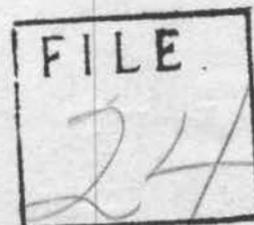


MOTOR VEHICLES: Federal war regulations suspend State
Weight Laws where conflicting.

June 9, 1942

6-11

Honorable Forrest C. Donnell
Governor of Missouri
Jefferson City, Missouri



Dear Governor:

We are in receipt of your request for an opinion under date of June 1, 1942, in which you inquire whether General Orders Nos. 3, 4, 5 and 6 of the Office of Defense Transportation and the Appendix attached thereto, being a part of said Orders, supersede Missouri state laws relative to permissible weights of motor vehicles operating on Missouri state highways.

The Missouri statutes regulating weight loads on the highways are Sections 8384 (b) and 8406, which are as follows:

"Sec. 8384 (b) No motor vehicle, except a combination of tractor and semi-trailer, the gross weight of which, including load, is more than 28,000 pounds, and no combination of tractor and semi-trailer, the gross weight of which, including load, is more than 42,000 pounds, and no motor vehicle having a greater weight than 22,400 pounds on one axle, and no motor vehicle having a load of over 800 pounds per inch width of tire upon any wheel concentrated upon the surface of the highway (said width in the case of rubber tires, both solid and pneumatic, to be measured between the flanges of the rim), shall be operated on the highways of this state: Provided, a combination of tractor and semi-trailer shall be considered a vehicle of six (6) wheels for the purpose of computing the

distribution of the load: Provided, that in special cases motor vehicles whose weight, including loads, exceed those herein prescribed may be operated under special permits granted as hereinafter provided."

"Sec. 8406. No motor vehicle, except a combination of tractor and semi-trailer, the gross weight of which, including load, is more than 24,000 pounds, and no combination of tractor and semi-trailer, the gross weight of which, including load, is more than 38,000 pounds, and no motor vehicle having a greater weight than 16,000 pounds on one axle, and no motor vehicle having a load of over 600 pounds per inch width of tire upon any wheel concentrated upon the surface of the highway (said width in the case of rubber tires, both solid and pneumatic, to be measured between the flanges of the rim), shall be operated on the highways of this state: Provided, a combination of tractor and semi-trailer shall be considered a vehicle of six (6) wheels for the purpose of computing the distribution of the load."

Section 8384 (b) has been held to apply only to cities containing 75,000 or more inhabitants. *State v. Schwartzmann Service, Inc.*, 40 S. W. (2d) 479.

The Office of Defense Transportation was created by Executive Order No. 8989, issued December 18, 1941, by the President of the United States. The pertinent parts of that Order, which is found in Vol. 6, No. 250 of the Federal Register, dated December 25, 1941, are as follows:

"By virtue of the authority vested in me by the Constitution and statutes of the United States, as President of the United States and Commander in Chief of the Army and Navy, and in order to define further the functions and duties of the Office for Emergency Management with respect to the state of war and to assure maximum utilization of the domestic transportation facilities of the Nation for the successful prosecution of the war, it is hereby ordered:

"1. The term 'domestic transportation' whenever used in this Order shall include railroad, motor, inland waterway, pipe line, air transport, and coastwise and intercoastal shipping.

"2. There shall be in the Office for Emergency Management of the Executive Office of the President an Office of Defense Transportation, at the head of which shall be a Director appointed by the President. * * * * *

"3. Subject to such policies, regulations, and directions as the President may from time to time prescribe, the Office of Defense Transportation shall:

"a. Coordinate the transportation policies and activities of the several Federal agencies and private transportation groups in effecting such adjustments in the domestic transportation systems of the Nation as the successful prosecution of the war may require.

"b. Compile and analyze estimates of the requirements to be imposed upon existing domestic transport facilities by the needs

of the war effort; determine the adequacy of such facilities to accommodate the increased traffic volume occasioned by the war effort; develop measures designed to secure maximum use of existing domestic transportation facilities; and stimulate the provision of necessary additional transport facilities and equipment in order to achieve the level of domestic transportation services required; and in this connection advise the Supply Priorities and Allocation Board as to the estimated requirements and recommend allocations of materials and equipment necessary for the provision of adequate domestic transportation service.

"c. Coordinate and direct domestic traffic movements with the objective of preventing possible points of traffic congestion and assuring the orderly and expeditious movement of men, materials, and supplies to points of need.

