

MEMO

Re: Proposed Fuel Conservation Maximum Speed Limit

Background Explanation: As of March 3, 1974, the sixtieth day after enactment of "Emergency Highway Energy Conservation Act," no highway projects under Title 23, U.S. Code, Section 106, will be approved by the Division Engineer, U. S. Department of Transportation, in Oregon unless there is not a maximum speed limit greater than 55 mph. This requirement will be considered complied with on submission by the state of:

- (1) Description of action taken by Governor or state agency to achieve the "no maximum speed limit above 55 mph";
- (2) Opinion of Attorney General that the state action taken is lawful; and
- (3) Statement that speed limit signs have been changed to show 55 mph limit.

Issue: Does the action already taken by the Transportation Commission and State Speed Control Board in setting 55 mph comply with section 2?

The letter to the House Judiciary Committee Chairman of January 9, 1974, from the Attorney General demonstrates that action already taken is not considered sufficient to establish a maximum speed limit not in excess of 55 mph.

Proposed Fuel Conservation Maximum Speed Limit

A. Summary

When the Department of Transportation determines there is a fuel shortage present or imminent, it may declare a maximum speed on all

highways in the state. A maximum speed so set to conserve fuel shall not be subject to the provisions of ORS 483.106 and 483.108 which allow alterations of the maximum speed limits of section 2 by the Department of Transportation and the State Speed Control Board based on engineering and traffic studies.

A violation of this maximum speed shall not be subject to the defense that the speed was reasonable and prudent under the conditions.

B. Section by Section Analysis

Section 2. (Maximum speeds.) The section would be amended to incorporate a reference to the proposed section 3, in line 3 of that section, so that the maximum speeds of section 2 may be those designated in that section, or under ORS 483.106 or 483.108 or section 3, except when a lower speed is required by the basic rule.

Section 3. (Maximum speed limit for fuel conservation.) The authority to set a fuel conservation speed limit is set out in section 3 which would be added to the Article on Speed Restrictions presently before the Subcommittee on Revision. The sections following would, of course, be renumbered.

A fuel conservation maximum speed limit could not be increased (or decreased) by the department or Speed Control Board. The limit would only be effective upon posting of signs.

Section 4. (Availability of affirmative defense to speed offenses.) This section would be amended by the addition of subsection (2) specifically making the defense not available to a charge of violating a fuel conservation maximum speed.

Issues:

- I. Proper location within state government of authority to determine fuel shortage.
- II. Should fuel shortage or conservation speed limit be distinguished from section 2 speed limits, e.g., citation of violation specify type of speeding charge?
- III. Maximum speed of 55 mph vs. maximum speed of 55 mph or less.
- IV. By removing the reasonable prudent driver defense of subsection (2), section 4, the 55 mph limit is absolute. What is Attorney General's opinion of need of this provision?