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STATE CAPITOL  
PHOENIX, ARIZONA

March 26, 1971

DEPARTMENT OF LAW OPINION NO. 71-15 R-4

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ARIZONA ATTORNEY GENERAL

REQUESTED BY: THE HONORABLE JAMES F. McNULTY, JR.  
Arizona State Senator

QUESTION: Did the 1970 amendment of A.R.S. § 28-701  
have the effect of repealing all speed limi-  
tation in the State of Arizona?

ANSWER: No.

The 1970 amendment of A.R.S. § 28-701 made three changes in the pre-existing statute. It eliminated subsection A of the pre-existing statute, established a maximum speed limit of 65 miles per hour on all state highways, except in school zones and in business and residential areas, thus eliminating some outmoded speed restrictions, and eliminated subsection C of the pre-existing statute, which became meaningless because of the latter deletions. In all other respects, the amended law is legally the same as its predecessor.

Subsection A of the 1970 amendment establishes maximum speeds (which may be altered by the Highway Commission or local authorities) in essentially the same language as the prior law. As was true under the earlier statute, this subsection also establishes a rule of evidence to be applied at trials of those persons exceeding those maximum speed restrictions. This rule provides that once the state has proven that a person exceeded a maximum speed limit a presumption arises that the speed was unreasonable, imprudent and unlawful. Once this presumption arises, the person so charged must then present evidence as to special circumstances showing the speed to have been reasonable and prudent, or the presumption will continue to stand.

Subsection C of the 1970 amendment compensated for the elimination of subsection A of the former statute by insertion of the phrase: ". . . no person shall drive . . . at a speed greater or lesser than is reasonable and prudent under the

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conditions and having regard to the actual and potential hazards then existing. . . ." The addition of the word "lesser" merely sets forth a legislative determination that speeds less than established by or pursuant to the statute might not be reasonable and prudent, such as driving 25 miles per hour at night on an interstate highway. The subsection then sets forth examples of when a speed other than that indicated might be unreasonable and imprudent.

Subsection A is violated when a person travels at a speed greater than the maximum speeds set forth therein, or such different speed as has been established pursuant to subsection B, and the person accused thereof has not shown that speed to have been reasonable and prudent.

Subsection C is violated when a person travels at a speed greater or lesser than is reasonable or prudent under existing conditions, even though the speed being traveled is less than what may be posted pursuant to subsection B or the maximum speeds provided in subsection A.

The violation of either subsection is declared a misdemeanor by subsection A of A.R.S. § 28-1031, and the penalty therefor is provided by subsection B of that section.

Therefore, in answer to your question, the 1970 amendment did not have the effect of repealing all speed limitation in the State of Arizona.

Respectfully submitted,

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by F.S.

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The Attorney General