALLS AND COUNCIL MEMBERS:

Public trust and confidence in government cannot be maintained when that trust is violated through surreptitious acts of public officials. For the record I charge that Mr. Holland with the concurrence and blessing of Mr. Cherches and without public awareness, initiated the use of a highly corrosive salt in the sand used on our streets. I want to emphasize that there was no public approval for the switch to highly corrosive sodium chloride (rock salt) to replace calcium chloride which is far less corrosive. I and many of you have seen the devastating results from the use of salt in other cities! Yes, used in sufficient amounts it will destroy ice and snow. It will also destroy sewer systems over a period of time. It will destroy our automobiles, starting with the brakes and working rapidly throughout the car. It will destroy vehicles used to spread the salt. All at whose expense? The citizens and tax payers of Great Falls! I hear a lot of baloney about how much better the salt makes the sand work from the same source that implemented the use of this corrosive salt. If it is so great why has the city experienced the highest number of accidents (over 500) during our recent snows and holidays than at any other time? The simple truth is that it just doesn't work on a heavy cover of ice or snow pack. Unless it is used straight and eventually that is what will happen--then we will have reached the deplorable state that we are surely headed toward now--a city whose streets are covered with salt residue--a city of rusted-out vehicles--and the Missouri River polluted by the salt-laden run-off from our streets.

Mr. Holland states that he has already used the 50,000 lbs. of sand and salt mix on hand at the beginning of our snow and ice period

and he anticipates using another 160,000 pounds. If the salt-to-sand ratio is one part to 25, I roughly calculate that we will have over seven tons of salt dumped on our streets this winter, or at least that's by Mr. Holland's estimate. But the citizens don't know the difference in the salt switch and no one has complained according to the Tribune. How can the people complain about a practice which was clandestinely hatched and implemented without public discussion, vote, or approval? Moreover, the actions of the city manager and city public works director are in direct violation of a city ordinance which prohibits the use of such salt.

Citizens of Great Falls, I call upon you to voice your opposition to this underhanded maneuvering done in the name of safety and economy. You the citizens have a choice--stop this deliberate pollution of our city or remain silent and get taken in again by the manipulators in city hall. I ask for your support now to Save Great Falls from further ruin!

Paul G. Pistoria

1. I hereby make a motion that the Council direct the City Public Works Director to stop the use of sodium chloride on city streets immediately.

2. I make a motion that any future consideration on the use of sodium chloride on city streets in any amount be subject to the approval of registered voters of Great Falls through referendum.

NOTES: Chemical Engineer's Properties Reference Manual indicates sodium chloride is 20 times more corrosive than calcium chloride.

NOTE - IMPORTANT!

Use of salt for ice control is prohibited throughout agencies of the Federal Government, i.e. Armed Forces, except in extreme conditions. For instance, Malmstrom Air Force Base does not use salt for ice control on streets.

Paul G. Pistoria

Pistoria claims commission slipped salt in 'clandestinely'

City commission critic Paul Pistoria, 2421 Central Ave., Tuesday attacked the use of salt to melt snow as "deliberate pollution" carried out by "manipulators in city hall."

Pistoria said the decision to use salt on city streets was "clandestinely hatched and implemented" without public discussion. Furthermore, he said, the salt will pollute the Missouri River and turn Great Falls into "a city of rusted-out vehicles."

Salt is being used this winter for the first time since it was banned by

the city council several years ago. Public Works Director Jack Holland said the salt is mixed with sand in a one to 25 ratio to prevent corrosion and that the mixture is cheaper and more efficient than snow-melting chemicals used previously.

At Tuesday's regular commission meeting, Pistoria read a prepared statement which said that salt "used in sufficient amounts will destroy ice and snow. It will also destroy sewer systems over a period of time. It will destroy our automobiles, starting with

the brakes and working rapidly throughout the car. It will destroy vehicles used to spread the salt. All at whose expense? The citizens and taxpayers of Great Falls!"

