

760930.3

MOTOR VEHICLES: Excessive or unusual noise and smoke.

CONSTITUTIONAL LAW: Vagueness and uncertainty.

The provision in the motor vehicle code which states that every motor vehicle, motorcycle, or motor-driven vehicle shall be equipped with a muffler in good working order to prevent excessive noise and smoke is valid.

Opinion No. 5100

September 30, 1976.

Mr. Edward G. McNamara, Jr.
Prosecuting Attorney
Mackinac County
404 Church Street
St. Ignace, Michigan 49781

You have requested my opinion as to whether 1949 PA 300, as amended by 1969 PA 134, § 707; MCLA 257.707; MSA 9.2407, is constitutional. That statute provides in relevant part as follows:

“(a) Every motor vehicle, including every motorcycle or motor driven cycle, shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall remove, destroy or damage any or all of the baffles contained in such muffler, nor shall any person use a muffler cutout, bypass or similar device upon a motorcycle or motor driven cycle on any highway or street.”

Substantially identical phraseology has been incorporated into the statutes of 42 jurisdictions. See Paul Sigal, *Constitutionality of the Auto Muffler Statutes: Comments on Noise Pollution Laws*, 48 *Journal of Urban Law*, 755, 761 (1971).

When subjected to constitutional attack, most courts have upheld their constitutionality. The general rule has been stated in *Public Regulation Requiring Mufflers or Similar Noise-Preventing Devices on Motor Vehicles, Aircraft or Boats*; 49 ALR2d 1202 as follows:

“The validity of a statute requiring motor vehicles to be equipped with mufflers in good working order to prevent any excessive or unusual noise, and prohibiting the modification of the exhaust system in a manner that increases or amplifies the sound of the motor, has been consistently upheld.”

A leading case in this area is *Smith v Peterson*, 131 Cal App 2d 241, 247-250; 280 P2d 522; 49 ALR2d 1194, (1955). The California statute considered in *Smith* includes language identical to that of the Michigan statute requiring a muffler adequate to prevent “any excessive or unusual noise.” The Court rejected the contention that the statute was unconstitutionally vague and uncertain; concluding in part as follows:

“In *Kovacs v Cooper*, 336 US 77, 69 S Ct 448, 449, 93 L Ed 513, 10 ALR2d 608, cited and discussed in *Haggerty v Associated Farmers of California, Inc.*, 44 Cal2d 60, 279 P2d 734, 735, the court upheld an ordinance which declared it unlawful for any person to use or

operate on the public streets any device which emits 'loud and raucous' noises. The objection centered around the use of the words 'loud and raucous.' The court said while these are abstract words, they have, through daily use, acquired a content that conveys to any interested person a sufficiently accurate concept of what is forbidden; that every motor vehicle, when in normal operation, necessarily makes some noise, makes some smoke, and permits gas or steam to escape to some extent; that they are in constant operation on our streets and highways; and even in the sparsely settled areas of state they are in constant operation in view of the citizens.

* * *

"... It appears to us that the requirement that a motor vehicle be equipped with a muffler in constant operation so as to prevent any excessive or unusual noise seems as certain as any rule which could be practically enforced. Motor vehicles have been used so long and have become so common, and mufflers so uniformly used to minimize the noise from their exhaust that what is usual has become a matter of common knowledge, and anything in excess of that is excessive and unusual, and usually capable of ascertainment as such. It may be that physicists have established definite standards of loudness of sound and means for measuring it, but this does not mean that such laboratory operations must be carried out by traffic officers on the highway where violators of this statute must be found and the evidence against them obtained.

* * *

"We conclude that the words 'excessive' or 'unusual' when viewed in the context in which they are used are sufficiently certain to inform persons of ordinary intelligence of the nature of the offense which is prohibited, and are therefore sufficient to establish a standard of conduct which is ascertainable by persons familiar with the operation of automobiles."

A similar muffler statute including language referring to "excessive and unusual noise" was upheld despite a claim that the statute was vague and uncertain and that it set no reasonable standard in *Department of Public Health v Buck*, 256, SW2d 642 (Tex Civ App, 1953) and in *Ex parte Trafton*, 160 Tex Crim 407, 271 SW2d 814 (1953), appeal dismissed 348 US 803, 75 S Ct 35; 99 L Ed 634 (1954).

It may also be noted that in *Dearborn Heights v Bellock*, 17 Mich App 163; 169 NW2d 347 (1969), the Court upheld an ordinance making it unlawful to "make or assist in making any noise by which the peace and good order of the city are disturbed" against the assertion that the ordinance was void for vagueness.

It is my opinion therefore that the statute, 1949 PA 300, as amended by 1969 PA 134, § 707, *supra* is valid.

FRANK J. KELLY,
Attorney General.