

OPINION NO. 79-035**Syllabus:**

1. The provisions of R.C. 5577.08, requiring the board of county commissioners to classify roads and make rules and regulations governing the weight and speed of vehicles weighing more than five tons on all improved roads within the county, except state highways, are mandatory.
2. The provisions of R.C. Chapter 5577 with regard to maximum weight, length, width, and height are applicable and enforceable as to vehicles traveling on any improved street, highway, bridge, or culvert within this state, irrespective of whether county commissioners have complied with R.C. 5577.08.

To: Donald L. Jones, Washington County Pros. Atty., Marietta, Ohio
By: William J. Brown, Attorney General, July 23, 1979

I have before me your request for my opinion regarding the following questions:

1. Are the provisions of R.C. 5577.08 with regard to the classification of improved roads by a board of county commissioners mandatory?
2. Are the provisions of R.C. Chapter 5577 respecting the permissible maximum weight and measures of vehicles applicable and enforceable as to roads under the jurisdiction of local authorities, where a board of county commissioners has not classified roads pursuant to R.C. 5577.08?

You have asked me to first determine whether the provisions of R.C. 5577.08 are mandatory with respect to the duty of county commissioners to classify improved roads as to permissible maximum weights and speeds thereon. R.C. 5577.08 provides:

The board of county commissioners shall classify the improved county and township roads and all other improved roads within their respective counties, except state highways, with reference to the *maximum weights and speeds permitted on such roads.*

The classifications made by the board under this section shall not apply to vehicles of a weight of five tons or less for vehicle and load.

In making the classification the board shall take into consideration the nature of the roadbed, construction, and any other factors which are material in the proper classification of such roads.

The board shall make rules and regulations governing the weight of vehicle and load and the speed permitted on the several classes of roads. (Emphasis added.)

Although I found no cases or opinions of this office which discuss the mandatory or permissive character of R.C. 5577.08, the use of the word "shall," as

is found throughout R.C. 5577.08, generally connotes the imposition of an imperative duty. State ex rel. Ewing v. Without A Stitch, 37 Ohio St. 2d 95 (1974). However, under certain circumstances, "shall" may be construed as being merely directory or permissive. Lakewood Homes, Inc. v. Board of Adjustment, 25 Ohio App. 2d 125 (1971).

Thus, in State ex rel. Smith v. Barnell, 109 Ohio St. 246, 255 (1924), it was stated that where the instructions of a statute are given merely with a view to the "proper, orderly, and prompt conduct of business," the provisions may be regarded as permissive. As such, matters in a statute which do not relate to the essence of the act, compliance with which is merely a matter of convenience, may be directory. Abate v. Pioneer Mutual Casualty Co., 22 Ohio St. 2d 161 (1970). See also, Singer Sewing Machine Co. v. Puckett, 176 Ohio St. 32 (1964). This exception to the general rule of mandatory construction is inapplicable to R.C. 5577.08, which relates to the essence of the act to be performed by the board of county commissioners, and is therefore substantive.

A statute may also be regarded as permissive where a mandatory interpretation would lead to absurd results, Lakewood Homes, Inc., *supra*, or would require the doing of a vain thing. Cf., 1937 Op. Att'y Gen. No. 136, p. 185 (word "shall" in G.C. 7351-1 [R.C. 5577.13] requiring sheriff to detail deputy and compensate him from county road fund is permissive where there is no road fund in existence). As a construction of R.C. 5577.08 imposing an imperative duty upon county commissioners would not lead to an absurd result, or require that which is impossible of performance, there are no overriding considerations which would mandate a permissive interpretation of its provisions.

Recent Ohio Supreme Court cases have firmly established the rule that the word "shall," when used in a statute, will be construed as being mandatory unless there appears a clear and unequivocal legislative intent that it receive a construction other than its ordinary meaning. State ex rel. Niles v. Bernard, 53 Ohio St. 2d 31 (1978); Malloy v. Westlake, 52 Ohio St. 2d 103 (1977); State v. Herbert, 49 Ohio St. 2d 88 (1976). The wording in R.C. Chapter 5577 reveals no manifest sense that the General Assembly intended that the use of the word "shall" therein should be given a meaning other than that which it is usually accorded. In fact, a mandatory construction of R.C. 5577.08 would further the statutory purpose of R.C. Chapter 5577 to prevent damage and destruction to public roads by the regulation of maximum permissible weights and speeds. See, Beuhrle v. Comms. of Mahoning County, 14 Ohio App. 334 (1921); 1928 Op. Att'y Gen. No. 1687, p. 334.

The reiteration of "shall" in R.C. 5577.08 and its companion provision, R.C. 5577.09, lends further support to this result, as the frequent repetition of the word "shall" is said to manifest a clear legislative intent that a statute's provisions are mandatory. Malloy v. Westlake, *supra*; Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102 (1971). Therefore, the provisions of R.C. 5577.08 requiring county commissioners to classify roads within their territory, and make rules and regulations regarding maximum weights and speeds thereon, are mandatory.

You have also asked me to comment on whether the statutes in R.C. Chapter 5577 with respect to maximum weights and measures (R.C. 5577.02 to R.C. 5577.06) are applicable and enforceable as to roads under the jurisdiction of a local authority in a situation where county commissioners have failed to comply with R.C. 5577.08.

R.C. 5577.02 to R.C. 5577.06 prescribe the maximum permissible length, width, height, and gross weights of vehicles. As evident from a reading of R.C. 5577.02 and R.C. 5577.05, these prohibitions are applicable to vehicles traveling on any improved public highway, street, bridge or culvert in this state. Furthermore, R.C. 5577.13 provides that county deputies shall be detailed to enforce the provisions of R.C. 5577.01 to R.C. 5577.14, and R.C. 5577.99 specifies the penalties for weight overloads and violations of any other provision of R.C. Chapter 5577.

As such, it is clear that the prohibitions of R.C. Chapter 5577 are applicable and enforceable regardless of whether or not the public way is under the

jurisdiction of a local authority or whether the county commissioners have made regulations governing vehicles weighing more than five tons pursuant to R.C. 5577.08. County commissioners are empowered to set speed and weight limits for vehicle and load on all roads within a county, to be determined on the basis of roadbed, construction, and similar factors. R.C. 5577.08. Other provisions of R.C. Chapter 5577 prescribe the maximum limits on weights and measures of vehicles on these roads. Although counties or municipalities may prescribe more stringent limits than those allowed in R.C. Chapter 5577, Beuhrle, supra, and Union Sand & Supply Co. v. Fairport, 172 Ohio St. 387 (1961), violations of the Chapter occurring on any road or highway in the state are punishable under R.C. 5577.99. Therefore, the failure of a board of county commissioners to classify roads and set weight or speed limits would in no way effect the enforceability of R.C. Chapter 5577.

Accordingly, it is my opinion, and you are advised, that:

1. The provisions of R.C. 5577.08, requiring the board of county commissioners to classify roads and make rules and regulations governing the weight and speed of vehicles weighing more than five tons on all improved roads within the county, except state highways, are mandatory.
2. The provisions of R.C. Chapter 5577 with regard to maximum weight, length, width, and height are applicable and enforceable as to vehicles traveling on any improved street, highway, bridge, or culvert within this state, irrespective of whether county commissioners have complied with R.C. 5577.08.