

OFFICIAL OPINION NO. 75-90, SDCL 32-22-38

May 16, 1975

George F. Bennett, Secretary  
Department of Public Safety  
Public Safety Building  
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 75-90

**SDCL 32-22-38**

Dear Secretary Bennett:

You have asked whether employees of the Department of Public Safety who operate the ports of entry and the office of truck regulation are authorized to sell oversize permits under SDCL 32-22-38.

SDCL 32-22-38 provides in part:

The [department of transportation] acting through the director of highways, the state highway engineer, state highway maintenance engineer or anyone of its district engineers, or any state highway patrolman, or any employee of the highway department designated by the director of highways may in their discretion issue a written or telegraphic permit . . .

The statute clearly sets forth who may issue permits. Anyone not found on the list is excluded unless some other provisions of law authorize their actions.

Port of entry personnel are not employees of the Highway Department. The ports of entry established by SDCL 10-49-18 were transferred to the Department of Public Safety by section 10 of Executive Order 74-1. The Legislature did not veto this order, and it has the effect of law. S.D. Const.

Art. IV, § 8. Employees of the office of truck regulation are also employees of the Department of Public Safety. Neither port of entry or truck regulation personnel can be found on the list of personnel entitled to issue permits. Therefore, they cannot sell permits

under the delegation in this section.

SDCL 10-49-18 provides:

In order to assist in the enforcement of this chapter and for the purpose of collecting fees, issuing permits, checking registration, and any other duty relating to the operation of a motor vehicle upon the public highways of this state or the transportation of any commodity in or into this state, the department of highways may establish permanent or temporary ports of entry and check crews and may utilize for this purpose, personnel of the highway patrol.

This section authorizes port of entry personnel to sell permits "relating to the operation of a motor vehicle upon the public highways of this state or the transportation of any commodity in or into this state. . . ." A permit for oversize operation under SDCL 10-49-18 is a permit for "operation of a motor vehicle" and "transportation of any commodity." The broad authority conferred on port of entry personnel by SDCL 10-49-18 supersedes the limitation imposed by the list set forth in SDCL 32-22-38. The statutes are *in pari materia* and must be read together. Therefore, it is my opinion that port of entry personnel may sell permits for oversize operation under SDCL 32-22-38. There is no such additional statutory authority for the employees in the office of truck regulation unless you make them port of entry personnel as well.

Respectfully submitted,

WILLIAM J. JANKLOW  
ATTORNEY GENERAL

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