

Opinion No. 37-1845

December 21, 1937

BY: FRANK H. PATTON, Attorney General,

TO: Mr. G. F. Conroy State Highway Engineer Santa Fe, New Mexico

{*204} This will acknowledge receipt of your letter dated December 18, {*205} wherein you inquire whether the State Highway Commission has the power to set a maximum speed limit for the operation of motor vehicles upon the highways of the State of New Mexico, and whether they may erect signs along the highway setting such speed limits.

I am unable to find any legislative act delegating generally to the State Highway Commission the unrestricted power to fix the maximum speed limit of motor vehicles operating upon the highways of the state.

The maximum speed limit for trucks and busses on the open highway is set by statute at 45 miles per hour. See (b) of Section 1 of Chapter 118 Laws of 1933. The same statute places only the following restrictions on passenger automobiles:

"Passenger automobiles may be operated at such speeds as shall be consistent at all times with safety and the proper use of the roads."

Insofar as passenger automobiles are concerned, the legislature has apparently set no definite maximum speed limit in connection with their operation upon the highways.

As already stated, the legislature has made no general grant of power to the State Highway Commission to arbitrarily fix the maximum speed limit of motor vehicles operating upon the highways of the state. However, the legislature has delegated to the State Highway Commission the power to determine and declare special speed limitations. This delegation of power is found in Section 8 of Chapter 75, Laws of 1929, also designated as Section 11-808 New Mexico Statutes Annotated, 1929 Compilation. Said Section provides as follows:

"Sec. 8. (Special Speed Limitations.)

It shall be unlawful to drive any vehicle upon any public bridge, causeway, viaduct or highway or section thereof at a speed which is greater than the maximum speed which can with safety to such structure or highway or section thereof be maintained thereon, when such structure is signposted as provided in this section.

The State Highway Commission upon request from any local authorities 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 or highway or section thereof cannot with safety to itself withstand vehicles traveling 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 one hundred feet 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."

A reading of the foregoing section discloses that apparently the legislature did not make a general unrestricted grant of power to the State Highway Commission with respect to fixing speed limits, but rather the same constitutes a special or restricted grant. It is to be noted that at the head of the original section 8 in such enactment, the legislature saw fit to place the following notation, namely, "(Special Speed Limitations.)"

We shall, therefore, answer your inquiry as follows: The State Highway Commission may, upon its own {206} initiative, conduct an investigation of any highway in the state, in order to determine the maximum speed of vehicles which such highway can withstand. If it shall find that such highway cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under law, the Commission may determine and declare the maximum speed of vehicles which such highway can withstand, and may cause suitable signs stating such maximum speed to be erected and maintained at a distance of one hundred feet before each end of such highway or section thereof. After such investigation by the State Highway Commission and its determination and declaration of the maximum speed and posting thereof on the highway, anyone exceeding such maximum speed limit may be punished in accordance with Section 59 of Chapter 75, Laws of 1929, also designated as Section 11-859, New Mexico Statutes Annotated, 1929 Compilation.

See also Attorney General's opinion No. 1676, dated June 15, 1937, and addressed to Mr. G. F. Conroy, State Highway Engineer.

Trusting that the foregoing sufficiently answers your inquiry, I am

By: FRED J. FEDERICI,

Asst. Atty. Gen.