

## Opinion No. 49-5229

July 5, 1949

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. B. G. Dwyre State Highway Engineer State Highway Department Santa Fe, New Mexico. Attention: L. D. Wilson Administration Engineer

{\*58} Reference is made to your letter dated June 30, 1949, wherein you make inquiry as to the legal authority of the State Highway Department to post such stretches of highway which are likely to be damaged by heavy trucks, with maximum load limits and prohibit any trucks from traveling such highways where the gross weight is in excess of the estimated safeload limit which can be transported over such highway without damage to the highway itself.

In the consideration of this {\*59} question, I wish to call your attention to paragraph (b) of § 68-601 of the New Mexico 1941 Compilation which reads as follows:

"The state highway commission may prescribe by rule for a maximum weight or size of vehicles, less than that specified herein, on designated bridges, causeways, viaducts, structures or highways, or sections thereof; and it shall be unlawful for any vehicle exceeding in size or weight the maximum so fixed to pass over such designated bridges, causeways, viaducts, structures, highways or sections thereof, if suitable signs specifying the same, are erected at or near each end of the bridge, causeways, viaducts, structures or highways so designated.

You will note from the above that the State Highway Commission may prescribe by rule for a maximum weight or size of vehicles less than that specified herein, on designated bridges, causeways, viaducts, structures **or highways or sections thereof**; \* \* \* if suitable signs specifying the same, are erected at or near each end of the bridge or causeway, viaduct, structure or **highway so designated**.

In connection with your authority to curtail the weight limit of the trucks, I want also to call to your attention to § 68-603 (a) of the 1947 pocket supplement which provides for tolerance not to exceed 20% and also to § 68-605 of the 1947 pocket supplement which provides for the issuance of special permits by the State Highway Department for excessive size and weight in emergency cases.

In view of paragraph (b) of § 68-601 quoted above, it is the opinion of this office that you may prescribe by rule a load limit which will be under the maximum load limit allowed by law for trucks traveling over certain sections of the public highways of the State of New Mexico, where the legal load limit would, in your opinion, do damage to certain sections of the highways, provided that such highways are properly posted at each end of said section so that the owners and drivers of the trucks will have due notice.

Trusting that the foregoing sufficiently answers your inquiry, I am