

---

OFFICE OF THE ATTORNEY GENERAL  
Official Opinion No. 2012-3

September 25, 2012

**OFFICIAL OPINION 2012-3**

Mr. Michael B. Cline  
Commissioner  
Indiana Department of Transportation  
100 N. Senate Ave., Room N758  
Indianapolis, IN 46204

**RE: Indiana Highway Laws of 1956 concerning weight limits**

Dear Commissioner Cline:

On August 22, 2012, your chief of staff requested a legal opinion on the following issue:

Did Indiana have any laws in effect in 1956 that would have prevented the State from permitting divisible loads on state highways, and thus "grandfathering" Indiana's ability to issue permits for divisible loads under 23 U.S.C. § 127?

**BRIEF ANSWER**

The Indiana laws in 1956 made no reference to divisible or nondivisible loads. But a divisible load is, by definition, an overweight load. Because Indiana authorized permitting overweight loads on state highways in 1956, it should be allowed to continue to do so under the "grandfathering" provisions of 23 U.S.C. § 127.

**ANALYSIS**

**The grandfather clause**

The Federal-Aid Highway Act of 1956<sup>1</sup> (23 U.S.C. § 127) provides that:

federal funds shall not be appropriated to any state allowing vehicles to travel on the interstate system with weights in excess of certain specified maximums contained in the federal statute or the corresponding weights existing in the various states on July 1, 1956, whichever is greater. Thus, if state law, as of July 1, 1956, authorized variations from the stated maximum weights . . . such variations are 'grandfathered' by the federal statute.

*Bunch v. Cobb* 257 S.E.2d 225, 226 (S.C. 1979). The grandfather clause "does not require that such vehicles be currently operated within the state as of July 1, 1956, but only that they could have been." (emphasis added); *South Dakota Trucking Association, Inc. v. South Dakota Dept. of Transportation* 305 N.W.2d 682, 686 (S.D.1981). *Accord: State ex rel. Dick Irvin Inc. v. Department of Transportation*, 525 P.2d 564 (Mont.1974).

**Indiana law in 1956**

In 1956 Indiana law addressed the concern of overweight cargos being transported across the state in two ways. The State Highway Commission (now the Indiana Department of Transportation) could designate "heavy duty highways" and determine a weight restriction for wheels and axels above the norm for other state highways but still below a maximum set by statute. The total gross vehicle weight on regular and heavy duty highways in 1956 was 72,000 pounds. Burns Ind. Statutes Ann. of 1965 § 47-536 (a), (b) (see compilers note showing no amendments after 1953). The total gross vehicle weight allowed by the 1956 Federal Aid Highway Act was 73,280 pounds. Pub. L. 85-767, Sec.127.

In addition to establishing heavy duty highways, however, the Commission had the authority "upon good cause shown to grant permits for transporting heavy vehicles and loads, or other objects, not conforming to the provisions of section two [§ 47-530] [dimensions of vehicles] and eight [§ 47-536] [weight of vehicles] of this act, whenever in the discretion of any such officer or body other traffic will not be seriously affected and the highway or bridge thereon will not be seriously damaged thereby." Burns Ind. Statutes Ann. of 1965 § 47 -538 (see

compiler's note showing no relevant changes after 1953).

The phrase "divisible load" does not appear in the 1956 statute or the law as it exists today, but in general terms it is a cargo that is overweight in the aggregate that *could be* divided into units of legal weight without affecting the physical integrity of the load. As you point out in your correspondence, a cargo of steel coils or grain is a divisible load. Although the 1956 law was silent about divisible loads it clearly allowed loads in excess of the statutory legal limit to be carried across the state if the hauler obtained a special permit. For that reason, under the authority of the grandfathering clause in 23 U.S.C. § 127, the state may permit divisible loads to travel on Indiana highways and interstates today.

### CONCLUSION

The Indiana law in 1956 made no reference to divisible loads, but because the State authorized permitting overweight loads on state highways at that time, it should be allowed to continue to do so on Indiana highways and interstates under the "grandfathering" provisions of 23 U.S.C. § 127.

Sincerely,

Gregory F. Zoeller  
Attorney General

Gordon White  
Deputy Attorney General

<sup>1</sup> The Act created what is now called the Dwight D. Eisenhower National System of Interstate and Defense Highways, or the Interstate System.

*Posted: 02/22/2017 by Legislative Services Agency*  
An [html](#) version of this document.