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“DRAG RACING”—*PRIMA FACIE* EVIDENCE, WHEN—§4511.251 (A)

SYLLABUS:

1. Under division (A) of Section 4511.251, Revised Code, drivers of motor vehicles competing over a common course from point to point need not operate such vehicles at speeds in excess of *prima facie* lawful speeds in order to violate said section, but a violation of such section would occur if the competition among the vehicles involved competitive accelerations or speeds as the predominant element of the competition; and operation of the competing vehicles at speeds in excess of the *prima facie* lawful speed could be used as evidence that competitive accelerations or speeds were a predominant element of such competition.

2. Operation of two or more vehicles side by side on an open highway at speeds in excess of *prima facie* lawful speeds constitutes *prima facie* evidence of a violation of division (A) of Section 4511.251, Revised Code, and such *prima facie* evidence need not include operation from a common starting point to a common finishing point over a prescribed course.

Columbus, Ohio, March 9, 1960

Hon. Scott B. Radcliffe, Superintendent, State Highway Patrol
Columbus, Ohio

Dear Sir:

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

“We respectfully request your opinion regarding the following matter which concerns Section 4511.251A of the Ohio Revised Code as the result of recent legislative action on Senate Bill No. 427, Subject—Drag Racing.

“1. Do the participants as described in the first sentence, who have set up a course and/or are racing over a common course from point to point, have to violate the *prima facie* limits?

“2. In the last sentence of the same section, first paragraph—Do the two vehicles travelling side by side in excess of the *prima facie* limits have to be operating from a common starting and finishing point over a course as described, or could this include persons who engage in a race on open highway and travel side by side in excess of the *prima facie* limits?”

Section 4511.251, Revised Code, to which you refer in your requests, reads as follows:

“(A) Drag racing is defined as the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance each other or the operation of one or more vehicles over a common selected course, from the same point to the same point, wherein timing is made of the participating vehicles involving competitive accelerations or speeds. Persons rendering assistance in any manner to such competitive use of vehicles shall be equally charged as the participants. The operation of two or more vehicles side by side either at speeds in excess of *prima facie* lawful speeds established by divisions (A) to (G), inclusive, of section 4511.21 of the Revised Code or rapidly accelerating from a common starting point to a speed in excess of such *prima facie* lawful speeds shall be *prima facie* evidence of drag racing.

“(B) No person shall participate in a drag race as defined in division (A) of this section upon any public road, street, or highway in this state.”

This statute is new legislation in this state and there have been found no reported cases construing it. In view of this absence of case authority, therefore, the meaning of this statute must be gleaned strictly from an analysis of its provisions.

Your first question asks whether the participants described in the first sentence of Section 4511.251 (A), Revised Code, who have set up a course and/or are racing over a common course from point to point must violate the *prima facie* speed limits in order to violate such section. It is important to note that this part of the definition of drag racing must involve timing of the participating vehicles and must involve competitive

accelerations of speeds. It would seem that the gravamen of this offense is the increased danger to persons and property in the vicinity resulting from the rapid acceleration and high speeds which may be involved in such competitions. This definition of drag racing does not expressly include the element of operating at speeds in excess of the *prima facie* lawful limits. While the statement in the same statute as to what shall constitute *prima facie* evidence of drag racing does include operation at speeds in excess of the *prima facie* lawful speeds provided by Section 4511.21, Revised Code, it does not necessarily follow that this is an indispensable element of the offense of drag racing. Just as operation of a motor vehicle at less than the *prima facie* lawful speeds may, under certain conditions of weather or traffic, be operation at an unreasonable and hence unlawful speed, certain types of competitive operation may be in violation of the drag racing statute even though the participating vehicles do not in fact exceed the *prima facie* lawful speed limits. It should be noted once again, however, that one of the essential elements of this offense is that the participating vehicles must make use of competitive accelerations or speeds. It may well be presumed that if a single vehicle operates over a selected course, from one point to another point, in a timed competition with other vehicles which operate over the same course at a later time, and if the course is sufficiently long, no significant use would be made of competitive accelerations or speeds but the competitive effort would depend primarily on driving ability and foresight. This presumption is, of course, dependent on the operation of the competing vehicles at speeds not exceeding the *prima facie* lawful speeds. If the vehicles do in fact operate at speeds in excess of *prima facie* lawful speeds, competitive accelerations or speeds would be presumed to be a part of the competitive effort.

Turning to your second question as to whether the last sentence of Section 4511.251 (A), Revised Code, requires the two vehicles to be operating from a common starting and finishing point over a described course or is also applicable to two vehicles racing side by side in excess of *prima facie* speed limits, it should be noted that this sentence merely supplies the standard for *prima facie* evidence of a violation of this statute. Any reasonable interpretation of the sentence with which you are concerned must conclude that *either* the operation of two or more vehicles side by side at speeds in excess of *prima facie* lawful speeds *or* the racing of two vehicles from a common starting point at rapidly accelerating speeds which reach speeds in excess of *prima facie* lawful speeds may be

considered *prima facie* evidence of drag racing. Thus, it is not necessary in order to establish a *prima facie* violation of this section to prove that the two racing vehicles started from a common point, but operation of the vehicles side by side at speeds in excess of *prima facie* lawful speeds may suffice.

In specific answer to your questions, therefore, it is my opinion and you are accordingly advised:

1. Under division (A) of Section 4511.251, Revised Code, drivers of motor vehicles competing over a common course from point to point need not operate such vehicles at speeds in excess of *prima facie* lawful speeds in order to violate said section, but a violation of such section would occur if the competition among the vehicles involved competitive accelerations or speeds as the predominant element of the competition; and operation of the competing vehicles at speeds in excess of the *prima facie* lawful speed could be used as evidence that competitive accelerations or speeds were a predominant element of such competition.

2. Operation of two or more vehicles side by side on an open highway at speeds in excess of *prima facie* lawful speeds constitutes *prima facie* evidence of a violation of division (A) of Section 4511.251, Revised Code, and such *prima facie* evidence need not include operation from a common starting point to a common finishing point over a prescribed course.

Respectfully,

MARK McELROY
Attorney General