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Robert K. Corbin

August 15, 1983

Ralph T. Milstead, Director  
Arizona Department of Public Safety  
P.O. Box 6638  
Phoenix, Arizona 85005

Re: (R83-071) 183-092

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Dear Mr. Milstead:

We are writing in response to your letter of May 17, 1983 in which you asked whether in light of the Arizona Supreme Court's decision in State ex rel. Ekstrom v. Justice Court of State, \_\_\_ Ariz. \_\_\_, 663 P.2d 992 (1983) all DWI (driving while intoxicated) related enforcement roadblocks are illegal. If DWI enforcement roadblocks are permissible, you have asked the conditions under which the Arizona Department of Public Safety can utilize the roadblocks and what procedural guidelines the Department must follow to insure their legality.

In its analysis in the Justice Court opinion, the Arizona State Supreme Court distinguishes between permissible and impermissible roadblocks clearly indicating that roadblocks will be allowed if they promote legitimate government purposes and if administratively planned and operated. State ex rel. Ekstrom v. Justice Court of State, supra., at p. 995.<sup>1/</sup>

Roadblocks in which automobiles and their occupants are detained constitute "seizures" within the meaning of the Fourth Amendment of <sup>the</sup> United States Constitution as applied to the states through the Fourteenth Amendment. See Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979). Also, Article 2, Sec. 8 of the Arizona Constitution provides protections to the highway traveler "from harassment by government agents". See State v. Ochoa, 112 Ariz. 582, 584, 544 P.2d 1097, 1099 (1976). The Fourth Amendment does not operate, however, as a complete bar to roadblocks. See United States v. Martinez-Fuerte, 428 U.S. 543, 96 S.Ct. 3074, 49

<sup>1/</sup> In Justice Court, the Supreme Court held that the roadblocks set up in Kingman were illegal because they were too intrusive and "the record discloses no statistics concerning the extent of the problem of drunk drivers on Arizona highways . . .". State ex rel. Ekstrom v. Justice Court of State, supra., at p. 996.

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L.Ed.2d 1116 (1976). Roadblocks are permissible when they promote a legitimate government interest which outweighs the intrusion on the interests protected by the Fourth Amendment and they are conducted in a manner designed to minimize the intrusion.

In order to demonstrate a legitimate government purpose, the Arizona Supreme Court emphasized the need for empirical data which would demonstrate that roadblocks are preferable to the present method of enforcement which is predicated upon the roving patrolman's observation of a motorist's driving behavior. We cannot say with any certainty what type of empirical data the Court would require.<sup>2/</sup> Empirical data in State v. Coccoma, 177 N.J. Super. 575, 427 A.2d 131 (1980), which sustained the legality of a license check - drunk driving roadblock, revealed a high incidence of fatal vehicular accidents involving alcohol abuse on the stretch of road where the roadblock was set up. Also, there were a number of bars located within the vicinity of the roadblock.

In addition to empirically establishing the legitimate government purpose for roadblocks, the administration and operation of the roadblock must be calculated to insure the least intrusion upon the public's freedom. Therefore, to minimize the intrusion, courts have found utilizing the following procedures significant:

- 1) the decision and the related planning to set up roadblocks made by top management officials of the Department;

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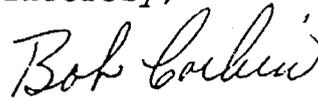
<sup>2/</sup> We do not know if a showing of the problem statewide is sufficient or if statistics evidencing high levels of drunk driving on the stretch of road where the roadblock is located is required. Justice Stanley G. Feldman would rely upon national statistics. In his concurring opinion, he took exception to the majority holding that roadblocks must be for investigatory purposes rather than serve as a deterrent. Thus, when roadblocks are used as a deterrent, Justice Feldman would focus on the problem to be deterred - drunk driving - in applying the balancing test. National statistics showing the number of highway fatalities related to drunk driving and the recently enacted drunk driving statutes (A.R.S. Sec. 28-692 to 692.02) which require aggressive enforcement, would be the focal points of Justice Feldman's analysis.

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- 2) there should be a factual basis governing the placement of roadblocks at given locations;
- 3) roadblocks must be for a specified limited duration;
- 4) there should be general public notification of the roadblocks as well as informing motorists at roadblocks as to their purpose;
- 5) there should be signals and warnings, illuminated at night, set up to put motorists on notice of an approaching roadblock; and
- 6) there must be explicit, neutral limitations on the patrolmen's conduct at the roadblocks.

See Garrett et al. v. Goodwin, et al., No. LR-C-82-385 (E.D. Ark., Dec. 17, 1982); United States v. Martinez-Fuerte, supra.; and State v. Hilleshiem, 291 N.W.2d 314 (Iowa 1980).

Sincerely,



BOB CORBIN  
Attorney General

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