

**OPINION NO. 83-049****Syllabus:**

1. The Director of Transportation may issue special permits which authorize the movement of a vehicle or combination of vehicles which weigh in excess of eighty thousand pounds over a designated route system upon the state highway system. So long as such permits are issued in accordance with state law as in effect on July 1, 1956, the state is eligible for federal funds under 23 U.S.C. §127.
2. With respect to all highways which are a part of the state highway system, the Director of Transportation has discretion under R.C. 4513.34 to issue a special permit authorizing a vehicle or combination of vehicles which exceeds the maximums specified in R.C. 5577.01 to 5577.09, or is otherwise not in conformity with R.C. 4513.01 to 4513.37, to operate or move upon any highway under the Director's jurisdiction. With respect to highways which are under the jurisdiction of a local authority, that local authority has discretion under R.C. 4513.34 to issue such special permits. So long as such permits are issued in accordance with state law as in effect on July 1, 1956, the state is eligible for federal funds under 23 U.S.C. §127.
3. Since R.C. 4513.34 authorizes the issuance of special permits for divisible loads, and since such permits could also have been issued under state law on July 1, 1956, 23 U.S.C. §127 allows for the issuance of such permits.
4. Pursuant to R.C. 4513.34, where a permit holder has obtained a permit from the Director of Transportation, as provided for in that section, such permit holder may move the authorized vehicles on any highway which is part of the state highway system, when said movement is partly within and partly without a municipality, and no local authority may require the permit holder to obtain any other permit or license or to pay any license fee or other charge for the movement of such vehicles on any highway which is part of the state highway system.

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**To: Warren J. Smith, Director, Department of Transportation, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, September 22, 1983**

I have before me your opinion request concerning the issuance of permits authorizing the operation of certain vehicles upon the state highway system. Your specific questions are:

1. Does the "grandfather rights" [clause] of 23 U.S.C. 127 extend to the issuance of special permits by the Director of Transportation over a designated route system?
2. Is the matter of whether to issue or withhold such permits solely a decision of the Director of Transportation?
3. May such permits be issued for loads that are divisible, i.e., capable of otherwise being divided into units that would be equal to or less than the maximum legal weights in Ohio?
4. Can the Director of Transportation implement a permit system as described above and still be in compliance with 23 U.S.C. 127?
5. If the answers to the foregoing questions are affirmative, what is the authority of the Director of Transportation with respect to the issuance of such permits for interstate and state routes that lie wholly or partially within municipal corporations?

In order to answer your questions it is first necessary to examine the provisions of 23 U.S.C. §127, concerning the grant of federal funds to states under the Federal-Aid Highway Act of 1956, 70 Stat. 374 (1956) (current version codified in scattered sections of 23 U.S.C.). 23 U.S.C.A. §127 (Supp. 1983) states, in pertinent part:

(a) No funds authorized to be appropriated for any fiscal year under provisions of the Federal-Aid Highway Act of 1956 shall be apportioned to any State which does not permit the use of the National System of Interstate and Defense Highways within its boundaries by vehicles with a weight of twenty thousand pounds carried on any one axle, including enforcement tolerances, or with a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances, or a gross weight of at least eighty thousand pounds for vehicle combinations of five axles or more. However, the maximum gross weight to be allowed by any State for vehicles using the National System of Interstate and Defense Highways shall be twenty thousand pounds carried on one axle, including enforcement tolerances, and a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances and with an overall maximum gross weight, including enforcement tolerances, on a group of two or more consecutive axles produced by application of the following formula:

$$(W = 500 \frac{LN}{N-1} + 12N + 36)$$

where W equals overall gross weight on any group of two or more consecutive axles to the nearest five hundred pounds, L equals distance in feet between the extreme of any group of two or more consecutive axles, and N equals number of axles in group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six feet or more: Provided, That such overall gross weight may not exceed eighty thousand pounds, including all enforcement tolerances, except for those vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable State laws,

or the corresponding maximum weights permitted for vehicles using the public highways of such State under laws or regulations established by appropriate State authority in effect on July 1, 1956, except in the case of the overall gross weight of any group of two or more consecutive axles, on the date of enactment of the Federal-Aid Highway Amendments of 1974, whichever is the greater. Any amount which is withheld from apportionment to any State pursuant to the foregoing provisions shall lapse. This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof which the State determines could be lawfully operated within such State on July 1, 1956, except in the case of the overall gross weight of any group of two or more consecutive axles, on the date of enactment of the Federal-Aid Highway Amendments of 1974.