Pistoria said he had not written the statement but declined, under questioning from commissioners, to identify the author. Pistoria's signature appears at the bottom of the typewritten statement.

Pistoria said salt, far from melting snow, actually causes accidents because it creates a "slick film of ice" where it is spread.

A portion of the statement says:

"If (salt) is so great, why has the city experienced the highest number of accidents during our recent snows and holidays than at any other time? The simple truth is that it just doesn't work on a heavy cover of ice or snow pack.

"Unless it is used straight — and eventually that is what will happen — then we will have reached the deplorable state that we are surely headed toward now — a city whose streets are covered with salt residue — a city of rusted-out vehicles — and the Missouri River polluted by the salt-laden runoff from our streets."

Pistoria described the decision to reintroduce salt as "underhanded maneuvering done in the name of safety and economy." Saying no public announcement had been made before the appearance of news reports this month, he called the decision "clandestinely hatched and implemented without public discussion, vote or approval."

Pistoria added the use of salt was prohibited by an ordinance passed by the old city council. Holland said he was unaware of any such ordinance.

METRO / MONTANA

Some residents critical of use of salt in city's road-sanding

By PETER JOHNSON
Tribune Staff Writer

Several residents peppered city officials with critical comments about the city's use of salt in its road-sanding operations at Tuesday night's commission meeting.

The spicy discussion arose — as it has does almost every winter — when the commission discussed purchase of sanding material, including 150 tons of roadway salt and 2,000 tons of washed sand.

State Rep. Paul Pistoria, D-Great Falls, said studies show salt usage causes a lot of deterioration in cars, roads and sidewalks. He contended the salt mixed in with snow melting from the bottom of his car has caused undue wear on his driveway. Pistoria announced that he has asked the legislative council to draw up a bill prohibiting the use of any salt in sanding any Montana roads or streets.

Public Works Director Carl Abel said a relatively small amount of salt must be mixed in with sand to prevent it from freezing up in chunks. Less than one part in 20 of the mixture is sand, Abel said, not enough to do "any appreciable damage." Without some salt the city couldn't sand the streets, he said, adding the state of Montana and other cities in this part of the country use a similar mixture.

But Pistoria had his supporters, including commissioners Shirley Kuntz and Walt Valacich, who both agreed



Pistoria

salt can cause some problems.

Three other audience members also raised concerns. Carshop owner Greg Kecskes said salt causes problems. He said he was "too lazy" to shovel snow off his parking lot and sanded it with a mixture containing less than 1 percent salt. After three years, the mixture had eaten holes in his seven-inch thick, blacktopped parking lot, Kecskes said.

With Kuntz dissenting, the commission voted to buy 150 tons of roadway salt from Dick Irvin Inc. of Shelby for \$31.55 a ton, a 9 percent price increase from last year.

The commission also agreed to buy 2,000 tons of washed sand from Northern Materials Co., Great Falls, and 5,000 tons of crushed five-eighths inch gravel from Kraus Construction Co., Great Falls. The sand is \$6.19 a ton, a

1 percent price increase from last year, or \$4.69 a ton if the city picks it up. The gravel is \$3.90 a ton, or \$2.60 a ton when the city picks it up, a 13 percent increase.

In another matter the commission routinely passed ordinances changing the information police require from pawnshop owners and secondhand dealers.

Pawnshop owners had strongly opposed an earlier version of the ordinance, but did not show up Tuesday, apparently satisfied with a compromise version.

Under the ordinance, both pawnshop owners and secondhand dealers will be required to keep detailed records on forms provided by the police. The forms require the date when an item was obtained by the pawnbroker or secondhand dealer; the name, age, physical description, address and signature of the person providing the item to them, and a full description of the item.

Police originally had proposed cards requiring even more detailed information, including the prices the pawnshops were paying for items, and the age and driver's license and social security numbers of the person selling the item.

