



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Mr. Julian Montgomery
State Highway Engineer
Austin, Texas

Dear Sir:

Opinion No. 0-2069
Re: Right of Highway Department
to post certain signs on
State highways.

In your letter of March 6, 1940, you make a request of this department for a ruling based upon certain facts, which are taken from your letter, as follows:

"Just at this time, we are undertaking to speed-zone a 26-mile section of U. S. Highway 281 beginning three miles South of Johnson City to the Comal County line. This particular stretch of highway has been selected because 38 per cent of the accidents have been chargeable to a primary cause of 'Driving too Fast for Conditions.' Under this zoning, we propose to erect on restricted zones speed signs which will indicate 'Safe Speed - 35 Miles per Hour' in the day time and show '30 Miles per Hour' at night when reflectorized.

"Also, we propose to erect certain signs on the highway which will show 'Safe Speed - 60 Miles per Hour' by day, and '50 Miles per Hour' by night through the medium of reflector buttons when the highway is safe for such speeds.

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"Will you please give us the benefit of your opinion as to whether we can legally post 'Safe Speed' signs as proposed?"

The correct answer of your inquiry is contained in Article 827a, Sections 8 and 11 of the Penal Code, which provide:

"Sec. 8. It shall be unlawful for any person to operate or drive any motor or other vehicle upon the public highways of Texas at a rate of speed in excess of forty-five (45) miles an hour, or drive or operate a motor or other vehicle within the corporate limits of an incorporated city or town, or within or through any town or village not incorporated, at a greater rate of speed than twenty (20) miles per hour; provided, that it shall be unlawful to operate upon said public highways a commercial motor vehicle as defined in this Act of either a registered or actual gross weight of six thousand (6,000) pounds or less at a rate of speed in excess of forty (40) miles per hour, or such vehicle of either a registered or actual gross weight of over six thousand (6,000) pounds, at a rate of speed in excess of twenty-five (25) miles per hour, or within the corporate limits of any incorporated city or town or within or through any town or village not incorporated at a rate of speed in excess of eighteen (18) miles per hour. Provided further, that it shall be unlawful to operate any motor vehicle engaged in this State in the business of transporting passengers for compensation or hire on any highway, road or thoroughfare not privately owned between cities, towns and villages at a rate of speed in excess of forty (40) miles per hour."

"Sec. 11. The Department is hereby authorized to classify, designate and

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mark both intrastate and interstate State Highways lying within the boundaries of this State and to provide a uniform system of marking and signing such highways under the jurisdiction of this State, and such system of marking and signing shall correlate with and so far as possible conform to the system adopted in other states."

Under these Sections of the Article we think the State Highway Department would be authorized to post the markers referred to in paragraph "1" of your letter, and as to such markers our answer to you is yes.

As to the markers referred to in the second paragraph of your letter, you are advised that it is our opinion that the State Highway Department is without authority to post such signs. The two Sections of Article 827a must be construed together and harmonize if possible. Sec. 8 of this Act expressly limits the speed of motor vehicles on the public highways of this State to 45 miles per hour, and other sections of the Act make all violations of this provision a penal offense and fix a penalty for the violation of the same.

The marker "SAFE SPEED 60 MILES BY DAY", and the marker "SAFE SPEED 50 MILES BY NIGHT" would surely be an open invitation to the general public operating motor vehicles on State highways so marked to violate the plain provisions of Section 8 of the Act, and certainly was not contemplated by the Legislature when it enacted Sec. 11 of the same Act. Regardless of what may be the private opinion of the various officials of this State with reference to the rate of speed with which motor cars may be operated upon the public highways of this State, the power to change such rate of speed remains with the Legislature, and as long as the statute remains unchanged the State Highway Department would not be authorized, under Sec. 11 of the Act, to post signs for a safe speed in excess of 45 miles per

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hour.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Grover Sellers*
Grover Sellers
Assistant

GS-MR

APPROVED MAR 23, 1940

George B. Mann
ATTORNEY GENERAL OF TEXAS

