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MOTOR VEHICLES USED TO DELIVER NEWSPAPERS ARE NOT ALLOWED THE USE OF FLASHING RED LIGHTS—THIS TYPE OF SIGNAL IS USED ONLY ON EMERGENCY VEHICLES WITHIN THE MEANING OF DIVISION (D) OF §4511.01, REVISED CODE.

SYLLABUS:

1. Motor vehicles which are used to deliver newspapers in rural areas are not, in such use, within the exemptions of division (D) of Section 4513.17, Revised Code, and the use of flashing red lights on such vehicles is prohibited.

2. Only such vehicles of municipal or county departments or public utility corporations which are utilized in situations requiring immediate action for the protection of the public health, welfare or safety, and which are identified as emergency vehicles by law, by the director of highways or by local authorities may be considered "emergency vehicles" within the meaning of division (D) of Section 4511.01, Revised Code.

Columbus, Ohio, April 21, 1960

Hon. J. Grant Keys, Director
Department of Highway Safety, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"We respectfully request your opinion regarding the following matter which concerns Sections 4513.17 and 4513.17d of the Ohio Revised Code.

"A problem presents itself in that certain vehicles being used to make rural deliveries of newspapers are starting to be equipped with flashing red lights. It is a common practice in some areas for these vehicles to make similar stops as the rural mail carriers. As you know, the vehicles used in making rural mail deliveries are included in the exemptions from the provisions of Section 4513.17, paragraph 'D' and gain such permission from the provisions of Section 4513.181.

"We believe that it was not the legislative intent of paragraph 'D' of Section 4513.17 in using the language '*or in the presence of vehicular traffic hazard*' to make use of the flashing red lights on vehicles in non-emergency type use or situations, as a requirement or even permissive, even though the operation of paper deliveries was made in the same manner as mail deliveries which are covered by specific legislation.

"There is also the question as to whether or not the mentioned vehicles would fall within the category of the slow moving vehicles referred to in Section 4513.11. Do not believe that it would be correct to classify these vehicles as ones which normally travel or are used at speeds of less than twenty miles per hour." Section 4513.17, Revised Code, provides in part:

"* * *

"(D) Flashing lights are prohibited on motor vehicles, except as a means for indicating a right or a left turn, or in the presence of a vehicular traffic hazard requiring unusual care in approaching, or overtaking or passing. This prohibition does not apply to emergency vehicles, disabled vehicles, school buses, traffic line strippers, snow plows, rural mail delivery vehicles, state highway survey vehicles, funeral escort vehicles, and similar equipment operated by the department or local authorities, nor to vehicles or machinery required by section 4513.11 of the Revised Code to have a flashing red light."

I also have before me your letter of March 22, 1960, supplementing your original request for my opinion, which reads in part:

“Again referring to Section 4513.17d, second sentence, ‘This prohibition does not apply to emergency vehicles,’ etc. Section 4511.01d defines an emergency vehicle.

“We would now like to have your opinion as to just what constitutes an emergency vehicle as far as vehicles of public utilities, municipal and county departments are concerned. Can such operators equip and use all of their equipment as emergency vehicles?”

The lights to which you refer in your original request are evidently not turn indicators. Further, a careful consideration of division (D) of Section 4513.17, Revised Code, clearly indicates that a motor vehicle used for rural newspaper delivery is not by reason of its slow movement and numerous stops a “vehicular traffic hazard” within the purview of the section.

A “vehicular traffic hazard” obviously is a situation on the highways which necessitates a warning because of the need of unusual care in approaching, overtaking, or passing, such as approaching a disabled vehicle or some other hazard on the highway or similar circumstances. The legislature, in enacting Section 4513.17 (D), Revised Code, recognized the necessity of limiting the number of vehicles and situations in which a vehicle might exhibit a flashing red light in order that such a device might not lose its meaning. There are numerous other delivery vehicles which engage in similar activities and, had the legislature included all such delivery units within this statute, the use of the flashing red light would have lost its effectiveness.

Delivery vehicles such as you describe are used much the same as mail delivery vehicles on the highway. The mail vehicles stop and start constantly and generally move at slow speeds along their routes. The legislature obviously did not feel that such activity was a “vehicular traffic hazard” since it specifically excluded rural mail delivery vehicles in Section 4513.17 (D), Revised Code. This clearly lends weight to the proposition that the “vehicular traffic hazard” referred to in Section 4513.17 (D), Revised Code, does not include circumstances which necessitate slow movement and constant starting-and-stopping upon the highway. The legislature has listed the vehicles which may utilize a flashing red light and the list does not include newspaper delivery vehicles. I must conclude, therefore, that under Section 4513.17, *supra*, motor vehicles used to deliver newspapers along specified routes in rural areas are prohibited from using flashing red lights.

