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SPRINGFIELD

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FILE NO. S-1315

**HIGHWAYS:**

Authority of County to  
Impose Weight Limitations  
on Vehicles Using County Highways

Honorable T. Jordan Gallagher  
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Court House  
Sycamore, Illinois 60178

Dear Mr. Gallagher:

This is in response to your letter concerning the authority of DeKalb County to establish weight limits upon county highways. You ask three questions:

1. Does section 15-316(c) of The Vehicle Code authorize the county to adopt a system of special excess weight permits and fees for trucks or other commercial vehicles that exceed the weight limitations imposed by county ordinance?
2. If the county were to adopt its own weight limitation ordinance and violators were prosecuted thereunder, would any fines and

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penalties collected be payable to the county treasurer rather than the Department of Law Enforcement?

3. May the county, pursuant to section 15-316(c) of The Vehicle Code, establish weight limitations that are the same as the statutory weight limits in section 15-111 of the Code?

In answer to your first question, it is my opinion that a county is authorized to issue a special and limited permit for the operation of a truck or commercial vehicle upon a county highway when such vehicle exceeds the weight limitation established by the county. A fee may be charged for such a permit; the fee must bear a reasonable relationship to the extra financial burdens imposed upon the county by virtue of the excessive weight of the vehicle.

Chapter 15 of The Vehicle Code (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 15-100 et seq.) provides for the control of the size and weight of vehicles operated upon highways within the State. Section 15-101 of The Vehicle Code (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 15-101) provides in pertinent part:

"(a) It is unlawful for any person to drive or move on, upon or across or for the owner to cause or knowingly permit to be driven or moved on, upon or across any highway any vehicle or vehicles of a size and weight exceeding the limitations stated in this Chapter or otherwise

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in violation of this Chapter, and the maximum size and weight of vehicles herein specified shall be lawful throughout this State, and local authorities shall have no power or authority to alter such limitations except as express authority may be granted in this Chapter.

\* \* \*

Accordingly, local authorities are precluded from altering the vehicle weight limitations set forth in the Code, except as otherwise expressly provided by statute.

Section 15-316(c) of The Vehicle Code (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 15-316(c)) provides:

" \* \* \*

(c) Local Authorities with respect to highways, under their jurisdiction may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles, or may impose limitations as the weight thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.

\* \* \*

This section permits local authorities to impose weight limitations on trucks or other commercial vehicles which use those county highways that cannot withstand the maximum weight limits set forth in section 15-111 of The Vehicle Code. (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 15-111.) Counties are included within the term "local authorities". (Ill. Rev.

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Stat. 1975, ch. 95 1/2, par. 15-100.) Therefore, a county board may, by ordinance or resolution, regulate the weight of trucks or other commercial vehicles operated upon county highways. The county board may set reasonable weight limitations which correspond to the condition, extent and type of use of a particular county highway.

Because a county has the authority to regulate the weight of trucks and other commercial vehicles operated upon highways within its jurisdiction, it would have the corresponding power to exempt certain of such vehicles from such regulations on the basis of a reasonable classification. (See 1952 Ill. Att'y. Gen. Op. 290.) Therefore, pursuant to this power to regulate weight limitations with respect to county highways, where reason and necessity dictate, the county may permit the special and limited operation of a vehicle in excess of maximum weight limitations which are set by the county.

It has been held that a county has those powers expressly conferred upon it by statute, and those necessary for the performance of the powers expressly conferred.

(Ashton v. Cook County (1943), 384 Ill. 287; LeFevre v. County of Lee (1933), 353 Ill. 30.) A similar rule exists for

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cities. (Chicago Cosmetic Co. v. City of Chicago (1941), 374 Ill. 384; City of Bloomington v. Wirrick (1943), 381 Ill. 347.) The powers of a city and a county are thus tested by the same rule. Hence, the decisions of the courts of this State relating to the powers of cities to enact regulatory ordinances under the police power and to charge a fee as incidental thereto may, by analogy, be extended to and made applicable to counties. See 1953 Ill. Att'y. Gen. Op. 71.

In Fr. Basil's Lodge v. City of Chicago (1946), 393 Ill. 246, it was held that the regulatory powers of a municipality might be exercised by exacting a license fee. The court stated at page 253:

"If power is given a city to regulate certain subject matter, such power includes also the authority to exact a license fee for the purpose of defraying all or a part of regulation or inspection. (Larson v. City of Rockford, 371 Ill. 441.)"

Accordingly, the county may charge a fee in return for its permission to exceed the established county weight limitation for a particular county highway.

Where a fee is imposed in pursuance of regulatory powers, the amount charged must bear a reasonable relationship

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to the additional burdens imposed due to the necessary expense in investigating, inspecting and otherwise exercising proper police regulation. (Ward Baking Co. v. City of Chicago (1930), 340 Ill. 212; Lamere v. City of Chicago (1945), 391 Ill. 552.) Sections 15-306 and 15-307 of the Code (Ill. Rev. Stat. 1975, ch. 95 1/2, pars. 15-306 and 15-307) set forth a schedule of fees which the Illinois Department of Transportation may charge for the issuance of a special permit to operate an overweight vehicle upon a highway within the Department's jurisdiction on a single-trip, round-trip or limited mileage basis. Such a scheme may be adopted by the county. The particular fees which the county may charge must bear a reasonable relationship to the actual cost of issuing of the permit, enforcing the permit and the wear and tear upon the county highway caused by the vehicle's excessive weight. The particular fees stated in sections 15-306 and 15-307 do not necessarily reflect the fees that may be charged by the county.

Your second question regards the disposition of any fines or penalties recovered for the violation of a county weight limitation ordinance. Section 16-105 of The Vehicle Code (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 16-105) provides in

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pertinent part:

"(a) Fines and penalties recovered under the provisions of Chapters 11 through 16 inclusive of this Act shall be paid and used as follows:

\* \* \*

2. For offenses committed upon any highway outside the limits of a city, village, incorporated town or park district, to the county treasurer of the county where the offense was committed except if such offense was committed on a highway maintained by or under the supervision of a township, township district, or a road district to the Treasurer thereof for deposit in the road and bridge fund of such township or other district; Provided, that fines and penalties recovered under the provisions of Section 15-113 of this Act shall be paid over to the Department of Law Enforcement which shall thereupon remit the amount of the fines and penalties so received to the State Treasurer \* \* \* ."

Section 15-113 (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 15-113) sets forth the fine to be charged for a violation of section 15-111 which provides for maximum weight limitations applicable to all highways within the State. Any prosecution for violation of a county weight limitation ordinance would arise from authority granted to the county to regulate vehicle weights under section 15-316. The collection of the fine would not arise under section 15-111 and therefore, pursuant to the

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language of section 16-105, the fine collected for the violation of the county ordinance would be payable to the county treasurer and not to the Illinois Department of Law Enforcement.

With regard to your third question, section 15-316(c) authorizes the county to establish weight limitations for county highways that cannot withstand the maximum weight limits set forth in section 15-111. The purpose of section 15-316(c) is to give the county the authority to provide a degree of protection for designated county highways that is greater than the protection provided by the weight limits in section 15-111. Since county weight limitations that are the same as the weight limits in section 15-111 would provide no greater protection for county highways, sections 15-316(c) does not authorize the imposition of such county weight limitations. Therefore, it is my opinion that the county may not establish weight limitations that are the same as the statutory weight limits in section 15-111 of The Vehicle Code.

Very truly yours,

A T T O R N E Y   G E N E R A L