

MOTOR VEHICLES: Over weight fine under Section 304.240, Laws of Mo., 1951, is minimum fine not maximum and minimum fines are bracketed in accordance with amount of overweight.



October 23, 1952

10/24/52

Honorable Gordon R. Boyer
Prosecuting Attorney
Barton County
Lamar, Missouri

Dear Sir:

This office is in receipt of a request from you for an official opinion, which is as follows:

"I have been advised by members of the State Highway Patrol that Section 304.240 has been interpreted to mean that in the event of an over weight truck in excess of 1000 pounds the fine is 10¢ per pound for the entire load.

"For example I had a truck this morning over weight 1100 pounds. I interpreted the fine to be \$10.00 for the first 500 pounds, \$25.00 for the next 500 pounds and \$10.00 for the next 100 pounds, a total of \$45.00. Under the interpretation of the Highway Patrol the fine would be \$110.00 at the rate of 10¢ per pound for each pound.

"Please advise me the correct interpretation of this section."

Section 304.240, Missouri Revised Statutes, Cumulative Supplement, 1951, reads as follows:

"Any person, firm, corporation, partnership or association violating

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any of the provisions of sections 304.170 to 304.230 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five dollars or by imprisonment in a county jail for a term of not exceeding twelve months, or by both such fine and imprisonment; provided, however, that where load limits as defined in sections 304.180 to 304.220 have been violated, the fine shall not be less than two cents for each pound of excess weight up to and including five hundred, and five cents for each pound of excess weight above five hundred and not exceeding one thousand, and ten cents for each pound in excess weight above one thousand; provided, that the court may, in its discretion, cause to be impounded the motor vehicle operated by any person violating the provisions of this section until such time as the fine and cost assessed by the court under this section is paid. (304.240, A.L. 1951 H.R. 325)".

It may be noted from the text of the above section that there is no maximum fine fixed by it. There is a maximum term of imprisonment which is to not exceed twelve months.

There is an express proviso in Section 304.240 to the effect that where load limits are violated, the fine shall be upon a rising scale, that is, not less than two cents per pound for each pound of excess weight up to and including 500, five cents for each pound of excess weight above 500 and not exceeding 1,000, and ten cents for each pound of excess weight above 1,000. We understand by this that the Legislature intended to fix a minimum fine for overweight and to bracket those fines in accordance with the extent of the overweight. The amount of an overload certainly has a definite relation to the culpability of the offense. The above section is definite in each step of the upward scale in that it is written "for each pound" and prescribes an amount for that pound.

In State ex rel. vs. Wilder, 206 Mo. 541, concerning the construction of statutes, the Court said, l.c. 549:

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"* * * On the other hand, it is equally well settled that words and phrases shall be taken in their plain or ordinary and usual sense, and that it is incumbent upon the courts to construe a statute as written, without regard to the results of the construction, or the wisdom of the law as thus constructed. * * * ."

The purpose of the statute seems to be to prohibit the operation of overloaded vehicles upon the highways of this state and to assess a fine in proportion to the extent of the overweight.

Section 304.240, supra, provides only for minimum fines. The only maximum provided was imprisonment in jail, not exceeding twelve months. There is no attempt to set the exact amount that the court or jury may fine. Only limitation upon the minimum amount of the fine is provided.

In other words, a minimum of \$10.00 for the first 500 pounds, \$25.00 for the next 500 pounds and ten cents a pound for each pound over 1,000 pounds.

CONCLUSION.

Therefore, it is the opinion of this office that Section 304.240, A.L. 1951, H.B. 325, prescribes a minimum fine for load limit violations and brackets the fine in accordance with the extent of the overweight.

Respectfully submitted,

APPROVED:

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JWF:irk