

W. R. Hutchins, State Engineer  
Arizona Highway Department  
Phoenix, Arizona

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Attention M. C. Hankins, Secretary

Dear Sir:

Replying to your inquiry as to the power of the State Highway Commission over speed limits in the State of Arizona we advise as follows:

The speed limits are fixed by the statute in Sec. 66-101, Ariz. Code Annot., 1939. Incorporated cities are granted rather wide powers with respect to speed limits on city streets. These powers are usually exercised in reducing the speed limits imposed by the statute rather than increasing such limits. We are concerned here only with that speed limit which relates to State Highways in rural districts and which is not controlled by specific limits set forth in the above-named section.

Our statute does not provide any set limit for traffic outside of cities, residence districts, and the like, but says that the vehicle shall not travel at a speed greater than is reasonable and prudent. Some 23 states, districts and provinces in the United States and Canada have similar provisions. The other states limit the speed to a specific number of miles per hour.

Whether our law is a good law or not is for the Legislature to decide and not for the Highway Commission. Since the Legislature has said there will be no set limit of speed in rural districts the Highway Commission have no power whatever to say that there shall be a set limit of 45 miles per hour, or any other number of miles per hour. The Commission cannot set aside the legislative act relative to speed limits any more than it could set aside the legislative act creating commissioner districts in the selection of commissioners.

The only one having power to fix speed limits at all is the Superintendent of Highway Patrol, who, with the approval of the Commission, may establish zones and post speed limits where traffic conditions are such as to require it in the interest of safety. This, however, does not give the Patrol Superintendent or the Commission, or both of them, power to fix a restricted speed limit for all of the highways throughout the state in the face of the legislative declaration that there shall be no such limit, but that the rate shall be reasonable and prudent.

We are also of the opinion that the power given to the Highway Patrol Superintendent, with the approval of the Commission, being Section 66-702 Ariz. Code Annot., 1939, relates solely to State and not to County Highways; nor does it relate to city streets unless such streets are parts of the State Highway itself, which come within the jurisdiction of the state authorities.

Often speed zones are requested by citizens of towns or other

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communities. We do not recall any instance where either the patrol Superintendent or any community asked the Commission to zone any portion of a State Highway that the request was refused.

Very truly yours,

JOE CONWAY  
Attorney General

*A. R. Lynch*

A. R. LYNCH  
Assistant Attorney General

ARL.eer

January 10, 1942

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