Pursuant to this provision, a state is not eligible for federal funds under the provisions of the Federal-Aid Highway Act of 1956, if it prohibits the use of any highways within the state which are part of the National System of Interstate and Defense Highways, see generally 23 U.S.C. §103, by vehicles carrying the specified axle weights or a gross weight of eighty thousand pounds for vehicle combinations of at least five axles. The statute further specifies a weight limitation which may not be exceeded by vehicles traveling on any such state highways. This limitation is the greater of either an overall gross weight of eighty thousand pounds with certain exceptions,<sup>1</sup> or the corresponding maximum weights permitted for vehicles on a state's public highways under laws or regulations of the state as in effect on July 1, 1956, with certain exceptions as to axle weights.<sup>2</sup> Thus, if state law as of July 1, 1956 permitted the use of state highways by vehicles with a gross weight in excess of eighty thousand pounds, the state may continue to allow the use of such vehicles on any state highways which are part of the National System of Interstate and Defense Highways and still maintain eligibility for federal funds under 23 U.S.C. §127. See State ex rel. Dick Irvin, Inc. v. Anderson, 164 Mont. 513, 525 P.2d 564 (1974). See also South Dakota Trucking Association, Inc. v. South Dakota Department of Transportation, 305 N.W.2d 682 (South Dakota 1981); Bunch v. Cobb, 273 S.C. 445, 257 S.E.2d 225 (1979).

The portion of 23 U.S.C. §127 which refers to maximum allowable weights for vehicles using a state's highways as of July 1, 1956 is commonly referred to as the "grandfather" clause. You specifically ask whether the limitation imposed by the grandfather clause of 23 U.S.C. §127 allows for the issuance of permits by the Director of Transportation for various vehicles traveling over a designated route system.

First, I note that the office of Director of Transportation is created by statute and the Director, therefore, has only those powers conferred upon him by statute. See State ex rel. Alden E. Stilson & Associates v. Ferguson, 154 Ohio St. 139, 93 N.E.2d 688 (1950). The authority of the Director of Transportation to issue special permits for vehicles and loads exceeding the maximums set by statute, see R.C. 5577.01-5577.09, is set forth in R.C. 4513.34, as follows:

The director of transportation with respect to all highways which are a part of the state highway system and local authorities with

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<sup>1</sup> Excluded from the gross vehicle weight limitation of eighty thousand pounds are vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable state laws.

<sup>2</sup> Any limitation upon the overall gross weight of a group of two or more consecutive axles as in effect on the date of enactment of the Federal-Aid Highway Amendments of 1974, 88 Stat. 2281 (1974), January 4, 1975, prevails over the corresponding weight authorized on July 1, 1956.

respect to highways under their jurisdiction may, upon application in writing and for good cause shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in sections 5577.01 to 5577.09 of the Revised Code, or otherwise not in conformity with sections 4513.01 to 4513.37 of the Revised Code, upon any highway under the jurisdiction of the authority granting such permit and, notwithstanding sections 715.22 and 723.01 of the Revised Code, the holder of a special permit issued by the director under this section may move the vehicle or combination of vehicles described in such special permit on any highway which is a part of the state highway system, when said movement is partly within and partly without the corporate limits of a municipal corporation, and no local authority shall require any other permit or license or charge any license fee or other charge against the holder of such permit for the movement of such vehicle or combination of vehicles on any highway which is a part of the state highway system. No holder of a permit issued by a local authority shall be required by the director to obtain a special permit for the movement of vehicles or combination of vehicles on highways within the jurisdiction of said authority. . . .

. . . .

The director or local authority may issue or withhold such permit; or, if such permit is issued, may limit or prescribe conditions of operation for such vehicle, and require bond or other security necessary to compensate for any damage to a roadway or road structure.

Pursuant to this provision, the Director of Transportation, with respect to all highways which are a part of the state highway system, may issue a special permit authorizing a vehicle or combination of vehicles which is not in conformity with the size and weight limitations of R.C. 5577.01 to 5577.09 or otherwise not in conformity with R.C. 4513.01 to 4513.37 to operate or move upon a highway under the Director's jurisdiction.

