

ATTORNEY GENERAL

May 14, 1979

JOHN A. WADDINGTON, *Director*  
Division of Motor Vehicles  
25 South Montgomery Street  
Trenton, New Jersey 08625

FORMAL OPINION NO. 11—1979

Dear Director Waddington:

You have inquired as to whether or not a truck (or truck and trailer combination) registered in another state but found on a New Jersey highway in excess of the weight listed on its foreign certificate of registration is in violation of N.J.S.A. 39:3-84.3, which makes it unlawful for:

any commercial motor vehicle, tractor, trailer or semitrailer [to be] *found* on a highway with a gross weight of vehicle and load *in excess of the weight limitation permitted by the certificate of registration for the vehicle* or in excess of the gross weight limitations imposed by the Title for vehicle and load or an axle weight in excess of the axle weight limitations imposed by this Title . . . .  
[Emphasis supplied.]

Alternatively stated, your question is whether or not the term "certificate of registration" as used in the statute was intended to encompass *foreign* registrations as well as New Jersey registrations. For the following reasons, we conclude that it was not.

Initially, it must be noted that the statute is penal and quasi-criminal in its nature, and so must be strictly construed. *State v. Gratale Brothers, Inc.*, 26 N.J. Super. 581 (App. Div. 1953). Even so, the statute must be read in relation to the mischief and evil sought to be suppressed and effect must be given to the terms of the statute in accordance with their fair and natural acceptance. *State v. Ferro*, 128 N.J. Super. 353 (App. Div. 1974).

At least as to the gross weight limitations for vehicle and load and the axle weight limitations of this statute, the intent and purpose of the law is plainly to protect our highways and highway structures from damage by overweight vehicles. *State v. Gratale Brothers, Inc.*, *supra* at 584. Recognized in that light, such provisions have been constitutionally upheld when applied to trucks registered out-of-state as well as in-state. *Morris v. Doby*, 274 U.S. 135, 47 S. Ct. 548, 71 L. Ed. 966 (1926).<sup>1</sup> Such a purpose, however, is not so apparent here, where two identical trucks both registered in New Jersey and both subjecting our highways to the same load and distribution (axle weight), could be treated differently under the statute depending only upon the fees accompanying their registration application.<sup>2</sup> Viewed thusly, this aspect of the statute appears as merely the enforcement arm of a revenue measure (N.J.S.A. 39:3-20) the purpose of which is to

1. In this case the Supreme Court was called upon to examine an Illinois gross weight limitation similar to ours in the face of a constitutional challenge that it placed an undue burden on interstate commerce. The court sustained the limitation, finding it a reasonable and non-discriminatory means to further a legitimate state objective.

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compel voluntary payment of the correct registration fee to the State of New Jersey by the owners of trucks registered *in this State*. See *State v. Youngstown Cartage Co.*, 105 N.J. Super. 223, 225 (Co. Ct. 1969), wherein the court recognized that “a weight in excess of the registered weight is not of itself a cause of damage to the highways.” and *State v. Levitan Interstate Transport, Inc.* 58 N.J. Super. 345, 351 (Co. Ct. 1959), wherein it was noted that to not enforce N.J.S.A. 39:3-84.3 in the particular situation under review there would “make possible an evasion of the revenue provisions of N.J.S.A. 39:3-20 . . .” To apply this portion of the statute to trucks registered out-of-state, therefore, could in no way be viewed as rationally related to its purpose since the subject registration fees would be paid to the state of registration and not to New Jersey.

Moreover, since the subject provision is plainly inapplicable on its face to trucks registered in states which do not require registration based upon gross weight,<sup>3</sup> *State v. Olean Transp. Corp.*, 39 N.J. Super 236 (Co. Ct. 1956), a determination that our statute was intended to apply to trucks registered out-of-state appears even less viable. Such would lead to the rather anomalous result that a truck registered in a state requiring registration based upon “unladen weight” and found in New Jersey in excess of such “unladen weight” would be immune from prosecution<sup>4</sup> while this same truck, if registered in a state where registration is based upon gross weight and found in excess of its registered gross weight, would be subject to prosecution. Such a result cannot have been intended. Rather, it must be concluded that the legislature intended that the subject overweight provision apply only to vehicles registered in New Jersey as a means of enforcing its registration laws. *State v. Youngstown Cartage Co.*, *supra*.