* * * * *

"e. Perform the functions and exercise the authority vested in the President by the following, subject to the conditions set forth in paragraph 3 of this Order:

"(1) Sec. 1 (15) of Interstate Commerce Act as amended, USC title 49, sec. 1 (15).

"(2) Sec. 6 (8) of Interstate Commerce Act as amended, USC title 49, sec. 6 (8)."

Joseph B. Eastman has been duly appointed Director of Defense Transportation pursuant to the above Executive Order and has issued the General Orders referred to by you in your request, which became effective June 1, 1942, except as to

certain provisions requiring a certain weight load on return trips. There were also a number of changes made in the Orders on May 30, 1942, by the Office of Defense Transportation, but these changes are not material to the question here involved.

Those parts of General Order No. 3, which apply under its terms to all common carriers, are as follows:

"By virtue of the authority vested in me by Executive Order No. 8989 dated Dec. 18, 1941, and in order to assure maximum utilization of the facilities, services, and equipment of common carriers by motor vehicle for the preferential transportation of materials of war and to prevent shortages in motor vehicle equipment necessary for such transportation, as contemplated by Section 6 (8) of the Interstate Commerce Act; to conserve and providently utilize vital equipment, material, and supplies, including rubber; and to provide for the prompt and continuous movement of necessary traffic, the attainment of which purposes is essential to the successful prosecution of the war:

* * * * *

"501.4 Definitions. As used herein:

"(a) The term 'property' means all material, equipment and supplies of every kind, capable of being transported by motor truck.

"(b) The term 'motor truck' means either (1) a straight truck, (2) a combination truck-tractor and semi-trailer, (3) a full trailer, (4) or any combination thereof.

"(c) The term 'common carrier' means any person which holds itself out to the general public to engage in the transportation of property in over-the-road service by motor truck for compensation, regardless of the designation of such person under any Federal or State statute.

"(d) The term 'capacity' means the rated load-carrying ability of the tires on the motor truck (as shown in Appendix No. 1 attached hereto). Where the commodity is of light density the total space available for a load shall be the measure of capacity.

"(e) The term 'special equipment' means any motor truck the primary carrying capacity of which is occupied by mounted machinery, or by a mounted tank or tanks designed to carry bulk liquids; low-bed motor trucks, pole trailer or pipe dollies.

"(f) The term 'over-the-road' service means all operations except those wholly within any municipality, or urban community, or between contiguous municipalities or urban communities, or within a zone adjacent to and commercially a part of any such municipality or municipalities or urban communities, or except hauls not more than fifteen (15) miles in length.

"(g) The term 'circuitous route' means any route or routes or combination thereof which exceeds the most direct highway route by ten (10) per cent.

"(h) The term 'person' means any individual, firm, copartnership, corporation, company, association, including a farm co-

operative association as defined in the Agricultural Marketing Act; approved June 15, 1929, as amended, or joint association; and includes any trustee, receiver, assignee, or personal representative thereof.

"501.6 Loading and operating requirements. On and after the effective date specified herein, no common carrier shall:

"(a) Operate a motor truck transporting a gross load which exceeds by more than twenty (20) per cent its capacity as defined herein.

"(b) Operate a motor truck in over-the-road service unless such truck is loaded to capacity at origin point and will be loaded to not less than seventy-five (75) per cent of capacity on the return trip; or unless loaded to seventy-five (75) per cent of capacity at origin point and will be loaded to capacity on the return trip; Provided, however, that no intermediate point at which a portion of a load has been discharged shall be deemed to be a point of origin, but the point at which the last portion of a load has been discharged shall be deemed to be the point of the beginning of a return trip; and, Provided further that when a motor truck has moved, loaded to capacity, in the direction of the heavy general flow of traffic by motor truck, it may be returned to its origin point partially loaded or empty, if there is no property in the possession of or on order to any common carrier awaiting transportation to, beyond or intermediate to said origin point to which said motor truck is returning, in a quantity which is beyond the capacity of such other carrier to transport within the time limit provided in Section 501.12 hereof."

A similar Order has been enacted applying to contract carriers (General Order No. 4) and to private carriers (General Order No. 5). Attached to each of the Orders, Nos. 3, 4 and 5, is an Appendix which is a part of each of the Orders and is as follows:

"The capacity of any motor truck shall be determined by multiplying the number of tires, of the size and description, mounted on the running wheels of such motor truck by the number of pounds of rated load carrying ability of such tires as designated in this Appendix; from the result of this computation there shall be deducted the unladen weight of the motor truck; the remaining balance, for the purposes of this Order shall be the capacity of such motor truck as defined herein."

