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**The Commonwealth of Massachusetts**

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DEPARTMENT OF THE ATTORNEY GENERAL  
JOHN W. McCORMACK STATE OFFICE BUILDING  
ONE ASHBURTON PLACE, BOSTON 02108, JANUARY 28, 1977

Speaker of the House of Representatives  
Clerk of the House of Representatives  
State House  
Boston, Massachusetts 02133

Dear Speaker McGee and Clerk:

On August 25, 1976, the House of Representatives issued House Order No. 5323 requesting the Attorney General to render an opinion relative to "the constitutionality of the establishment by the Department of Public Works of a diamond lane, so called, restricting the use of inside lanes of the Southeast Expressway to cars having four or more passengers." It is my opinion that such action would be constitutional.

The establishment of a diamond lane by the Department of Public Works, as regulation of highway use, is a permitted exercise of the state's police power. It has long been recognized that the police power of a state encompasses a broad authority to regulate the use of its highways. *See, e.g., Neu v. McCarthy*, 309 Mass. 17, 19 (1941), where the court stated:

The State, as the original and general sovereign, establishes and maintains the public ways and regulates their use. . . .

[G]eneral control remains in the State and may be exercised by it to secure safe and orderly use of the ways for the benefit of all persons and agencies. . . .

*Accord, Opinion of the Justices*, 297 Mass. 559, 563 (1937).

*See Bibb v. Navajo Freight Lines*, 359 U.S. 520, 523 (1969).

*Cf. Boston v. McCarthy*, 304 Mass. 18, 20-21 (1939) (regulatory power over sidewalks and public ways).

In view of this expansive regulatory authority over highway use, it is clear that the Commonwealth (or its agent, the Department of Public Works) may reasonably determine that the establishment of a

diamond lane would promote the public safety and convenience. Restriction of an inside lane of the highway to cars of four or more passengers may accomplish one or more of the following permissible legislative ends: provide an incentive for car pooling because of speedier access to, and egress from, the city of Boston; reduce the number of cars using the Southeast Expressway thereby effecting a more orderly flow of traffic; reduce accidents; lower air pollution; conserve fuel; reduce maintenance costs. The only remaining question is whether there exist "any countervailing interest[s] of constitutional dimensions", *Neu v. McCarthy, supra* at 19, which might nevertheless render establishment of such a lane unconstitutional.

I have concluded that there are no such interests. Clearly the presence of a diamond lane does not unreasonably interfere with a citizen's right to travel. *Cf. Shapiro v. Thompson, 394 U.S. 618, 629-631, (1969)*. It is also plain that the lane would not violate equal protection rights. In view of the many reasons (some of which are cited above) that can be given in support of the lane's establishment, regulation providing for the lane does not discriminate arbitrarily against any class of drivers or travelers. Nor could a diamond lane be considered an undue burden on interstate commerce. As the Supreme Court of the United States has stated:

The power of the State to regulate its highways is broad and pervasive. We have recognized the peculiarly local nature of this subject of safety, and have upheld state statutes applicable alike to interstate and intrastate commerce. *Bibb v. Navajo Freight Lines, supra* at 523.

No other constitutional rights or interests appear pertinent to the establishment of a diamond lane.

In summary, it is my opinion that establishment of a diamond lane represents a constitutional and valid exercise of the Commonwealth's police power to regulate the use of its highways.

Very truly yours,

FRANCIS X. BELLOTTI  
*Attorney General*