Pawnshop owners objected to providing all of the detailed information, in part because they feared some "trade secrets" might filter down to a pawnshop operated by two police officers and a retired officer.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF)	NOTICE OF PUBLIC
RULE for the movement of Triple)	HEARING FOR PROPOSED
Trailer Vehicle Combinations and)	ADOPTION OF A RULE for
other Special Vehicle Combinations)	the Movement of Triple
)	Trailer Combinations

TO: All Interested Persons

1. On June 20, 1980 at 9:00 A.M., a public hearing will be held in the highway auditorium of the Department of Highways building, to consider the adoption of a rule for the movement of Triple Trailer Vehicle Combinations and other Special Vehicle Combinations.

2. The rule as proposed provides as follows:

Rule I. MOVEMENT OF TRIPLE TRAILER VEHICLE COMBINATIONS AND OTHER SPECIAL VEHICLE COMBINATIONS (1) The following multiple trailer combinations may be operated on a trip basis by a Special Permit issued by the Department of Highways:

(a) A truck-tractor and three trailers, the trailers of approximately equal length, having an overall combined length not to exceed 105 feet.

(b) A truck and two trailers, the trailers of approximately equal length, having an overall combined length not to exceed 95 feet.

(c) A truck-tractor and two trailers of approximately equal length, having an overall combined length not to exceed 105 feet.

(d) An auto transporter combination consisting of a truck and two stinger steered semi-trailers not to exceed 105 feet in vehicle length and 110 feet in load length.

(2) Travel is authorized only on the Interstate Highway System, completed and uncompleted, and on adjacent roads subject to approval by the Department of Highways to allow for local pick-up and delivery. Local is defined as a distance not to exceed 10 miles one way from point of entrance or exit from an Interstate Highway.

(3) Travel is authorized 24 hours per day, including weekends and holidays, during the period of Daylight Savings Time in each calendar year.

(4) A sign stating "Long Load - Pass with Care" shall be displayed on the rear of each combination. Letters must be a minimum of 6 inches in height and of a reflectorized type material.

(5) Maximum speed may not exceed posted speed limits at any time. Speed or any hazardous moving violation will subject the Permittee to revocation of special permit privileges.

(6) Maximum weight may not exceed that allowed by Section 61-10-107, MCA, which is 20,000 pounds per single axle, 34,000 pounds per tandem axle, and total gross weight of 105,500 pounds.

(7) The combinations may not be dispatched or operated when hazardous conditions such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke adversely affect visibility or traction. When adverse conditions are encountered on the road, speed shall be reduced and if conditions become sufficiently dangerous, the operation of the combination shall be discontinued until safe operation can be resumed. During severe conditions, in the interest of safety for the public and combination, the driver may proceed to the first safe place where the unit may be removed from the highway.

(8) The following regulations shall apply regarding equipment:

(a) All trucks and tractor trucks shall be powered to provide adequate acceleration ability and hill climbing ability under normal operating conditions, and to operate on level grades at speeds compatible with other traffic. The ability to maintain a minimum speed of 20 mph under normal operating conditions on any grade over which the combination is operated is required.

(b) All trucks and tractor trucks shall have adequate traction to maintain a minimum speed of 20 mph under normal operating conditions on any grade over which the combination is operated and to be able to resume a speed of 20 mph after stopping on any such grade and, except in extreme road or weather conditions, to negotiate at any speed all grades encountered.

(c) Conventional 12 ply tires which give a "hard" ride are recommended. The use of so-called low pressure or extra width tires are prohibited unless approved by the Department of Highways.

(d) A heavy duty fifth wheel is required. All fifth wheels must be clean and lubricated with a light duty grease prior to each trip. The fifth wheel must be located in a position which provides adequate stability.

(e) Pick-up plates must be of equal strength to the fifth wheel.

(f) The king pin must be of a solid type and permanently fastened. Screw out or folding type king pins are prohibited.

(g) All hitch connections must be of a no-slack type, preferably air actuated ram. Air actuated hitches which are isolated from the primary air transmission system are recommended.