R.C. 4513.34 does not specify whether the Director may issue special permits authorizing operation or movement upon only a designated portion of the highway system or whether such permits must authorize a vehicle's operation or movement upon the entire state highway system.<sup>3</sup> The Director is, however, given express

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<sup>3</sup> R.C. 4513.34 states, in part:

notwithstanding [R.C. 715.22 and 723.01], the holder of a special permit issued by the director under this section may move the vehicle or combination of vehicles described in such special permit on any highway which is a part of the state highway system, when said movement is partly within and partly without the corporate limits of a municipal corporation, and no local authority shall require any other permit or license or charge any license for or other charge against the holder of such permit for the movement of such vehicle or combination of vehicles on any highway which is a part of the state highway system. (Emphasis added.)

I believe that the emphasized portion of the above quotation merely authorizes a permit holder to move the designated vehicle or combination of vehicles upon any portion of the state highway system for which the permit has been issued and provides that no local authority, including a municipality, may require an additional permit or fee for the movement upon such highway

authority to prescribe conditions of operation for such vehicle. I have no reason to conclude that limiting the validity of a special permit to only a designated portion of the state highway system would be an unreasonable condition to impose. I believe, therefore, that the Director of Transportation may in his discretion issue special permits under R.C. 4513.34 authorizing operation or movement upon only a designated portion of the state highway system. See State v. Weaver, 79 Ohio L. Abs. 258, 144 N.E.2d 300 (Ct. App. Madison County 1956) (pursuant to G.C. 6307-106 (currently at R.C. 4513.34), director of highways could issue special permit containing condition that upon violation of any terms of permit, such permit would be null and void). See generally State ex rel. Hunt v. Hildebrant, 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph four) ("[w]here an officer is directed by . . . a statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed").

Since your question concerns the director's authority to issue special permits within the limitations imposed by 23 U.S.C. §127, the extent of the director's current authority under R.C. 4513.34 must be limited by the applicable statutory provisions concerning the issuance of permits as in effect on July 1, 1956. If state law in effect on July 1, 1956 authorized variations, either by special permit or some other means, from the maximums otherwise set by statute, such variations are allowable under the "grandfather" clause of 23 U.S.C. §127. State ex rel. Dick Irvin, Inc.

In 1956, R.C. 5577.04 (formerly G.C. 7248-1, as amended in 1949-1950 Ohio Laws 549 (Am. Sub. S.B. 163)) prohibited vehicles with axle and wheel loads in excess of a certain weight from using the public highways within the state and also prohibited the use of such highways by vehicles which exceeded the maximum vehicle and load weights, stating:

nor shall the weight of vehicle and load imposed upon the road surface by any vehicle exceed, for pneumatic tires seventy-eight thousand pounds; nor shall such weight of vehicle and load exceed, for solid tires, eighty per cent of the permissible weight of vehicle and load as provided for pneumatic tires.

At the same time, R.C. 4513.34 (formerly G.C. 6307-106, as amended in 1941 Ohio Laws 766, Am. Sub. S.B. 29)), provided for the issuance of special permits authorizing the operation or movement of a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in R.C. 5577.04. R.C. 4513.34 stated, in pertinent part:

The director with respect to highways under his jurisdiction and local authorities with respect to highways under their jurisdiction may, in his or their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in sections 7246 to 7250, inclusive, of the General Code or otherwise not in conformity with the provisions of this act upon any highway under the jurisdiction of the authority granting such permit and for the maintenance of which such authority is responsible. Any such permit may be issued for a single or round trip or in special instances for a certain period of time.

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so long as the movement is partly within and partly without such municipality. When read in this context, such language does not imply that a permit issued by the Director of Transportation must be valid for the entire state highway system.

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The director or local authority is authorized to issue or withhold such permit at its discretion; or, if such permit is issued, to limit or prescribe conditions of operation of such vehicle or vehicles, and may require such bond or other security as may be deemed necessary to compensate for any damage to any roadway or road structure.

It is clear, that, in 1956, the Director of Highways (currently the Director of Transportation)<sup>4</sup> had authority to issue permits for a vehicle or combination of vehicles whose weight exceeded the maximum weight otherwise authorized by statute for operation or movement upon those highways which were under the Director's jurisdiction and for which the Director had the responsibility of maintenance. Such permits could be issued for single or round trips or, in special instances, for a certain period of time. In issuing such a permit, the Director could impose limitations or conditions upon the operation of the vehicles. Given the broad language of R.C. 4513.34, as in effect in 1956, I see no reason why the Director could not have limited the authority to operate under such special permits to operation over a designated route upon the highways under his jurisdiction. Since the Director's authority on July 1, 1956 to issue special permits appears to have included the authority to limit the validity of such permits to a designated route upon the highways which were under his jurisdiction and for which he had the responsibility of maintenance, the "grandfather" clause of 23 U.S.C. §127 allows for the Director to continue to issue such permits, as authorized by R.C. 4513.34, and maintain the state's eligibility for federal funds under that statute.