Following this paragraph is a long list of tire sizes with the load carrying ability of each.

There are certain exemptions set out in each of the Orders applying to vehicles hauling explosives and farm products, but we are not here concerned with these exemptions.

General Order No. 6 of the Office of Defense Transportation applies only to local delivery carriers and has no mandatory provisions with regard to load capacity. That class of carriers, therefore, cannot claim any exemption from the operation of state laws under the Eastman Orders.

Title 10, U. S. C. A. 1361, provides:

"The President, in time of war, is empowered, through the Secretary of War, to take possession and assume

control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable."

Under the broad grant of authority contained in this section, particularly the last clause thereof, the President is empowered to completely take over, in time of war, a system of transportation. We have no doubt that, having the power to take full control, he may exercise the lesser power of regulating a system for such purposes in connection with the war effort as he may deem "needful and desirable."

The President, through the Office of Defense Transportation, apparently deems the regulation of motor transportation "needful and desirable" and has proceeded to exercise the lesser power of regulation. This regulation rises to the dignity of a law, and consequently any state laws conflicting therewith are of no force and effect.

In *United States v. Eaton*, 144 U. S. 677, 36 L. ed. 591, 1. c. 594, it is stated:

"Regulations prescribed by the President, * * * under authority granted by Congress, may be regulations prescribed by law, * * * and may thus have, in a proper sense, the force of law."

The rule is well settled that state laws which conflict with Federal laws and operate to hinder the Federal government in the prosecution of a war are suspended during the existence of a state of war. In *State v. Burton*, 103 Atl. 962, we find the following:

"Under the Constitution of the United States, the conduct of the war now existing between this country and Germany vests wholly in the Federal government. Any state law, the operation of which will hinder that government in carrying out such constitutional power, is, during the exercise of the power, suspended as regards the national government and its officers, who are charged with the duty of prosecuting the war. The principle is well established that, in respect to the powers and duties exclusively conferred and imposed upon the Federal government by the Constitution of the United States, the several states have subordinated their sovereignty to that of the nation. Ex parte Siebold, 100 U. S. 371, 25 L. ed. 717; Tennessee v. Davis, 100 U. S. 257, 25 L. ed. 648; Re Neagle, 135 U. S. 1, 34 L. ed. 55, 10 Sup. Ct. Rep. 658; Re Waite (D. C.) 81 Fed. 359; Re Fair (C.C.) 100 Fed. 149."

It is to be noted, however, that the Federal Statute states that the President's power is to be exercised through the Secretary of War, while here it is being exercised through the Office of Defense Transportation. This latter office was created by Executive Order No. 8989, December 18, 1941, as a division of the Office of Emergency Management. Section 6 of said Executive Order provides:

"To facilitate unity of policy and action and the use of existing governmental services, the heads of each of the following departments and agencies shall designate a responsible representative or representatives to maintain

formal liaison with the Office of Defense Transportation: The Department of War, the Department of the Navy, the Department of the Treasury, the Department of the Interior, the Department of Agriculture, the Department of Commerce, the Department of Labor, the Interstate Commerce Commission, the United States Maritime Commission, the Civil Aeronautics Board, the Federal Works Agency, the Federal Loan Agency, the Board of Investigation and Research appointed under the Transportation Act of 1940, the Office of Production Management, the Office of Price Administration, the Economic Defense Board, and such additional departments and agencies as the President may subsequently designate."

(Underscoring ours.)

The Office of Emergency Management was created by an Administrative Order of May 25, 1940, issued pursuant to the Executive Order No. 8248, September 8, 1939. Said Administrative Order provides (5 F. R. 2109) as follows:

"WHEREAS, I find there is a threatened national emergency;

"NOW, THEREFORE, By virtue of the authority vested in me by the Constitution and the Statutes, and in pursuance of Part I of Executive Order No. 8428 of September 8, 1939, it is hereby ordered as follows:

"Section 1. There is established in the Executive Office of the President an office to be known as the Office for Emergency Management which shall be under the direction of one of the

Administrative Assistants to the President, to be designated by the President.

