

## Opinion No. 51-5417

September 6, 1951

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

**TO:** Mr. Burton G. Dwyre State Highway Engineer State Highway Department Santa Fe, New Mexico

{\*122} In your letter of September 4, 1951, you ask if Chapter 3 of the Session Laws of 1943 permit the State Highway Commission to adopt a resolution establishing the maximum speed at which motor vehicles shall be permitted to operate on highways.

This law is found in § 68-504, N.M.S.A., subdivision (b) thereof, which reads as follows:

"(b) Maximum speed. -- The State Highway Commission may by resolution establish the maximum speed at which motor vehicles shall be permitted to operate upon the public highways, or upon any public highway or section thereof, and may, from time to time, change such maximum speed limits."

It appears that you are concerned about the possibilities of such a statute being declared unconstitutional, if such speed limit were adopted, upon the grounds that the State Highway Commission would be thereby usurping legislative power.

The general principle governing the conditions under which the power to make rules and regulations may be delegated has been stated as follows:

"A legislature in enacting a law complete in itself and designed to accomplish the regulation of particular matters falling within its jurisdiction, may expressly authorize an administrative commission, within definite valid limits, to provide rules and regulations for the complete operation and enforcement of the law within its expressed general purpose. So long as a policy is laid down and a standard is established by a statute, no unconstitutional delegation of legislative power is involved in leaving to selected instrumentalities, both the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. 11 Am. Jur. 240."

It may be argued that § 68-504 does not lay down and establish a standard governing the speed within which motor vehicles may be operated upon the highways of New Mexico and within which range the Highway Commission may prescribe speed limits. This argument is weakened somewhat by the fact that § 68-504 provides for maximum speed limits for trucks of not more than 50 miles per hour; prohibits a speed of more than 15 miles per hour when vehicles are passing a school during recess, etc.; and restricts speed of vehicles to 20 miles per hour in business districts and 35 miles per hour in residential districts.

In determining whether the Legislature has established a standard for fixing speeds, reference may be had to all of Chapter 68. It can be argued that the first sentence of § 501 of Chap. 68 establishes such a standard. This reads as follows:

"The driver or operator of any vehicle in or upon public highways within this State shall drive or operate such vehicle in a careful manner, with due regard for safety and convenience of pedestrians and all other vehicles or traffic upon such highways."

In addition to this, there are other sections of Chapter 68 that definitely establish speed limits for certain types of vehicles.

In 25 Am. Jur. 257, the following statement appears:

{\*123} "While the legislative power to promulgate regulations cannot be delegated to ministerial officers to be exercised in their uncontrolled discretion it is generally considered that no unconstitutional delegation of legislative power to regulate the use of streets or other public ways is involved in leaving it to the discretion of administrative officers to accomplish in detail what is authorized or required by the law in general terms, so long as such discretion is limited to a discretion in its essence, ministerial and not legislative, although it may be such as might be exercised by the legislative body. The disposition in more recent times is to uphold provisions permitting administrative officers to determine conditions under which a law may or may not apply, or to alter regulations to meet peculiar local conditions, as against the objection that a delegation of legislative power is thereby made."

Over and above § 68-504 there is further authority contained in that chapter for the establishment of speed limits upon the highways. I respectfully refer you to § 68-508. The appropriate part of that statute is as follows:

"The State Highway Commission upon request from any local authority shall, or upon its own initiative may, conduct an investigation of any public bridge, causeway, viaduct or **highway** or **section thereof** and if it shall thereupon find that such structure of **highway** or **section thereof** cannot with safety to itself withstand vehicles travelling at the speed otherwise permissible under this Act, the Commission shall determine and declare the maximum speed of vehicles which such structure or **highway** or **section thereof** can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of 100 Ft. before each end of such structure, or **highway** or **section thereof**. The findings and determination of the Commission shall be conclusive evidence of the maximum speed which can with safety to any such structure be maintained thereon."

The first paragraph of § 508 makes it unlawful to drive any vehicle upon a highway or section thereof at a speed which is greater than the maximum speed which can with safety to such highway be maintained thereon, when such structure is signposted as provided for in that section.

In rendering an opinion upon this section to the State Highway Commission, on December 21, 1937, Opinion No. 1845, the then Attorney General stated that the Commission, by virtue of this section, could determine the maximum speed at which vehicles could be operated upon highways and post signs on such highways indicating such speed and that anyone exceeding such maximum speed limits could be punished as provided in that Act.

This opinion was subsequent to an earlier opinion given by the Attorney General to the Highway Engineer. In the earlier opinion, No. 1676, dated June 15, 1937, the Attorney General stated that the only authority the Highway Commission had to create speed limits differing from those established by law was that contained in that section, (now section 508). At that time, and at the time that Opinion No. 1845 was rendered, Section 504 (being the section under consideration) did not give the Highway Commission authority to establish maximum speed limits by resolution.

It is apparent that from 1929 the Legislature intended that the Highway Commission should have power to determine maximum speed limits by virtue of Section 508 and { \*124 } provided a method for determining what these should be.

This is a valid grant of power to an administrative commission.

Section 504 was amended in 1943 in many respects. In one respect, it was amended to permit the Highway Commission to establish by resolution maximum speed limits upon the highways for all vehicles. While that section did not spell out the standards that the Highway Commission should follow in determining such maximum speed limits, the section in effect overlapped section 508 and by implication included it therein and both sections should be read together in determining whether standards were established by the legislature to guide the Highway Commission in establishing such maximum speed limits by resolution.

It is, therefore, my opinion that § 68-504, being Chap. 3 of the Laws of 1943, authorizes the Highway Commission to establish by resolution maximum speed limitations for all vehicles upon the highways of the State of New Mexico; that such speed limitations may be enforced by law enforcement agencies and that the statute is not unconstitutional upon the basis that the State Highway Commission would thereby be exercising powers belonging exclusively to the Legislature.