after their terms will be for six years commencing at noon on the first day of January, next succeeding their election. M.C.L.A. § 168.426j, M.S.A. 1969 Cum. Supp. § 6.1426(10).

District court judges were established by implementing legislation adopted pursuant to the constitutional mandate of Article VI, Section 26 of the Michigan Constitution, to replace justices of the peace and circuit court commissioners. The district courts, while not a court of record, are, nevertheless, part of the one court of justice existing in this state as specified by Article VI, Section 1. District court judges are, therefore, state officers. In multi-judge districts, judges were originally elected for a term of four, six or eight years. M.C.L.A. § 600.9926, M.S.A. 1969 Cum. Supp. § 27A.9926. Thereafter their term of office will be six years commencing at noon on the first day of January, next following their election. M.C.L.A. § 168.467i, M.S.A. 1969 Cum. Supp. § 6.1467(9).

Certain circuit judges were elected between 1964 and 1966 for a term of other than six years. However, their regular term thereafter will be six years in length commencing at noon on the first day of January, next following their election. Art. VI, Sec. 12, Mich. Const.; M.C.L.A. § 168.419, M.S.A. 1969 Cum. Supp. § 6.1419. In 1964 certain probate judges were elected for eight year terms. However, the length of their regular term thereafter will be six years commencing at twelve o'clock noon on the first day of January, next succeeding their election.

In view of such constitutional provisions and particularly Article 2, Section 5 legislation to implement the election of state judges would not presently be constitutional. Instead the constitution would first have to be amended to authorize the adoption of the required statutory amendments for that purpose. If desired this office will be glad to discuss the required amendments with either yourself or a member of the Legislative Service Bureau.

FRANK J. KELLEY,
Attorney General.

700305.1

MOTOR VEHICLES: Overweight vehicles.
CRIMINAL LAW: Scienter.

The owner or lessee of a motor vehicle operated on the state highways is subject to criminal penalties even though he personally had no actual knowledge of the violation where he authorizes another person to load and drive the vehicle.

No. 4678 March 5, 1970.

Hon. Willis F. Ward
Chairman
Michigan Public Service Commission
5th Floor, 7-Story Office Building
Lansing, Michigan 48913

You have requested the opinion of this office relative to certain amendments to Section 724(c), Act 300, P.A. 1949, as amended; M.S.A. 1969 Cum. Supp. § 9.2424. More specifically, you have asked:

1. Whether the necessary elements of a criminal act are now found within Section 724 in conjunction with Section 722, so that these sections may stand alone without reference to other sections of the act?

2. Whether knowledge of the owner is still a requirement to prosecute under Section 724?

3. Whether an owner can under any circumstances be held culpable after he has directed his driver not to overload?

In your letter, you discussed the recent history of this section of the Michigan vehicle code, including the court decisions in *People v. Brown Bros. Equipment Company, Inc.* (1966), 3 Mich. App. 618, affirmed (1967) 379 Mich. 363, and the legislative amendment passed in 1967 (of Section 724, Act 300, P.A. 1949), Public Act 277 of 1967, M.S.A. 1969 Cum Supp. § 9.2424; M.C.L.A. § 257.724.

Prior to this amendment, the form of the act in effect at the time of the *Brown Bros.* decisions was as follows:

> "(c) Any owner of any vehicle as defined in this act, or any lessee, who violates the provisions of section 722 is guilty of a misdemeanor . . ."

In the *Brown Bros.* case, supra, the Court of Appeals said that the act as written failed to:

> ". . . indicate the necessary elements of a crime, principally because the sections do not speak of an act, but rather of a condition." (p. 621).

Therefore the Court went on to say it was necessary to look at Sections 716 and 722 as well. In Section 716, the act provides:

> "(a) It is a misdemeanor for any person to drive or move or for the owner to cause or *knowingly* permit to be driven or moved on any highway any vehicle or vehicles of a size and weight exceeding the limitations stated in this chapter . . ." (Emphasis supplied)

Section 722 establishes the applicable weight limitations.

The Court of Appeals said that, by reading the three sections together, the requirement for *mens rea* or "scienter" is clearly obvious. The mere fact the word "knowingly" was left out of Section 724 does not alter that conclusion.