The same analysis applies to your third question, which asks whether the Director may issue special permits for divisible loads. 23 U.S.C. §127 does mention the divisibility of loads, but states only that where the eighty thousand pound gross weight limitation applies, exception from such limitation is made for "those vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable State laws." However, since Ohio law as of July 1, 1956, authorized the operation of vehicles and loads of weights exceeding eighty thousand pounds by issuance of special permits, the "grandfather" clause of 23 U.S.C. §127 imposes, instead of the eighty thousand pound limitation, any limitation imposed by Ohio law as of that date.

Under current state law, specifically R.C. 4513.34, the Director of Transportation has broad authority to issue permits for vehicles exceeding the weight limits imposed by R.C. 5577.01-5577.09. R.C. 4513.34 is silent as to whether permits may be issued for divisible loads. No limitation upon the issuance of such permits may, therefore, be implied. See Dougherty v. Torrence, 2 Ohio St. 3d 69, 442 N.E.2d 1295 (1982) (in interpreting a statute one must give effect to the words used and may not insert words not used). Again, the Director's authority under current law must be read in conjunction with any limitations imposed by state law on July 1, 1956, in order to comply with 23 U.S.C. §127. The provisions of R.C. 4513.34, as in effect in 1956, did not restrict the Director's authority to issue special permits to only those loads which were nondivisible. I must, therefore, conclude that since R.C. 4513.34 authorizes the Director to issue special permits for vehicles carrying divisible loads upon the highways under the jurisdiction of the state, and since the Director also could have done so on July 1, 1956, the Director may continue to issue such permits and remain in compliance with 23 U.S.C. §127.

Your second question asks whether the decision to issue such special permits in accordance with 23 U.S.C. §127 is a decision to be made solely by the Director of Transportation. It is apparent that R.C. 4513.34 currently allows for the issuance

<sup>4</sup> Pursuant to R.C. 5501.03, the Department of Transportation and the Director of Transportation "shall supersede, succeed to, and have and perform all the duties, powers, and functions of the department of highways and the director of highways as provided in Title LV of the Revised Code on September 28, 1972, and by other law."

of special permits by both the Director of Transportation and local authorities for those highways under their respective jurisdictions. As stated above, however, the Director's general authority to issue special permits for overweight vehicles using highways within the state which are part of the National System of Interstate and Defense Highways pursuant to R.C. 4513.34 must be limited by state law in effect on July 1, 1956, in order for such action to comply with the limitations imposed by 23 U.S.C. §127. See *State ex rel. Dick Irvin, Inc.*, 164 Mont. at 518, 525 P.2d at 567-568 ("[i]f the state law in effect on July 1, 1956 authorized variations from the maximums, by special permit or otherwise, such variations are also permitted by the federal statutes to be authorized over the interstate system").

On July 1, 1956, R.C. 4513.34 authorized both the Director and local authorities to issue special permits, but only for those highways which were under their respective jurisdictions and for which the Director or local authority had the responsibility of maintenance. Thus, it is clear that in 1956, pursuant to R.C. 4513.34, the Director did not have exclusive authority to issue special permits for all public highways within the state, but only for those roads which were under the Director's jurisdiction and for which the state had the responsibility of maintenance. Since local authorities may issue special permits pursuant to R.C. 4513.34 and could also have issued permits on July 1, 1956, for the operation or movement of vehicles upon those highways which were under their jurisdiction and which such local authorities were responsible to maintain, the "grandfather" clause of 23 U.S.C. §127 allows for local authorities to continue to do so.

Since I have incorporated the answer to your fourth question in my answers to your first three questions, I now turn to your final question, in which you ask: "what is the authority of the Director of Transportation with respect to the issuance of [special permits pursuant to R.C. 4513.34] for interstate and state routes that lie wholly or partially within municipal corporations." Based upon conversations between your office and members of my staff, it is my understanding that you are not presently concerned with the situation where a designated route upon an interstate or state highway lies wholly within a municipal corporation, and, therefore, wish to delete that portion of the fifth question. I note that, for purposes of this question, I will assume that your reference to interstate and state routes which lie partially within municipalities is to designated routes upon a state or interstate highway where the route lies partially within a municipality.

