

Opinion No. 55-6262

August 26, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. James C. Compton, Assistant District Attorney, Ninth Judicial District, Portales, New Mexico

You have asked the opinion of this office on a question arising out of the following:

In your area considerable automobile windshield damage has been reported. Much of this is due to the blowing of gravel and sand off of uncovered vehicles transporting these materials. You further state that the hauling of manure in uncovered trucks is creating a problem upon same blowing unto other vehicles using the highways.

You ask whether or not Section 6, Chapter 37, Laws of 1955, is sufficient authority for police officers to require the covering of these cargos with tarpaulins or other covering. Section 6, Chapter 37, Laws of 1955, provide:

"Loads on vehicle. -- (a) No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in clearing or maintaining such roadway.

"(b) No person shall operate on any highway any vehicle or combination of vehicles with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway."

Under the above, it seems to me, that the remedy of the State is restricted to arrest when the offense occurs. It is doubtful that prior to the occurrence of the offense a person could be required to take measures which would prevent the offense. The offense is not committed until a vehicle thus loaded is "driven or moved" or operated on a highway. Certainly the driver or owner of the vehicle commits no offense if his vehicle, although loaded as prohibited is parked on the side of a highway. However, once moving on the highway if sand, gravel or manure escapes then arrest and punishment may follow.

It is noticed that the statute may be broad enough to authorize arrest even though no part of the cargo has escaped. A vehicle may not be loaded as to permit its load to escape, yet, perhaps, such load would not escape except at higher speeds. As a practical matter, however, proof of the offense would be almost impossible unless there is an actual dropping, sifting or escaping of the load.

We trust the above helps answer your inquiry.

By: Santiago E. Campos

Assistant Attorney General