(h) The drawbar length should be the practical minimum consistent with the clearances required between trailers for turning and backing maneuvers.

(i) Axles must be those designed for the width of the body.

(j) All braking systems must comply with state and federal requirements. In addition, fast air transmission and release valves must be provided on all trailer, semitrailer and converter dolly axles. A brake force limiting valve, sometimes called a "slippery road" valve may be provided on the steering axle. Indiscriminate use of engine retarder brakes is prohibited.

(k) Anti-sail mud flaps are required.

(l) All mutiple trailer combinations must be stable at all times during normal braking and normal operation. A multiple trailer combination when traveling on a level, smooth, paved surface must follow in the path of the towing vehicle without shifting or swerving more than three inches to either side when the towing vehicle is moving in a straight line.

(m) In no case shall any trailer or semitrailer be placed ahead of another trailer or semitrailer which carries an appreciably heavier load. The heaviest trailer or semitrailer should be placed in front and the lightest at the rear.

(9) The following requirements shall apply to drivers:

(a) A driver must have had at least eight years of experience driving truck trailer combinations, five years of which must have been in driving multiple trailer combinations such as doubles or triples.

(b) The driver may have had no moving traffic convictions during the past three years while driving a truck.

(c) The driver must fully comply with the driver's requirements set forth in the Motor Carrier Safety Regulations of the U. S. Department of Transportation.

(d) The driver must have had special instruction and training in the operation of any multiple trailer combination prior to operating any such combination on a highway.

(e) The driver must be a paid employee of the Company holding the Special Permit and under direct supervision and responsibility of the Company.

(f) The responsibility for strict compliance with the driver requirements shown in this section shall be borne equally by both the Driver and the Company.

(10) Notwithstanding other state and federal requirements for reporting motor vehicle accidents, all reportable accidents involving a multiple trailer combination operated under a special permit must be reported to the Gross Vehicle Weight Division of the Department of Highways within ten days of the date of the accident.

(11) In lieu of Special Permit, G.V.W. Form 32, companies intending to use in excess of five permits per day will be authorized to proceed in the following manner:

(a) Secure a letter from the Department of Highways for the operation of the vehicle combinations.

(b) Place a photo copy of the letter in each power unit utilized.

(c) Record the number of round trips made each month and forward this information, accompanied by a check equal to \$6.00 times the number of trips, to the Gross Vehicle Weight Division within 10 days following the end of each month.


(12) Violations of any rules and regulations may result in the Highway Commission's revocation, cancellation or suspension of permits without refund pursuant to Section 61-10-143, MCA.

3. The rule is proposed to respond to a petition for its adoption filed by the Montana Motor Carrier's Association, 1727 Eleventh Avenue, Helena, Montana 59601. The petition sets forth reasons why the operation of Triples Trailers should be allowed, primarily for conservation of fuel. Copies of the petition are available from the Department of Highways.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing or may submit the data, views or arguments in writing to Ronald P. Richards, Director, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, not later than June 28, 1980.

5. Jack A. Holstrum, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

6. The authority of the Department to adopt the proposed rule is based on Section 61-10-122, MCA, and the rule implements Section 61-10-121, MCA.

By: 
Ronald P. Richards
Director of Highways

Certified to the Secretary of State May 17, 1980.

Fish and Game Commission

David Niss said the staff has raised an objection to the Fish and Game Commission's proposed repeal of a rule regarding migratory waterfowl collection permits because there is sufficient statutory authority elsewhere which would render the rule unnecessary. Mr. Niss said that Senator Lowe had raised the question of whether the repeal of the rule might prevent the collection of certain species of birds because the law limits such collection only to persons with a demonstrated scientific interest connected to a university, museum, etc. Senator Lowe said there are collectors who currently hold permits from the state or federal government who are not connected to a scientific institution. F. W. Wright, Director of Legal Services for the Department of Fish, Wildlife and Parks, appeared to explain the Department's rationale for repeal of the rule. He said that the primary reason was simply that the rule had not been used. He said the Department does not issue migratory waterfowl permits to private collectors and that scientific collection is a separate issue. Senator Lowe asked that Mr. Wright do some research to determine whether or not legislation should be proposed to address this matter.