The Michigan Supreme Court affirmed the Court of Appeals on the ground that the Michigan vehicle code requires knowledge or scienter on the part of the owner or lessee of an overloaded vehicle to support the prosecution of such person. *Id.* 379 Mich. 363, 365. See also *People v. Ward* (1961), 364 Mich. 671.

Act 277, P.A. 1967, became effective November, 1967, three months after the Michigan Supreme Court decision in *Brown Bros.* There the legislature changed the language of Section 724 to read as follows:

> "(c) Any owner of any vehicle as defined in this act, or any lessee of the vehicle of an owner-operator, who causes or allows a vehicle to be loaded and driven or moved on any highway, when the

weight of that vehicle violates the provisions of section 722 is guilty of a misdemeanor . . ."

Section 724(c) now speaks of an act; that of causing or allowing an overloaded vehicle to be driven or moved on any highway. Also, by the express terms of the section, ignorance of the occurrence of the acts that caused the offense—overloading the vehicle—cannot constitute a defense. In order to complete the offense, an owner or lessee need only allow an overloaded vehicle to be driven or moved on a highway.

This conclusion is reenforced when Section 724(c) is compared to Section 724(d) and Section 724(f). Subsections (d) and (f) both condemn as a misdemeanor a *knowing* failure to stop a vehicle at, or bypasses, a weighing station or at the command of an authorized official for the purpose of weighing the vehicle.

In the case of *People v. Gould* (1926), 237 Mich. 156, the court said in its interpretation of a criminal statute (at page 163):

". . . It is an old and well recognized rule that, when omissions, defects, or imperfections in a previously existing law have been supplied or corrected in subsequent legislation, they should be liberally construed for the advancement of the remedy, and suppression of the mischief against which they are directed. . . ."

The legislature is deemed to have knowledge of the contents of other sections of a statute it enacts or amends. *People v. Buckley* (1942), 302 Mich. 12. Similarly, the legislature is deemed to have knowledge of the decision of courts of last resort regarding the interpretation of previously enacted statutes. Also, the legislature is presumed to have intended some object when it amends a statute. Its efforts cannot be assumed to have had no purpose. *Strong v. Daniels* (1855), 3 Mich. 466.

Thus, under clearly defined principles of statutory construction, the decision of the Michigan Supreme Court in *Brown Bros.*, supra, no longer can be considered the standard for prosecutions brought under the Michigan Highway Weight Act.

Recently, the Circuit Court for the county of Monroe, William J. Weipert, Jr., Judge, in the case of *State Highway Department v. Barkman,* Docket No. 13666, February 26, 1969, upheld the conviction of an owner for the operation of an overweight vehicle under the amended statute in question. The court held that:

"The question . . . is whether the applicable statute, as amended, continues to make scienter an element of the offense in an overloading case, as the statute was construed . . . prior to its amendment.

". . . a few months after the last decision, the statute was amended—clearly, in this Court's opinion, to block up this breach in the dike, the loophole whereby the purpose of the law was being circumvented. . .

". . . it would seem to this Court a short-sighted policy indeed that made only drivers responsible for the enormous damage overloading inflicts on our highways—drivers who may be fly by night or financially irresponsible—while the legislative eye is closed to the real damage—

feasors, the truck owners who profit by cutting corners. It is as if we are to blame ghetto conditions on the $40 per week maintenance man. Counsel for truck owners may be forgiven for having blind spots in this connection, but not courts and legislators.

"By dissecting the English language in rudimentary form of 'Words and Phrases' scholarship, defense counsel proves to his own satisfaction that the amendment serves no purpose. Presumably the Legislature had nothing else to do other than to change words for busy work."

In decisions from other jurisdictions, the Wisconsin Supreme Court in the case of *State v. Dried Milk Products Co-op.* (1962), 114 N.W. 2d 414, a case involving essentially the same factual situation as *Brown Bros.*, interpreted a Wisconsin statute which is very similar to the amended Michigan statute.

