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PHOENIX, ARIZONA

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DEPARTMENT OF LAW LETTER OPINION NO. 65-37-L (R-139)

REQUESTED BY: The Honorable Darvil McBride
 State Senator

QUESTION: May an officer cite a motorist into
 court using the Uniform Traffic
 Citation, for an equipment violation,
 such as no headlight or no tail light,
 or is he now limited to issuing a
 repair order to be followed by direct
 citation into court if the motorist
 fails to repair the equipment?

ANSWER: See body of opinion.

A.R.S. §28-982, as amended 1965, provides, generally speaking, that an officer may stop and inspect a vehicle at any time on reasonable cause to believe that it is unsafe, improperly equipped or in need of repair. In the event that the inspection reveals that the vehicle is in an unsafe condition or that it is improperly equipped, the officer is required to give the driver written notice of said need for adjustment. Upon receipt of the notice, the driver has two alternatives: (1) he may continue to operate the vehicle by procuring the necessary adjustment and having the adjustment certified to the department within five days; or (2) he may discontinue operating the vehicle on the highways. Under the procedure provided by this section no criminal sanctions may be levied against the driver unless he fails to procure the necessary adjustments, yet continues to operate the vehicle on the highway.

In addition to the above described procedures, A.R.S. §§ 28-1051 et seq, as amended 1959, provide procedures whereby "all police officers" may without a warrant arrest persons who violate

provisions of A.R.S. Title 28, Chapter 6, which is commonly referred to as the Uniform Act Regulating Traffic on Highways, and which provides that it is a misdemeanor to drive an improperly equipped motor vehicle on the highways (A.R.S. §28-921 A).

While it appears that these statutes deal in the same subject area, they provide separate and distinct procedures which a peace officer may follow when confronted by a vehicle which is or may be improperly equipped.

The Arizona Supreme Court, in Burnside v. Douglas School District, 33 Ariz. 1, 261 Pac. 629, 631 stated:

"It is a cardinal rule of statutory construction that different statutes are to be construed, if possible so as to make both effective. Repeals by implication are not favored, nor is it sufficient to raise such implication that the subsequent law covers some of the cases provided by the former statute. There must be plain, unavoidable and irreconcilable repugnancy between the two statutes."

The statutory procedures in question are both addressed to the regulation of unsafe vehicles on the highways by providing specific regulatory measures. While the differing procedures provided by the statute may be alternatively applied in some instances to a single set of circumstances, the subsequently enacted inspection statutes do not specifically repeal the prior arrest statutes. In view of the foregoing, it is our opinion that the procedures provided by A.R.S. §28-982, as amended 1965, and A.R.S. §28-1051, et seq., as amended 1959, are separate, complimentary, and distinct. Under appropriate circumstances, an officer may pursue a course of conduct under either of the statutes.

Respectfully submitted,


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The Attorney General