MAR Issue No. 10

Department of Highways

David Niss said the Department proposes to adopt a rule implementing a permit system for the operation of triple trailers and that while there seems to be no question that the Department can implement a permit system, the staff's position is that the section cited as authority for adopting the rule, 61-10-122, MCA, does not provide rulemaking authority to the Department. Mr. Niss said that this does not mean that the law does not provide somewhere else for the adoption of a permit system. Rep. Harper MOVED THAT A REPRESENTATIVE OF THE DEPARTMENT BE INVITED TO ATTEND THE AFTERNOON PORTION OF TODAY'S MEETING TO EXPLAIN THE RATIONALE FOR THE RULE AND IF ATTENDANCE WOULD NOT BE POSSIBLE THAT THE DEPARTMENT PRESENT IN WRITTEN FORM AN EXPLANATION OF THE RATIONALE. The motion passed unanimously. David Niss provided the Committee with copies of a letter from Beverly Soules who opposes the triple trailer rule.

MAR Issue No. 11

Division of Workers' Compensation, Department of Labor

David Niss stated that the Division has proposed some rules relating to safety in logging operations. He stated that the Division first attempted to adopt the rules by reference but that the staff convinced the Division that it did not have the authority to do this and that the rules should be printed in the Register. But, Mr. Niss continued, upon further review the staff has become concerned regarding some of the language and content in the proposed rules and feels that while there is no legal objection to the rules, it would be left to the Committee's discretion whether to object to the rules on the basis of the language contained in them in that the

Review of 1980 MAR Issue No. 12

David Niss stated that Issue No. 12 of the 1980 MAR contains only one notice of proposed rulemaking on which the staff had a question and that is the proposed rule regarding a General Update and Revision of the Montana Merit System, MAR 2-2-46. He said that the staff concern is that §2-18-105 does not grant express rulemaking authority but that it does say that the Merit System Council shall continue to operate under the policies under which it was established, which was in 1940. Mr. Niss clarified that §2-4-102(11) defines rules as including policies and he stated that the staff's position is that that is not express rulemaking authority. He said, however, that the staff realizes that the policies have been in existence for some time and that the Merit System Council is only proposing some amendments. Mr. Niss also stated that the notice cites §2-18-105 as both the section granting rulemaking authority and the section being implemented and that the staff has noted that this section grants only the barest of rulemaking authority.

Senator Smith MOVED THAT THIS MATTER BE ADDED TO THE LIST OF PROPOSED LEGISLATION and the motion carried unanimously.

Rep. Harper commented that the state rules seem to be more narrow than the proposals in the federal Register in that the state rules seem to limit participation in the Merit System to people who are already in an authorized employment or rehabilitation program whereas the federal regulations allow for a class of economically disadvantaged people. He said he would suggest that the Committee delay any action on the proposed amendments until after the public hearing to see if any objections are raised at that hearing.

Review of Legal Authority for Highway Department Regulations
Authorizing Triple Trailer Combinations

David Niss stated that at the June 13 meeting of the Committee staff comments were reviewed concerning proposed regulations of the State Department of Highways regarding triple trailer combinations, as published in Issue No. 10 of the MAR. He said that a letter was written to the Department of Highways expressing the Committee's concern that there was no express grant of rulemaking authority as required by 2-4-102 and asking if the Department would provide further information to the Committee. Mr. Niss continued that pursuant to that letter Ron Richards, Director of the Department of Highways, furnished the staff with a copy of a July 2, 1980 memo to Mr. Richards prepared by the Legal Division of the Department, copies of which have been furnished to the Committee members. Mr. Niss stated that the staff still has a concern about the legal authority for the regulations in that the Department memo states that the "department clearly has no express authority to adopt the proposed rule on permitting of special vehicle combinations". Mr. Niss said that under 2-4-102(11) that if there is no express rulemaking authority that the rule must be considered

