



STEVE CLARK
ATTORNEY GENERAL

OPINION NO. 85-153

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

June 21, 1985

(501) 371-2007

Honorable Joseph K. Mahoney
Arkansas House of Representatives
406 Armstrong Building
El Dorado, AR 71730

Dear Representative Mahoney:

This is in response to your request for an Attorney General's opinion regarding the constitutionality of Act 608 of 1985, which requires an oil or gas company to file a bond with a county before it can drive heavy equipment on county roads for exploration or drilling projects. Inasmuch as you have posed several questions, I will respond to each of these individually:

(1) The term "heavy equipment" would seem to be vague and lacking in definition. Would you please comment on this?

I would agree that the term "heavy equipment" as used in this Act is somewhat vague and does not give as much guidance to the oil and gas companies as a more specific provision could. There are certainly some pieces of equipment which are understood in the industry to be "heavy equipment," but there may be other vehicles which could fall into a gray area. One possible solution would be to define "heavy equipment" as falling within some particular tonnage range, so that anything over a certain weight would give rise to the bonding requirement.

(2) Does this violate equal protection or other constitutional standards by singling out one segment that, for the sake of discussion, is not using any heavier equipment than individuals or companies involved in the poultry or agriculture business?

A state may select or classify one group or segment of society for treatment different than that given to other groups or segments, so long as said classification is not arbitrary or unreasonable, and is designed to accomplish a legitimate state objective. Such a legitimate, reasonable classification would not violate the equal protection clause of the Constitution.

As long as there are valid reasons for classifying heavy equipment used for oil and gas exploration or drilling differently than heavy equipment used by other industries,

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Act 608 would probably pass constitutional muster. I do not possess enough knowledge about the various industries or the legislative reasons behind this classification to state an opinion of whether this particular Act makes a legitimate classification. There could certainly be numerous reasons why the oil and gas industry would be required to post a bond: the nature and weight of the heavy equipment used by the industry; any particular types of damage that this equipment has inflicted on roads prior to passage of the Act; the frequency with which the industry uses county roads when conducting exploration and drilling work; any prior problems with the industry cooperating with the counties in repair of damage done by such equipment; etc.

There are other laws dealing with highways and county roads which single out certain industries for special treatment. Under Ark. Stat. Ann. §75-817(c) (Supp. 1983), certain types of equipment are allowed to exceed the normal maximum weight allowed on the front steering axle of a vehicle, more particularly:

. . . vehicles of special design, equipment, or construction, engaged in occasional or specialized heavy hauling, such as, but not limited to, hauling of heavy machinery, commodities which require specialized equipment, oil and/or gas field equipment, or similar equipment, . . . (emphasis added).

Subsection (g) allows an eight percent variance on allowable gross weight for five-axled vehicles hauling unfinished and unprocessed farm products, forest products, or other products of the soil from point of harvest or production to point of processing; and provides a similar variance to haulers of animal feed.

Ark. Stat. Ann. §75-817.3(7)[8](c) (Supp. 1983) exempts from responsibility for the Highway Use Equalization Tax vehicles whose gross weight is above 73,280 pounds:

used exclusively in hauling unfinished and unprocessed farm products, forest products, and clay minerals, and ores, from the point of production, harvesting or severance to the point at which the same shall first undergo any processing, conversion or transformation from their raw, natural or severed state, nor to any vehicle owned and operated by the United States of America or the State of Arkansas, or any political subdivision thereof.

Ark. Stat. Ann. §75-818 (Repl. 1979) authorizes the State Highway Commission and local authorities, with respect to highways and roads under their particular jurisdictions, to grant special permits in certain situations allowing haulers to exceed normal size and weight limits set by law. This statute states that no special permit need be sought or obtained for vehicles or machinery of excessive width used for certain farm purposes.

If there are reasonable and rational reasons for imposing the bonding requirement on the oil and gas industry, and not on all vehicles, then Act 608 would not violate the equal protection clause. If there are no such reasons, that industry might have grounds to attack the Act, arguing that a bond should be required by all users of "heavy equipment" on the county roads.

(3) I see no conflict between the existing laws pertaining to heavy equipment and overloads on the highways falling under the jurisdiction of the State Highway Department, and this Act dealing with heavy equipment on county roads. The Arkansas Highway Commission is empowered to administrate over the highways and roads included within the State Highway System, but the law is clear that the administration of county roads lies within the ambit of the quorum courts and county judges. In addition, each county has a County Highway Commission, composed of the county judge and two other members (Ark. Stat. Ann. §76-801 (Repl. 1981), which is charged with constructing, maintaining and repairing county roads not within the State Highway System. Ark. Stat. Ann. §76-806 (Repl. 1981).

See also Ark. Stat. Ann. §76-126 (Repl. 1981), which allows the quorum court, acting through the county judge, to prohibit vehicles over a certain weight from using county roads in times of emergency; §76-901 (Repl. 1981) which authorizes a quorum court to establish and open new roads; and §76-1037 (Repl. 1981), part of an act authorizing counties to contract with the State Highway Commission for the repair of county roads, which says that nothing in that Act:

shall have the effect of adding any county roads to the State Highways System nor shall such contracts remove from the county court of the contracting county exclusive jurisdiction over the roads within that county. (Emphasis added).

Section 3 of Amendment 55 to the Arkansas Constitution states that the county judge of each county shall "operate

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the system of county roads." Certainly Amendment 55 also grants power to the quorum court to enact measures pertaining to maintenance and repair of county roads.

Act 608 of 1985 simply grants to the counties the power to require a bond sufficient to cover any anticipated damage to "county roads." There is no other State law which prohibits this authority and, therefore this would seem to be a viable grant of power to the counties under Amendment 55.

This is not the only State law allowing a governmental unit to require some sort of surety to cover possible damage to roads under its jurisdiction. Ark. Stat. Ann. §75-830 and 75-831 allow the State Highway Department to issue special permits for persons to move mobil homes of a certain length and width, upon the filing of evidence of acceptable insurance coverage. Allowing counties to require a bond sufficient to cover anticipated damage to county roads caused by heavy vehicles would seem to be a similarly legitimate provision.

(4) Is this an additional burden placed on a business without the same burden being placed on others engaged in substantially the same conduct?

See response to number (2).

(5) Is there anything else potentially wrong with the legislation?

Not that I can identify at this time, with the information which has been presented to me.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Jeffrey A. Bell.

Sincerely,


STEVE CLARK
Attorney General

SC/JB/pw