". . . The words of the sections, 'cause,' 'require,' 'permit,' while inherently carrying the requirement of some awareness, do not in the sections involved, imply more than an awareness of the vehicle operating on the highways pursuant to licenses and within the scope of the owner's or employer's business. If the vehicle had been stolen and driven by a thief, no liability would have attached to the defendant. But a corporation acts of necessity through its agents whose acts within the scope of the agent's authority are the acts of the corporation, both for the imposition of civil and criminal liability. . . ."

The Michigan statute, as amended, uses the words "causes or allows." The Wisconsin statute, 348.02(3) Stats., uses the words "causes or permits."

The Supreme Court of Maine, in another case involving the operation of an overweight vehicle on the state highways upheld a lower-court decision, defining the word "cause" in the following terms:

"One who engages in the business of hauling lumber *causes* the vehicle driven by his driver to be operated on the highway. The control of the vehicle had not been released by the respondent . . .

". . . if the respondent was the owner of the vehicle . . . and let the truck . . . for hire to another with the knowledge that lumber belonging to that other person was to be loaded and hauled over the highways of the State of Maine . . . , the owner of that vehicle, under those circumstances, had the responsibility of ascertaining that the truck was not overloaded . . ." (Emphasis supplied)

State v. Edgecomb (1956), 120 A. 2d 284, 286, 151 Me. 368.

The appellate division of the Circuit Court of Connecticut, in *State v. Salone* (1961), 174 A., 2d 803 (Conn.), interpreting yet another case involving owner liability for the violation of a highway weight statute, defined the word "allow" in a similar fashion:

"The defendant would have the court give a narrow and technical construction to one word taken out of context in the statute. 'The rule of strict construction does not require that the narrowest technical meaning be given to the words employed in a criminal statute, in disregard of their context and in frustration of the obvious legislative intent.' *United States v. Corbett,* 215 U.S. 233, 242, 30 S. Ct. 81,

> 84, 54 L. Ed. 173 . . . We cannot exalt technicalities above substance. We conclude the word 'allow' is effective to make defendant responsible, regardless of any knowledge on his part. . . ."

The decision in the *Salone* case was specifically approved in a later corollary case, *State v. Lesnewsky* (1963), 193 A. 2d 908 (Conn.) (cert. denied (1963) 197 A. 2d 933).

In California, the applicable statute reads:

> "It is a misdemeanor for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle . . . exceeding or otherwise failing to comply with the limitations or requirements stated in this division." West's Ann. Vehicle Code, § 690.

The California Court of Appeals in the case of *Rupley v. Winkler* (1957), 304 P. 2d 867, ruled that a specific criminal intent was not necessary to sustain an owner's conviction under the above statute. The court held that the only knowledge required on the part of the owner was that the vehicle was being operated on the highway, assigned to the work of the owner or his lessee. No specific criminal intent would be necessary.

To directly answer each of your three questions, it is the opinion of this office that:

1. The legislature, by its 1967 amendments, has included within Section 724, M.S.A. § 9.2424, in conjunction with Section 722, M.S.A. § 9.2422, the "necessary elements of a criminal act." Thus, on this basis, without reference to Section 716, M.S.A. § 9.2416, the proscribed acts of an owner or lessee, not the operator of the vehicle, have been sufficiently delineated.

2. On the basis of clearly defined rules of statutory construction, the legislature has obviated the need for an actual knowledge on the part of a vehicle owner or lessee. The protection of public health, safety and welfare may reasonably demand such laws and, under certain limitations, they are clearly constitutional as an exercise of police power. *People v. Roby* (1884), 52 Mich. 577; *People v. Hatinger* (1913), 174 Mich. 333.

3. Even in those situations where the driver has received general instructions regarding the loading of vehicles, which include a prohibition against overloading, the owner may still be liable for violations of the act. What is involved here is a statute designed to maintain and keep from destruction the public highways of this state. See the *Dried Milk Products* case, supra.

Thus, if the truck is loaded by the driver or other employees or agents of the owner or lessee, and this is done in exercise of the authority of that employee or agent, then the owner is still liable. If, however, the vehicle had been stolen and driven by a thief, there would be no liability on the part of the owner or lessee because in such a case the owner or lessee had not caused or allowed the vehicle to be driven on the highway.

FRANK J. KELLEY,
Attorney General.