



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

February 7, 1963

Honorable Terry Townsend
Chairman, Highways and Roads Committee
House of Representatives
Austin, Texas

Opinion No. C-11

Re: Constitutionality of H.B. 50,
with regard to the delegation
to the State Highway Commis-
sion of authority to set speed
limits on the State Highway
System, lower than a maximum
speed of 70 miles per hour.

Dear Mr. Townsend:

You have requested the opinion of this office as to the constitutionality of certain provisions of House Bill 50, 58th Legislature. This proposed Act would raise the maximum permissible speed on any highway in this State to 70 miles per hour, while other provisions would require the Texas Highway Commission to set lower limits wherever highway conditions are such as to make the maximum speed unsafe. The problem posed is whether the authority granted to the State Highway Commission is so broad as to violate the general rule that the Legislature may not delegate its legislative powers.

For convenience, the pertinent portions of the proposed Act are quoted:

"Sec. 167. Authority of the State Highway Commission to Alter Maximum Prima Facie Speed Limits.

"(a) Whenever the State Highway Commission shall determine upon the basis of an engineering and traffic investigation that any maximum prima facie speed hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a highway, taking into consideration the width and condition of the

pavement and other circumstances on such portion of said highway as well as the usual traffic thereon, the Legislature hereby directs the State Highway Commission to determine and declare a reasonable and safe maximum prima facie speed limit thereat or thereon, by proper order of the Commission entered on its minutes, . . . which limit, when appropriate signs giving notice thereof are erected, shall be effective at such intersections or other place or part of the highway at all times or during hours of daylight or darkness, or at such other times as may be determined; provided, however, that said State Highway Commission shall not have the authority to modify or alter the basic rule established in paragraph (a) of Section 166 nor to establish a speed limit higher than seventy (70) miles per hour.

"(b) The State Highway Commission shall, in conducting the engineering and traffic investigation specified in paragraph (a) of Section 167, follow its 'Procedure for Establishing Speed Zones' which is in use on the effective date of this act and as same may be subsequently revised for reasons of technological advancements in traffic operation, design and construction of highways and motor vehicles, as well as the safety of the motoring public."

An examination of the Constitution of Texas reveals no provision that would specifically prohibit the delegation of authority contained in the proposed Act. Where there is no express prohibition, the Legislature has authority to act. Houston Lighting and Power Co. v. Fleming, 128 S.W.2d 487 (Tex.Civ.App. 1939, rev. on other grounds, 135 Tex. 463, 138 S.W.2d 520).

The general rule is that the Legislature may not delegate its legislative powers. It is also a general rule that if the Legislature has prescribed sufficient standards to guide the discretion conferred, the power is not legislative and the delegation is lawful. Gillaspie v. Department of Public Safety, 152 Tex. 459, 259 S.W.2d 177; cert. den. 347 U.S. 933; Moody v. University Park, 278 S.W.2d 912 (Tex.Civ. App. 1955, n.r.e.). In the quoted portions of the proposed

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Act, the Legislature has given clear and explicit instructions to the State Highway Commission as to the criteria to be applied in determining a reasonable and safe maximum prima facie speed limit. In Subsection (b) of Section 167, the Commission is even directed to use a specific technique, already established and in use, as a means of arriving at the said reasonable and safe maximum speed.

Further light was cast upon the problem of delegation of legislative power in Nichols v. City of Dallas, 347 S.W.2d 326 (Tex.Civ.App. 1961, n.r.e.), when, at page 333, Chief Justice Dixon stated:

"The fact that under a delegation of authority to an administrative officer there is an area for the exercise of his discretion does not render the delegation of authority unlawful if the standards formulated for his guidance and the limits of his discretion, though general, are capable of reasonable application."

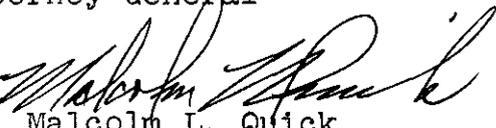
In view of the foregoing, it is the opinion of this office that the delegation of authority to the State Highway Commission, contained in House Bill 50, is sufficiently limited and contains sufficiently explicit instructions, so as not to constitute an unlawful delegation of legislative power.

SUMMARY

The authority granted in House Bill 50, 58th Legislature, authorizing the State Highway Commission to set speed limits lower than 70 miles per hour wherever highway conditions are such as to make that speed unsafe, is sufficiently limited and contains sufficiently explicit instructions, and does not constitute an unlawful delegation of the legislative power, and is therefore constitutional.

Yours very truly,

WAGGONER CARR
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By 
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APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

Marietta Payne
Frank Booth
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APPROVED FOR THE ATTORNEY GENERAL
By: Stanton Stone