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ARIZONA ATTORNEY GENERAL

August 3, 1951  
Op. No. 51-216

Mr. Warren L. McCarthy  
County Attorney  
Maricopa County Courthouse  
Phoenix, Arizona

Dear Mr. McCarthy:

We have your letter of July 26 wherein you ask for an opinion on the following questions:

1. "In filing a complaint under Section 56 (a) above quoted, is it necessary to specify the speed which the defendant is alleged to have driven, also the prima facie speed applicable within the district or location?
2. If necessary to quote the prima facie speed, is such prima facie speed the established speed for the particular location as set forth in Section 56 (b) or is such prima facie speed that which the officer would consider reasonable and prudent in view of actual and potential hazards existing at that time?
3. Must the officer clock the defendant in order to establish the speed which the defendant is alleged to have driven or may such speed be proven by other evidence?"

Section 56 (a) of the Uniform Traffic Code reads:

"No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so

Mr. Warren L. McCarthy  
County Attorney

August 3, 1951  
Page two

controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care."

You state in your letter it has been contended that in a prosecution under this section the complaint must allege the legal rate of speed in the locality of the alleged crime and the speed at which the defendant was traveling. Section 56 (a) follows immediately after the section defining reckless driving and provides for a prosecution for an offense independent of the crime of reckless driving, or violation of an established speed regulation, commonly referred to as speeding. If a person drives a vehicle at a speed greater than is reasonable and prudent under the conditions having regard to hazards then existing, he violates a separate criminal statute, namely Section 56 (a) or it could be said he was driving in wilful and wanton disregard for the safety of persons or property and might be prosecuted for reckless driving regardless of the rate of speed he was traveling. The rate of speed one is traveling is not necessarily an element of the offense of reckless driving or the offense created by said Section 56 (a). A person might be guilty of reckless driving or of the offense denounced by Section 56 (a) while driving within the limits of a rate of speed established by regulation.

Section 62 (a) of the code provides:

"In every charge of violation of any speed regulation in this Act, the complaint, also the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven, also the prima facie speed applicable within the district or at the location." (Emphasis Supplied)

Section 62(a) relates only to charges of violations of any speed regulation. Section 56 (a) does not prescribe speed regulations, but subdivisions (b) and (c) of Section 56, and other sections of the code do prescribe such regulations. The traffic code defines several separate offenses, one of which is reckless driving, another is a violation of Section 56 (a) and still another penalizes one for violating speed regulations, and in answering your questions the separate offenses should be kept in mind. To constitute the crime of speeding the accused must violate some speed regulations by driving faster

Mr. Warren L. McCarthy  
County Attorney

August 3, 1951  
Page three

than the rate established by regulation for a particular locality, whereas a person may violate Section 55 or 56 (a) while traveling within the established rate of speed.

If a man is charged with reckless or illegal driving under Sections 55 or 56 (a) there is no good reason for alleging the rate of speed he was traveling and the speed fixed by law. A man while driving a vehicle in down-town Phoenix at ten miles per hour during the rush period, but at a speed greater than was prudent under the conditions, having regard to the hazards then existing by reason of, say an enormous crowd, an offense could be charged under 56 (a) by alleging he did the things denounced by Sections 55 or 56 (a). It would be useless to allege in such a complaint, he was operating his vehicle at ten miles per hour in a twenty-five mile zone.

It is our opinion if a person is charged with the offense denounced by Section 56 (a) it is not necessary to allege the rate of speed the accused was traveling, or the established rate of speed, but if a person is charged with exceeding the legally established speed limits in violation of (b) and (c) of Section 56, or any section other than 55 and 56 (a) of the Code regulating speed, then Section 62 (a) must be complied with.

Our answer to the first question renders it unnecessary to answer the second.

We think your third question should be answered in the negative. Clocking speed is only one way of proving the speed a vehicle was traveling. A person could testify to the speed of a vehicle by the time it took to pass between two objects, or if qualified, a witness may give an opinion as to the speed a vehicle was traveling. If clocking is the only method of proving speed, then only those having special devices could testify as to the rate of speed a vehicle was traveling.

Very truly yours,

FRED O. WILSON  
Attorney General

EARL ANDERSON  
Assistant Attorney General

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