The above determination is mindful of the apparently contrary conclusions reached in *State v. Olean Transp. Corp.*, *supra*. and *State v. Levitan Interstate Transport, Inc.*, *supra*. Suffice it to say that unlike *State v. Youngstown Cartage Co.*, *supra*. these decisions are not precisely on point with the situation present here. In *Olean*, for example, the only question for determination was whether or not our statute applied to a tractor registered in a state that required registration to be based upon the vehicle’s “unladen weight” rather than its “gross weight.”<sup>5</sup> The court concluded that it did not, adding in dictum, however, that in its view the statute did

2. N.J.S.A. 39:3-20 provides that:

- a. The Director is authorized to issue registrations for commercial motor vehicles . . . upon application therefor and payment of a fee based on the gross weight of the vehicle [meaning the vehicle and its load] . . . [T]he minimum registration fee shall be \$50.00 plus \$8.50 for each 1,000 pounds or portion thereof in excess of 5,000 pounds.

Thus, a truck registered for 6,000 pounds (having paid a fee of \$58.50), for example, could not be prosecuted under N.J.S.A. 39:3-84.3 when found on the highway weighing 5,500 pounds, whereas if only a \$50.00 registration fee had been paid for this same truck, a summons could issue.

3. At least ten states, as you have indicated in your request for advice, require that registration be based upon the truck’s “unladen weight.”

4. This is assuming that the vehicle and load did not exceed either the maximum gross weight limitation or the axle weight limitation set forth in our statute.

5. See footnote 3.

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apply to trucks registered in other states that required gross weight to be listed on registration certificates. The question presented in *Levitan* was whether or not our statute applied to a combination of a New Jersey registered tractor and a trailer registered in another state that required gross weight to be listed on its registration certificate. The court concluded that it did, specifically rejecting the defendant's contention that the statute was limited in application to only combinations of vehicles *wholly* registered in New Jersey. The situation here, on the other hand, concerns only vehicles or combinations of vehicles *wholly* registered *out-of-state*.

To whatever extent the language in either of those cases goes beyond their narrow holdings, moreover, it is found unpersuasive. Both courts base their decision at least in part on their recognition of the purpose of the act to protect our highways, but fail to realize, as recognized in *Youngstown* and as noted above, that such purpose only applies to the maximum gross weight and axle weight limitations of the act. Furthermore, the reasoning in *Levitan* appears additionally suspect for reason that it rests upon the court's fear that:

To uphold defendant's contention is to make possible an evasion of the revenue provisions of N.J.S.A. 39:3-20, a statutory construction not to be favored. A New Jersey trucker would be enabled to register his tractor at a minimum fee and haul an out-of-state trailer and load over the New Jersey highways with immunity from any complaint for overweight of vehicle and load as evidenced by the combined certificates of registration. [*Id.* at 350.]

However persuasive such observation may have appeared at the time this decision was reached, it no longer appears so following amendment of N.J.S.A. 39:3-20 and N.J.S.A. 39:3-84.3 prohibiting the operation of combinations of New Jersey tractors and out-of-state trailers on New Jersey highways in excess of twice the gross weight listed on the New Jersey tractor's registration certificate and prescribing fines based upon such excess. L. 1963, c. 166, §§1 and 2. The "immunity" feared by the Court in *Levitan* thus no longer exists. The existence of these amendments, in fact, can be seen as evidence of a legislative disapproval of the approach taken by the court in *Levitan*, since the out-of-state trailer's registration certificate in such a situation is now irrelevant to the determination as to whether or not a violation has occurred under the statute or as to how much of a fine should be assessed. These determinations are now to be based solely upon the gross weight listed on the New Jersey tractor's certificate of registration and the total weight of the combination.

For the reasons set forth above, you are therefore advised that a truck registered in another state and found on a New Jersey highway in excess of the weight listed on its foreign certificate of registration (but within the maximum gross weight and axle weight limitations of the act) is not in violation of N.J.S.A. 39:3-84.3.

Very truly yours,  
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