to be an interpretive rule and the statutes state that an interpretive rule does not have the force of law. Mr. Niss stated that the staff's concern is that in spite of this the Department states in their memo that "the proposed rules simply give notice as to the conditions and limitations on the exercise of such discretions. Violations [sic] of the proposed guidelines will be denied special permits of if they already have a permit such permit will be revoked." Mr. Niss said the staff is concerned that even though the Department has admitted that the rules have no force and effect of law that they constitute something approaching advice and that the Department has stated that violators of the advice will be denied special permit or those permits will be revoked if those permits have already been granted.

Beata Galda, representing the Department of Highways, stated that the purpose of the rule is to list the conditions under which permits will be issued and that this procedure will result in a savings in that the conditions would not then have to be printed on the face of every permit. She added that the purpose of going through the rulemaking procedure is to give the public an opportunity to provide input to the Department.. Ms. Galda said that under the statute the Department has discretion to issue special permits and the rulemaking procedure implements that statute in that the discretion that will be exercised by the Department should the rule be adopted will then be listed in a rule, and that in essence it is policy rather than law that is being determined. Ms. Galda said it is the Department's intention that this is an interpretive rule and that there is implied authority for the rule in that the Department has discretion to issue such special permits.

Larry Huss, attorney for the Montana Motor Carriers Association said the Association concurs in the Department's position and believes that the whole rulemaking process was an accomodation to afford the public an opportunity to comment on the standards under which the Department will exercise its discretion in authorizing permits for the triple trailer combinations.

David Niss said that staff comments go to the form the Department has used and that the staff believes it sets a poor precedent to adopt regulations that do not have the force and effect of law, but to state that violations of the regulation would result in cancellation or forfeiture.

Rep. Harper asked Ms. Galda if any changes or modifications were made in the rules as a result of the public hearing and she asked Don Copley of the Department to respond. Mr. Copley stated that to date no modifications have been made in the rules but that the decision on the proposed rules has not been issued as yet.

David Niss asked Ms. Galda if the section of law granting the Department the authority to issue permits contains authority for the Department to revoke licenses for violations of other rules or if it is only because of the language in the proposed rule that the Department has the authority to cancel or revoke a permit, based upon violations of other rules and regulations. Mr. Huss responded that the rule was proposed but that the Department has not adopted the rule as yet. He said that the rule was drafted only for public consideration and that

the Association believes that the statutory language that says that conditions can be attached to the utilization of longer combination permits also state that if those conditions are exceeded or violated that the permit can be revoked.

Rep. Ramirez said that it appears that the only issue is whether the Department can say if the conditions of the permit are violated that the permit will be revoked -- that there seems to be no question that the rule can be adopted as an interpretive rule which states what the policy of the Department will be. David Niss said it is primarily a question of form -- whether what the Department has proposed to do may in fact be done in the rulemaking process or should be done as suggested, by printing the conditions on the permit. Senator Story MOVED THAT THE COMMITTEE DROP CONSIDERATION and Rep. Ramirez said that he didn't believe a motion was needed to do that.

Rep. Stobie said he does not like to see a department adopt a rule, even though he believes in the rule, when it seems that what they are doing is not quite legal. Ms. Galda responded that §61-10-122 says that the Department may otherwise limit or prescribe conditions of operation of vehicle combinations and she said that in putting the conditions in a rule she does not believe the Department has gone beyond the scope of that authority by saying that violations of any conditions under which the vehicle may travel may result in revocation of the permit.


Mr. Niss said there may be room for compromise in that if the Department were to cite on the permit the place in the MAR where the regulation appears so that those issued permits will know the conditions they must comply with that the staff would be willing to drop the objection. Ms. Galda replied that the Department would have no objection to this suggestion. REP. STOBIE MOVED THAT THE DEPARTMENT BE REQUESTED TO STATE ON THE PERMIT WHERE IN THE MAR THE CONDITIONS TO BE COMPLIED WITH MAY BE FOUND. David Niss requested that the suggestion be noted as a Committee request rather than a staff request. The motion carried unanimously.

