

OPINION NO. 72-046

Syllabus:

The use of a scale which is unable to weigh an entire

truck at the same time is in accord with Section 5577.04, Revised Code.

To: Daniel T. Spittler, Wood County Pros. Atty., Bowling Green, Ohio
By: William J. Brown, Attorney General, May 26, 1972

Your letter requesting my opinion states the facts and poses the question as follows:

"The municipal courts in our county have had some difficulty in recent times with Section 5577.04 of the Ohio Revised Code which deals with, among other things, gross overloads of trucks. The problem originates with the fact that the scales which are used on Interstate 75 are unable to weigh the whole truck at one time. Therefore, the police have been forced to add the different axle weights to obtain the gross weight of a particular truck. Our question is as follows:

"Are the use of scales which will not allow the determination of the total weight of a particular truck but only weigh each axle in accordance with the provisions of Section 5577.04 of the Ohio Revised Code and Section 901.10.1 of the Ohio Revised Code?"

"Your attention would also be called to Handbook 44 of the National Bureau of Standards at page 60 (UR 4.4)."

Section 5577.04, Revised Code, to which you refer, provides for determination of the maximum allowable gross weight of trucks operating on the public highways. In pertinent part, it reads as follows:

"No vehicle, trackless trolley, load, object, or structure having a maximum axle load greater than nineteen thousand pounds shall be operated or moved upon improved public highways, streets, bridges, or culverts. The maximum wheel load of any one wheel of any such vehicle shall not exceed six hundred fifty pounds per inch width of pneumatic tire, measured as prescribed by section 5577.03 of the Revised Code.

"The weight of vehicle and load imposed upon the road surface by vehicles with pneumatic tires shall not exceed the following:

(A) By any two successive axles, spaced four feet or less apart, and weighed simultaneously, twenty-four thousand pounds;

(B) By any two successive axles, spaced more than four feet but less than eight feet

apart, and weighed simultaneously, thirty-two thousand pounds;

"(C) By any two successive axles, spaced eight feet or more apart, thirty-eight thousand pounds;

"(D) By any three successive load-bearing axles designed to equalize the load between such axles and spaced so that each such axle of the three-axle group is more than four feet from the next axle in the three-axle group and so that the spacing between the first axle and the third axle of the three-axle group is no more than nine feet, forty-eight thousand pounds. Such load-bearing three-axle group shall only be weighed simultaneously as a unit.

"The total weight of vehicle and load shall not exceed thirty-eight thousand pounds plus an additional nine hundred pounds for each foot of spacing between the front axle and the rearmost axle of the vehicle provided, that the total weight of the vehicle and load imposed upon the road surface shall not exceed seventy-eight thousand pounds.

"In the determination of weights under this section by a scale other than a compact, self-contained, portable scale specially adapted to determining the wheel loads of highway vehicles, a weight is not unlawful unless it exceeds the weights provided in this section plus three per cent to compensate for possible weighing inaccuracy."

This Section does not specifically prohibit the determination of gross weight by a scale which will not encompass the entire vehicle at one time. On the contrary, it clearly implies that the component parts of a truck may be weighed seriatim on the same scale, or that several sets of scales may be used at the same time. Subsections (A), (B) and (D) provide that the determination of certain axle group loads shall be by weighing the successive axles "simultaneously" and the three-axle groups "simultaneously as a unit". Under these provisions it is possible that certain two or three-axle trucks may have to be weighed at one time. But there is no requirement that they be weighed on the same scale, and there is no general requirement that the gross weight of all trucks be determined simultaneously on the same scale.

This conclusion is supported by consideration of Section 4513.33, Revised Code, which outlines the authority given to police officers in enforcing the weight limitations set forth in Section 5577.04, supra. Section 4513.33, supra, provides in pertinent part:

"Any police officer having reason to believe that the weight of a vehicle and its load is unlawful may require the driver of said vehicle to stop and submit to a weighing of it by means of a [1] compact, self-contained, portable, sealed scale specially adapted to determine the

wheel loads of vehicles on highways; [2] a sealed scale permanently installed in a fixed location, having a load-receiving element specially adapted to determining the wheel loads of highway vehicles; [3] a sealed scale, permanently installed in a fixed location, having a load-receiving element specially adapted to determining the combined load of all wheels on a single axle or on successive axles of a highway vehicle, or [4] a sealed scale adapted to weighing highway vehicles, loaded or unloaded. * * *

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* * * In determinations of gross weight by the use of compact, self-contained, portable sealed scales, specially adapted to determining the wheel loads of vehicles on highways, all axles shall be weighed simultaneously by placing one such scale under the outside wheel of each axle."
(Emphasis and bracketed numerals added.)

This Section makes it clear that a police officer has the option of using any one of four types of scale in determining the gross weight of a truck; that, when using portable scales, the officer may use as many as are necessary depending on the number of axles; and that there is no requirement for simultaneous weighing where any of the other three types of scale are used. In addition, Section 4513.33, supra, provides that the weighing shall be done only on a level terrain, and that Section and Section 5577.04, supra, both provide a three percent margin to compensate for any possible inaccuracy in the weighing equipment.

You also call attention to a provision in the National Bureau of Standards' Handbook 44, and to Section 901.101, Revised Code, which makes the regulations of Handbook 44 applicable in Ohio. The provision to which you refer (Scales, UR.4.4.) applies only in instances when a truck is being "commercially weighed". The general provisions of the Handbook, however, distinguish between "commercial weighing" and "law-enforcement equipment" (General Code, G-A.1.). UR.4.4. has, therefore, no application here.

In specific answer to your question it is, therefore, my opinion, and you are so advised, that the use of a scale which is unable to weigh an entire truck at the same time is in accord with Section 5577.04, Revised Code.