Section 4513.11, Revised Code, reads in part:

“* * *

“All farm machinery and animal-drawn vehicles or other machinery, including all road construction machinery, except when being used in actual construction and maintenance work in an area guarded by a flagman, or where flares are used, or when operating or traveling within the limits of a construction area designated by the director of highways, a city engineer, or the county engineer of the several counties, when such construction area is marked in accordance with the requirements of the director of highways and the manual of uniform traffic control devices, as set forth in section 4511.09 of the Revised Code, which normally travels or is normally used at a speed of less than twenty miles an hour shall display on the rear thereof a red flashing light which shall be visible from a distance of not less than five hundred feet to the rear during the time and under circumstances specified in section 4513.03 of the Revised Code. It shall be a light approved by the director of highway safety. When a double-faced light is used, it shall display amber light to the front and red light to the rear.”

The legislature, in specifying the type of vehicle covered by the above cited section, listed “farm machinery, animal-drawn vehicles, or other machinery, including all road construction machinery.” The list describes several types of equipment which are quite similar. A general rule of construction, *ejusdem generis*, requires that a general phrase be confined to the enumerated classes. The rule *ejusdem generis*, is defined in 37 Ohio Jurisprudence, 779, Statutes, Section 450, as follows:

“In accordance with what is commonly known as the rule of *ejusdem generis*, where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be construed as restricted by the particular designation and as including only things or persons of the same kind, class, or nature as those specifically enumerated, unless there is a clear manifestation of a contrary purpose. An explanation which has been given for the principle is that if the legislature had meant the general words to be applied without restriction it would have used only one compendious term. In accordance with the rule of *ejusdem generis*, such terms as ‘other,’ ‘other thing,’ ‘others,’ or ‘any other,’ when preceded by a specific enumeration, are commonly given a restricted meaning, and limited to articles of the same nature as those previously described.”

A slow moving automobile is not within the class of vehicles dealt with in Section 4513.11, Revised Code.

Accordingly, it is my opinion and you are advised that Section 4513.11, Revised Code, deals with farm machinery, animal-drawn vehicles, construction equipment, and devices of similar nature, but not slow moving motor vehicles even though such motor vehicles may normally travel at a speed of less than twenty miles per hour.

The problem posed in the supplement to your original request for my opinion requires a consideration of the definition of "emergency vehicle" as set forth in Section 4511.01 (D), Revised Code. Section 4511.01 (D) provides:

"'Emergency vehicle' means fire department, police, and state highway patrol vehicles, ambulances, vehicles of salvage corporations, organized under sections 1709.01 to 1709.07, inclusive, of the Revised Code, *emergency vehicles of municipal or county departments or public utility corporations when identified as such as required by law, the director of highways, or local authorities*, motor vehicles when commandeered by a police officer, and motor vehicles when used by volunteer firemen responding to emergency calls in the fire department service when identified as required by the director."

(Emphasis added)

The above cited section of the Revised Code sets forth two requirements before a vehicle of a municipal or county department or public utility corporation may be considered as an "emergency vehicle." The vehicle must be an "emergency vehicle" of the municipal or county department or public utility corporation and it must be identified as such as required by law by the director of highways, or by local authorities. A fire department, police or state highway patrol vehicle, an ambulance or a vehicle of a salvage corporation organized under sections 1709.01 to 1709.09, Revised Code, is automatically, by definition, an "emergency vehicle." In order to properly determine when a vehicle of a county or municipal department or public utility corporation is an "emergency vehicle" we must carefully consider the type of vehicles which are automatically designated as, "emergency vehicles" by this statute. It is a basic rule of statutory construction that ambiguous language may be resolved by considering the subject matter of the statute. 37 Ohio Jurisprudence 560, Statutes, Section 299. The vehicles which are designated as, "emergency vehicles" by this statute are obviously engaged in the protection of public health, welfare and safety. Therefore, it is obvious when we consider the vehicles owned by municipal or county departments or public utility corporations that only those which are involved with public health, welfare or

safety may be considered as "emergency vehicles." Webster's International Dictionary, 2nd Edition, defines an "emergency" as, "An unforeseen combination of circumstances which calls for immediate action." Therefore, a vehicle of a municipal or county department or public utility corporation must be utilized not only for the purposes of health, welfare or safety but in situations which call for immediate action. Therefore, it is quite obvious that the municipality, county or public utility corporation may not designate all of their vehicles, "emergency vehicles" since only those which are utilized for the purposes of servicing unforeseen action requiring the protection of the public health, welfare or safety may be considered "emergency vehicles" and then only when marked, as required by law, or by the director of highways or local authorities.

Therefore, in answer to your second question, it is my opinion and you are accordingly advised that only such vehicles of the municipal or county department or public utility corporation which are utilized to service situations which require immediate action for the protection of the public health, welfare or safety and are identified, as such, as required by law by the director of highways or by local authorities may be considered, "emergency vehicles," within the meaning of Section 4511.01 (D), Revised Code.

In conclusion, it is my opinion and you are advised:

1. Motor vehicles which are used to deliver newspapers in rural areas are not, in such use, within the exemptions of division (D) of Section 4513.17, Revised Code, and the use of flashing red lights on such vehicles is prohibited.

2. Only such vehicles of municipal or county departments or public utility corporations which are utilized in situations requiring immediate action for the protection of the public health, welfare or safety, and which are identified as emergency vehicles by law, by the director of highways or by local authorities may be considered "emergency vehicles" within the meaning of division (D) of Section 4511.01, Revised Code.

Respectfully,

MARK MCELROY

Attorney General