"Section 2. The Office for Emergency Management shall:

"(a) Assist the President in the clearance of information with respect to measures necessitated by the threatened emergency;

"(b) Maintain liaison between the President and the Council of National Defense and its Advisory Commission, and with such other agencies, public or private, as the President may direct, for the purpose of securing maximum utilization and coordination of agencies and facilities in meeting the threatened emergency;

"(c) Perform such additional duties as the President may direct."

That part of the Executive Order No. 8248 under which said Administrative Order was promulgated is as follows (4 F. R. 3864; C. F. R. 1939 Supplement, p. 217):

"By virtue of the authority vested in me by the Constitution and Statutes, and in order to effectuate the purposes of the Reorganization Act of 1939, Public No. 19, Seventy-Sixth Congress, approved April 3, 1939, and of Reorganization Plans Nos. I and II submitted to the Congress by the President and made effective as of July 1, 1939, by Public Resolution No. 2, Seventy-Sixth Congress, approved June 7, 1939, by organizing the Executive Office of the President with functions and duties so prescribed and responsibilities so

fixed that the President will have adequate machinery for the administrative management of the Executive branch of the Government, it is hereby ordered as follows:

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"There shall be within the Executive Office of the President the following principal divisions, namely: (1) The White House Office, (2) the Bureau of the Budget, (3) the National Resources Planning Board, (4) the Liaison Office for Personnel Management, (5) the Office of Government Reports, and (6) in the event of a national emergency, or threat of a national emergency, such office management as the President shall determine."

In 1939 Congress enacted what is known as the Reorganization Act of 1939 (Public No. 19, Seventy-Sixth Congress, approved April 3, 1939) referred to by the President as his authority for Executive Order No. 8248. That Act (53 Stat. 561) authorized the President to make certain reorganizations of governmental agencies in order to "group, coordinate and consolidate agencies of the government as near as may be according to major purposes" (Section 1 (a) (3)). Section 4 of the Act then provides, "whenever the President, after investigation, finds that (a) the transfer of the whole or any part of any agency or the function thereof, to the jurisdiction and control of any other agency * * * * * is necessary to accomplish one or more of the purposes of section 1 (a), he shall" submit a plan of such transfer to Congress for approval, and upon such approval such plan becomes effective.

We are unable to find where the President has submitted for congressional approval any plan of reorganization, such as is made in Executive Order No. 8248, and from the language,

"in order to effectuate the purposes of the Reorganization Act of 1939" there used, we conclude that no such plan has been submitted, but that the President merely acted by executive order to form a policy regulating his own office. Therefore, we are unable to say that the powers vested in the President in 10 U.S.C.A. 1361, to be exercised through the Secretary of War, have been transferred to the Office of Emergency Management, and from that on down to the Office of Defense Transportation. However, under the view we take of the language of 10 U.S.C.A. 1361, we are of the opinion that no such transfer is necessary in order for the Office of Defense Transportation to exercise the power vested in the President under said Section 1361. It will be noted that that section provides, "the President, in time of war, is empowered, through the Secretary of War, to * * *" etc. The direction that such power is to be exercised through the Secretary of War, we think, is only directory and not mandatory. That must also be the view of the President, since we have shown that such power is being exercised through another, other than the Secretary of War, and there has been no plan submitted to and approved by Congress transferring such power to the Office of Defense Transportation. Another factor to be noted is that the Secretary of War does participate in the exercise of the power through a liaison office.

It is apparent, therefore, that the Eastman Orders suspend the operation of such state laws as are in conflict with their provisions for the duration of the war. It is readily apparent from an examination of the Orders that certain vehicles operating within their provisions would violate the Missouri statutes first above quoted. For example, many common carriers in this state are known to use a tire described as a "10x20" which in the Appendix has a rated load carrying capacity of 4000 pounds. The ordinary tractor and semi-trailer is equipped with the dual wheels at four points and has a total of ten tires on the ground. Under the Eastman Orders a common carrier employing such a vehicle must have a gross load of 40,000 pounds before it may operate on the highways for a haul of more than fifteen miles. Such a load clearly violates the Missouri statute prohibiting a gross load limit of more than 38,000 pounds on state highways outside certain municipal areas.

CONCLUSION

It is the conclusion of this department that the Missouri statutes, Section 8384 (b) and Section 8406, are inoperative in so far as they directly conflict with the Eastman Orders for the duration of the war, or, until the Eastman Orders are terminated by the proper authorities. We do not believe that provision of the Eastman Orders permitting a twenty per cent over-load in excess of the capacity set out in the Appendix is mandatory and, therefore, it does not suspend state laws where in conflict.

Respectfully submitted,

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