



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Glenn Capps
County Attorney
Mason County
Mason, Texas

Dear Sir:

Opinion No. 0-4996

Re: Validity of the present 35
mile per hour speed limit
established by the State
Highway Commission on all
highways comprising the State
Highway System.

You have requested the opinion of this department
on the above stated question.

The speed limit to which you refer was promul-
gated by the State Highway Commission, evidently under a
supposed grant of authority contained in Section 8 of Art-
icle 827a, Vernon's Annotated Penal Code of Texas, as amend-
ed by House Bill No. 1074, Chapter 506, Acts of 1941, 47th
Legislature, Regular Session, the pertinent parts of which
are as follows:

"Section 8. Rate and Speed of Vehicles.

"It shall be unlawful for any person to oper-
ate or drive any motor or other vehicle upon the
public highways of Texas at a rate of speed in ex-
cess of sixty (60) miles an hour during the day-
time, or to drive or operate a motor or other
vehicle at a rate of speed in excess of fifty-five

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(55) miles per hour during the nighttime, 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 thirty (30) miles per hour; provided, that it shall be unlawful to drive or operate upon said public highways a commercial motor vehicle, truck-tractor, trailer, or semitrailer as defined in this Act, at a rate of speed in excess of forty-five (45) miles per hour during the nighttime. 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 fifty-five (55) miles per hour.

"Daytime as used in this Act shall mean a half hour before sunrise to a half hour after sunset, and nighttime shall mean at any other hour.

"Provided further that no person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions then existing, having regard to the actual and potential hazards when approaching and crossing an intersection or a railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions; and speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

"The State Highway Commission shall have the power and authority upon the basis of an engineering and traffic investigation to determine and fix the maximum, reasonable and prudent speed at any road or highway intersections, railway grade crossings, curves, hills, or upon any other part of a

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highway, less than the maximum hereinbefore fixed by this Act, taking into consideration the width and condition of the pavement and other circumstances on such portion of said highway as well as the usual traffic thereon. That whenever the State Highway Commission shall determine and fix the rate of speed at any said point upon any highway at a less rate of speed than the maximum hereinbefore set forth in this Act and shall declare the maximum, reasonable and prudent speed limit thereat by proper order of the Commission entered on its minutes, such rate of speed shall become effective and operative at said point on said highways when appropriate signs giving notice thereof are erected under the order of the Commission at such intersection or portion of the highway.

" . . . "

The order of the State Highway Commission, fixing the general 35 mile per hour speed limit, was passed September 22, 1942, and is as follows:

"An engineering and traffic investigation and survey of the Texas Highway System having been made, the Commission finds that maintenance equipment, materials and supplies necessary to maintain and prolong the life of the system in its present condition are becoming increasingly difficult to obtain because of priorities and other restrictions of the Federal Government; that most of the highways comprising the system are vital to the national defense and should be preserved in the best possible manner for such use; that a reduction of the maximum speed of motor vehicles using such highways will decrease the wear and tear upon road surfaces and at the same time permit the safe operation of vehicles with worn tires which cannot be replaced.

"It is therefore ordered by the Commission upon the basis of such engineering and traffic investigation and survey, that the maximum reasonable and prudent speed of motor vehicles on all highways comprising the State Highway System, outside the limits of incorporated cities and towns, be reduced to a

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speed not in excess of 35 miles per hour, and the State Highway Engineer is authorized and directed to proceed with the erection of appropriate signs showing the maximum reasonable and prudent speed on all highways comprising the State Highway System, outside the limits of incorporated cities and towns, as not exceeding 35 miles per hour."

From a careful reading of the above statutory provision granting the Highway Commission the authority to determine what are maximum reasonable and prudent speeds upon certain sections and points of the Texas highways, we are impressed with the belief that the wording of the statute itself does not show an intention to give the Highway Commission authority to establish a new speed limit of general application on all the many thousands of miles of State highways, but rather indicates a contrary intent. The obvious intent of the grant is to empower the Commission to do what the Legislature itself could not practicably do: to determine and fix maximum safe speed limits (below the general maximum limits) at particular "road or highway intersections, railway grade crossings, curves, hills" or upon any other particular section of highway which, because of predetermined local--not general--conditions, might present extraordinary hazards to traffic safety.

But the quoted order of the Commission goes beyond the authority granted, and in effect, attempts to repeal a general penal law passed by the Legislature, and substitute in its place an order passed by an administrative board.

While we recognize the patriotic motives which impelled its passage, yet it is our opinion that said order of the State Highway Commission, fixing the maximum speed limit on all highways comprising the State Highway System at 35 miles per hour, is in excess of the Commission's authority and therefore invalid. The Legislature is now in session and can make such changes as it deems desirable.

We express no opinion concerning the constitutionality of the delegation of authority contained in said Section 8, nor is this opinion to be construed as passing upon the legality of other orders of the State Highway Commission fix-

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ing the maximum speed limit upon particular sections of the
State Highways at 35 miles per hour.

Yours very truly

ATTORNEY GENERAL OF TEXAS

W. R. Allen

By

W. R. Allen
Assistant

WRA:mp
of J.C.C.

APPROVED MAR 4, 1943

Gen. E. Mann

ATTORNEY GENERAL OF TEXAS

