

OFFICIAL OPINION NO. 76-87, Authorized regulation of special motor vehicles under Chapter 32-21

September 17, 1976

Mr. Donald C. Dahlin, Secretary
Department of Public Safety
Public Safety Building
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 76-87

Authorized regulation of special motor vehicles under Chapter 32-21

Dear Mr. Dahlin:

You have requested an opinion from this office in regard to the following factual situation.

FACTS:

SDCL 32-21-1.2 adopted in 1976, establishes three types of special motor vehicles and defines each type. In both the Type I and Type II vehicles, the text states that those vehicles may contain changed or changes and modifications to the steering and suspension systems. SDCL 32-21-1.3 exempts those special vehicles, defined in SDCL 32-21-1.2, when displaying a license decal and being operated under certain conditions, from the general provisions of the vehicle inspection statute. Another provision of the same section requires the Department of Public Safety to promulgate rules for minimum safety standards for these special vehicles.

SDCL 32-21-3, as amended in 1976, provides that the Secretary of Public Safety shall require only the items of brakes, steering and suspension, tires and wheels, and lights to be inspected under the motor vehicle inspection law.

SDCL 32-15-24, adopted in 1973, prohibits the alteration of the suspension system on a vehicle, with an unloaded weight of six thousand pounds or less, operated upon the highways of this state.

Based on the above facts, you ask:

QUESTIONS:

(1) Does SDCL 32-21-1.2 by defining special vehicle types, and providing that these special vehicles may have changed or changes and modifications made to steering and suspension systems, exempt them from the provisions of SDCL 32-15-24?

(2) In the event the answer to question #1 is yes, can the Department of Public Safety promulgate rules setting standards and conditions for steering and suspension systems on these special vehicles, when this specific item is one of the items of equipment covered by the vehicle inspection law (32-21-3) from which they are exempt?

(3) Can the Department of Public Safety make *any* rules requiring these special vehicles defined in 32-21-1.2, and meeting the requirements of 32-21-1.3, to submit to an inspection and secure approval and certification prior to issuance of the special identification decal?

(4) Providing the answer to question #3 is yes, and being SDCL 32-21-1.3 exempts those special vehicles defined in SDCL 32-21-1.2, when operated under specific conditions from the provisions of Chapter 32-21, can the Department of Public Safety promulgate rules requiring equipment items, other than those required to be inspected under 32-21-3, to meet certain standards and conditions and require an inspection and certification of those items prior to issuance of the special identification decal?

(5) Can the Department of Public Safety promulgate rules requiring the items of equipment on motor vehicles required by various chapters of Title 32 SDCL, excluding those items required to be inspected under 32-21-3, to be inspected and certified for compliance with the statute and for safe condition prior to issuance of the special identification decal?

SDCL 32-21-1.2 and 1.3 provide:

32-21-1.2. For the purposes of this chapter a special motor vehicle shall mean:

Type 1. Those vehicles which are restored to their original body configuration and which may contain changed steering, brakes, power train or suspension systems.

Type 2. Those vehicles changed from the recognized vehicle manufacturers original body configuration, but which retain the general appearance, including changes to the body chassis or engine of the original vehicle. This type may also include changes and

modifications to engine, chassis, brake system, power train, steering and suspension systems.

Type 3. Those vehicles, other than type 1 or type 2, custom built with fabricated parts, or parts taken from existing vehicles.

32-21-1.3. Any special vehicle with a decal issued by the department of public safety attached to its license plate and used only in fair weather on dry, well maintained hard surface roads shall be exempt from the provisions of this chapter. The department of public safety shall promulgate rules for minimum safety standards of such vehicles.

SDCL 31-21-3 provides:

The inspection required by §32-21-2 shall be made and such certificate obtained with respect to the brakes, steering and suspension, tires and wheels and lights as shall be designated by the secretary of public safety.

SDCL 32-15-24 provides:

No person shall operate a motor vehicle with an unloaded weight of six thousand pounds or less, other than a motorcycle, or a type required to be registered under the laws of this state upon a public highway with either the rear or front suspension components altered or changed to deviate from the basic geometry of the manufacturer's design.

SDCL 32-15-24 and SDCL 32-21-1.2 and -1.3, by their terms, are not consistent with each other. SDCL 32-15-24 prohibits people from operating certain motor vehicles with the suspension components altered or changed to deviate from the manufacturer's "basic geometry" design. SDCL 32-21-1.2 and -1.3 specifically allow a special class of motor vehicles which can include "changed or modified suspension systems." This special class of motor vehicles is exempted from the general inspection provisions of chapter 32-21 by SDCL 32-21-1.3. The use of such special motor vehicles, however, is limited to use on hard, dry roads and in accordance with the rules of the Department of Public Safety relating to minimum safety standards for such vehicles.

