

Consequently, since it would be impractical to obtain personal service of process upon every motor vehicle driver, it would appear that, based upon the opinion, the Department would not have the authority to stop motor vehicle traffic.

As these hearings went to press, the Department's opinion was not available, nor did the Department have any comment on the opinion of the Library of Congress.

(The Library's opinion follows:)

THE LIBRARY OF CONGRESS,
LEGISLATIVE REFERENCE SERVICE,
Washington, D.C., April 18, 1968.

To: House Committee on Science and Astronautics
Attention: Mr. Joseph M. Felton, Counsel.

From: American Law Division.

Subject: Competence of HEW, proceeding under § 108(k) of the Air Quality Act of 1967 (81 Stat. 485, 497) to combat air pollution in a municipality attributable to (a) automobile traffic or to (b) industrial operations by instituting a class action against (a) automobile drivers or (b) against manufacturers or utilities with a view to enjoining operation of motor vehicles or the emission of pollutants by a class of industries such as public utilities or manufacturers.

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Class action against motorists

Inasmuch as Rule 23 of the Federal Rules of Civil Procedure (28 U.S.C. Rule 23) governing class actions was substantially modified as recently as February 28, 1966, and the revision thereof did not become operative until July 1966, the interval of time which has elapsed since the latter date has not been sufficient to permit an accumulation of recent precedents numerous enough to present an accurate assessment of the significance of the aforementioned amendments. For these reasons it is not possible to advance a definitive conclusion as to whether these modifications effect such a liberalization of Rule 23 as to eliminate what are deemed to be obstacles to the institution of a class action by HEW against motor vehicle operators.

Reasoning by analogy from factually irrelevant precedents embracing plaintiff-defendant representatives of classes such as members of labor unions, corporate stockholders or bondholders, debtors, creditors, merchants and manufacturers affiliated with a trade association, or professional men or tradesmen conspiring with manufacturers to violate the antitrust laws, and, more particularly from evaluations thereof in legal periodicals, one is persuaded to assign the following reasons in support of the contention that a class action is not maintainable against operators of motor vehicles. The latter are too disparate and unidentifiable a group to merit description as a class whose members are bound together by a substantial common interest. Unlike the groups heretofore mentioned as plaintiff-defendant representatives of a class, operators of motor cars, busses, and trucks are not affiliates of a membership association such as the A.A.A. (Automobile Association of America); nor do they share any interest in property or claims to property.