R.C. 4513.34, governing the issuance of special permits, reads, in pertinent part, as follows:

The director of transportation with respect to all highways which are a part of the state highway system and local authorities with respect to highways under their jurisdiction may . . . issue a special permit. . . to operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in sections 5577.01 to 5577.09 of the Revised Code, or otherwise not in conformity with sections 4513.01 to 4513.37 of the Revised Code, upon any highway under the jurisdiction of the authority granting such permit and, notwithstanding sections 715.22 and 723.01 of the Revised Code, the holder of a special permit issued by the director under this section may move the vehicle or combination of vehicles described in such special permit on any highway which is a part of the state highway system, when said movement is partly within and partly without the corporate limits of a municipal corporation, and no local authority shall require any other permit or license or charge any license fee or other charge against the holder of such permit for the movement of such vehicle or combination of vehicles on any highway which is a part of the state highway system.

The authority of the Director of Transportation to issue a special permit under R.C. 4513.34 clearly extends to all highways which are part of the state highway system. As a general rule, state roads are part of the state highway

system. R.C. 5535.01(A). Although roads designated as interstates are not expressly mentioned in R.C. 5511.01 as part of the state highway system, it is my understanding that such interstate routes are considered to be part of the state highway system. See R.C. 4513.39 (authorizing certain township police and constables to make arrests for specified violations "on those portions of all state highways, except for those highways included as part of the interstate system" located in certain areas); State v. Darrah, 64 Ohio St. 2d 22, 412 N.E.2d 1328 (1980) (Director of Transportation may place traffic control devices upon all state highways as are necessary, including at least portions of interstates). Further, I note that, as reflected in R.C. 5511.01, portions of the state highway system are located within municipalities. I am aware, however, that R.C. 4511.01(II) defines the term "state highway" to mean "a highway under the jurisdiction of the department of transportation, outside the limits of municipal corporations, provided that the authority conferred upon the director of transportation in [R.C. 5511.01] to erect state highway route markers and signs directing traffic shall not be modified by [R.C. 4511.01 to 4511.80 and 4511.99]," and R.C. 4513.01 makes this definition applicable to certain provisions of R.C. Chapter 4513, including R.C. 4513.34, thereby suggesting that no road within a municipality is a state highway for purposes of that provision. Regardless of whether the portion of a road within a municipality may come within the term "state highway" as used in R.C. 4513.34, however, R.C. 4513.34 specifically provides that where the movement of a vehicle upon the state highway system is partially within and partially without a municipality, no local authority, including the appropriate municipal body, R.C. 4511.01(AA), may require the permit holder to obtain any other permit or license or to pay any license fee or other charge for the movement of the vehicles upon any highway which is part of the state highway system.

It is, therefore, my opinion, and you are advised, that:

1. The Director of Transportation may issue special permits which authorize the movement of a vehicle or combination of vehicles which weigh in excess of eighty thousand pounds over a designated route system upon the state highway system. So long as such permits are issued in accordance with state law as in effect on July 1, 1956, the state is eligible for federal funds under 23 U.S.C. §127.
2. With respect to all highways which are a part of the state highway system, the Director of Transportation has discretion under R.C. 4513.34 to issue a special permit authorizing a vehicle or combination of vehicles which exceeds the maximums specified in R.C. 5577.01 to 5577.09, or is otherwise not in conformity with R.C. 4513.01 to 4513.37, to operate or move upon any highway under the Director's jurisdiction. With respect to highways which are under the jurisdiction of a local authority, that local authority has discretion under R.C. 4513.34 to issue such special permits. So long as such permits are issued in accordance with state law as in effect on July 1, 1956, the state is eligible for federal funds under 23 U.S.C. §127.
3. Since R.C. 4513.34 authorizes the issuance of special permits for divisible loads, and since such permits could also have been issued under state law on July 1, 1956, 23 U.S.C. §127 allows for the issuance of such permits.
4. Pursuant to R.C. 4513.34, where a permit holder has obtained a permit from the Director of Transportation, as provided for in that section, such permit holder may move the authorized vehicles on any highway which is part of the state highway system, when said movement is partly within and partly without a municipality, and no local authority may require the permit holder to obtain any other permit or license or to pay any license fee or other charge for the movement of such vehicles on any highway which is part of the state highway system.