Government Paperwork Study

The Committee made the following decisions regarding its continuing study of government forms:

- Each member will be responsible for submitting to David Niss, within two weeks, a written report.
- Department administrators will be requested to testify before the Committee at its next meeting regarding forms on which Committee members had substantive questions. David Niss will make the determination of which agencies will be contacted.
- Those forms which have not as yet been reviewed, including those which Committee members did not have time to review, will be distributed among the other Committee members.

MONTANA MOTOR CARRIERS ASSOCIATION INC.



B. G. HAVDAHL, EXECUTIVE VICE PRESIDENT
P. O. BOX 1714, HELENA, MONTANA 59624
TELEPHONE: AREA CODE 406 442-6600

January 28, 1981

Representative Paul K. Kropp
Chairman
House Highways and Transportation
Committee
Montana House of Representatives
Helena, MT 59601

Dear Paul:

Please accept my apology for continuing the debate on an issue not germane to your committee hearing January 27, 1981, on House Bill 320. I defended the trucking industry against accusations concerning the operation of triple trailers by lobbyists for the Montana Automobile Association and the Montana Railroad Association because the matter had nothing to do with HB 320.

I felt compelled to counter the use of half truths and the twisting of facts before your committee by Tom Harrison, representing the Triple A, when he insisted on "rehearing" the triples issue before your committee. His allegation that the trucking industry was attempting to seek to operate triples in Montana through a regulation after being turned down by the Legislature in past sessions, is just not true. The Legislature has never had the matter of triple trailers before it because present law does allow the issuance of permits by the Department of Highways to operate the longer and heavier combinations. The Legislature did authorize gross weights of up to 105,500 pounds on 7, 8, and 9 axle combinations in the 1967 session.

In the same bill, a provision was proposed to the 1967 Legislature that would have permitted the operation of general truck combinations up to 105 feet in length without a special overlength permit. The Legislature deleted that proposed provision from the bill but retained the statute authorizing the operation of a truck combination over 85 feet with special permit.

A rule under which triple trailers could be operated during daylight savings months only on the Interstate Highways in Montana was requested in 1980 by the industry under the Montana Administrative Procedures Act. The purpose of the rule was to

MEMBER



REPRESENTING THE TRUCKING INDUSTRY IN MONTANA

Representative Paul K. Kropp

January 28, 1981

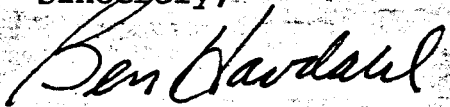
establish operating standards for drivers, equipment, and time period specifically on the Interstate routes. It was not proposed by the Department of Highways and the Department has never indicated acquiescence in full operation of triples. To suggest to your committee that this was the purpose behind HB 320 is an improper indication. Tom Harrison raised and lost many of the same issues in the District Court.

I was also amazed at the comment relating to triple trailers by Tom Dowling, representing the Montana Railroad Association. It is incredible to me that the Railroad Association would chastise the trucking industry in Montana for attempting to improve service to Montana's major cities along the Interstate with the operation of longer, more efficient triple combinations when the Milwaukee Railroad arbitrarily shut down operations in most of Montana notwithstanding the negative economic impact it caused to shippers and consumers in this state. In addition, Burlington Northern Railroad is now talking about withdrawing service in Montana on many of its spur lines.

The Legislature is not the proper forum for the railroads to seek economic advantage over their potential competition. It is hard to justify, in our opinion, the position by the Montana Railroad Association against improving transportation efficiency of general commodities by truck combinations in Montana.

Thank you and your committee for your indulgence and the opportunity to respond.

Sincerely,



B. G. HAVDAHL
Executive Vice President

BGH:ap

cc: Members of the House Highways and Transportation Committee