It is a long-standing rule of statutory construction that words and phrases must be interpreted in their plain meaning and effect. *Board of Regents v. Carter*, 228 N.W. 2d 621 (1975), and that the primary rule of statutory construction is to give effect to the intent of the Legislature. *Watertown Independent School District No. 1*

of Codrington County v. Thyem, 159 N.W. 2d 122 (1968).

When SDCL 32-21-1.2 and -1.3 were passed by the Legislature in 1976, I believe the legislative intent is evident to allow limited use of such special motor vehicles with modified and changed suspension systems, provided the use of such vehicles was limited to the specified conditions in statute and the applicable rules of the Department of Public Safety. It is true that SDCL 32-15-24 was not specifically amended or repealed, but in view of the provisions of chapter 195 of the Session Laws of 1976, I believe that SDCL 32-15-24 has, by implication, been significantly "amended." I do not make this conclusion lightly since I am aware that repeal and amendment by implication are not favored by the courts. *Security State Bank v. Breen*, 277 N.W. 497 (1938). In this situation, however, I can see no other reasonable conclusion.

In my opinion, the above-cited rules of statutory analysis and construction in effect give priority to the 1976 Legislative enactment (SDCL 32-21-1.2, -1.3, and -1.4).

If a vehicle meets the requirements of SDCL 32-21-1.2, -1.3, it is my opinion that such vehicle is exempted from the provisions of SDCL 32-15-24.

In regard to your second question, I believe the intent of SDCL 32-21-1.3 is to grant to the Department of Public Safety, authority to make safety rules for such special vehicles. This authority, I believe, includes the power to set reasonable safety standards relating to the operation of these special vehicles. The intent of this 1976 law was clearly to allow the special vehicles to be exempted from the general safety inspection standards for general purpose motor vehicles. Consequently, the safety standards set by the Department in regard to these "special" motor vehicles would have to be reasonable in view of this expressed legislative purpose. The Legislature did not intend that the special motor vehicles would be completely unregulated as to safety factors. The Legislature obviously did intend, however, to regulate them on a different basis than through the general motor vehicle safety inspection law. This legislative distinction and purpose will have to be reasonably reflected in the Department's rules implementing SDCL 32-21-1.3.

In response to your third question, I believe that in implementing SDCL 32-21-1.3, the Department could make the decision that public safety required a safety inspection prior to the issuing of a license plate decal. This inspection would, however, have to take into account the above-expressed legislative purpose behind SDCL 32-21-1.3.

In response to your fourth question, I believe the answer is YES, provided the area

regulated is one which is a realistic safety concern and is significant in regard to the safety of such special motor vehicles. Once again, in setting the safety regulations for these special motor vehicles, the Department must exercise reasonable judgment and give deference to the legislative history of this legislation which points out that special vehicles have a limited use capacity and that the Legislature intended these vehicles to be exempt from the provisions of the motor vehicle safety inspection law for general purpose vehicles. If the Department regulation on these special motor vehicles approached the regulatory function from this point of view, I believe the Department could justify a required inspection prior to the decal being issued. The Department cannot, however, use their rule-making powers under SDCL 32-21-1.3 without relation to a particular and real safety need of such special vehicles. The Department cannot do indirectly by regulation what SDCL 32-21-3 and 32-21-1.3 prohibit them from doing directly.

In response to your fifth question, it is hard to be very specific here as the answer would depend on what equipment and what statutory language you would be referring to. The intent of SDCL 32-21-1.2 and -1.3 appears to me to give the Department of Public Safety a reasonable regulatory authority in the interest of public safety over special motor vehicles exempted from the general inspection statutes. I believe the Department can regulate special motor vehicles on matters which, in light of the limited use capabilities and special characteristics of the special motor vehicles, are real safety hazards and concerns. I do not believe it would be appropriate for the Department to attempt to regulate special vehicles in specific areas exempted from regulation for general purpose vehicles of the vehicle inspection laws. The burden of the Department here will be to show that they are addressing a legitimate safety problem with the special vehicles in their regulations, and they are not attempting to do indirectly what SDCL 32-21-1.3 says they cannot do directly. This may be a difficult area to draft regulations in, but I believe the structure and history of the legislation involved leads to the conclusions expressed above.

Respectfully submitted,

WILLIAM J. JANKLOW
ATTORNEY GENERAL

WJJ: DOC: mhb