

issue was approved by this office in an opinion rendered to your board under date of July 26, 1933, being Opinion No. 1166.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1875.

MOTOR VEHICLE—LICENSE TO OPERATE—MINOR—EXAMINATION—DRIVERS' LICENSE LAW—MUNICIPALITY OR VILLAGE MAY NOT ENACT ORDINANCE IN CONFLICT WITH STATE LAW.

SYLLABUS:

The state law providing that a state license to operate a motor vehicle may only be issued to a minor under eighteen years of age after having passed an examination, a municipality may not exact an ordinance, the provisions of which attempt to fix a minimum age requirement before a person may legally operate a motor vehicle upon the streets of the municipality.

COLUMBUS, OHIO, February 4, 1938.

Hon. Virgil E. Johnson, Prosecuting Attorney, Zanesville, Ohio.

DEAR SIR: This is to acknowledge receipt of your recent communication wherein you request my opinion as follows:

“Section 6296-1 and the rest of that section of the General Code of Ohio which is the Driver's License Law does not fix the age limit of an applicant for a driver's license.

I would appreciate your opinion on the following question:

Can city or village councils fix the age limits, in their respective municipalities under the present Driver's License Law, of applicants for driver's licenses?”

Sections 6296-1 to 6296-38, both inclusive, of the General Code, comprise what is known as the Driver's License Law of Ohio. With respect to driver's or operator's license, a reading of the entire act fails

to disclose any minimum age requirement. The only provision relating to age limitation for driver's or operator's license is that contained in Section 6296-10 of the General Code, which provides as follows:

"The registrar shall not grant the application of any minor for an operator's license unless such application is signed by the father of the applicant, if the father is living and has custody of the applicant, otherwise by the mother, guardian, or other person having the custody of such minor."

Paragraph (c) of Section 6296-11 of the General Code, prohibits the issuance of a driver's or operator's license to a minor under eighteen years of age without an examination. Section 6296-26 of the General Code, makes it unlawful for any person to cause or knowingly permit any minor under the age of eighteen years to drive a motor vehicle upon the highways unless such minor has first obtained a license or permit to so drive a motor vehicle under the provisions of the Act.

However, as stated before, there is no condition precedent set forth in the Act that a person must have attained a certain age before being able to procure a driver's or operator's license. Because of this privilege and because of the absence of any minimum age requirement, it is my opinion that the Registrar would have no authority or right to deny an application for a state driver's or operator's license to a person on the sole ground that such person has not attained a certain age even though the applicant resides in a municipality wherein an ordinance requires the attainment of a certain age before a person can operate a motor vehicle upon the streets of that particular municipality.

However, underlying the question you propound, and the fundamental question you evidently have in mind and on which you desire my opinion, is whether or not a village council can enact a valid ordinance fixing a reasonable minimum age requirement before a person may legally operate a motor vehicle on the streets of the particular municipality in view of the provisions of the present State Driver's License Law. This question involves a consideration of the powers of local self-government and in respect thereto your attention is directed to the provisions of Sections 3 and 7 of Article XVIII of the Constitution of Ohio, which read as follows:

Section 3.

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

Section 7.

“Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of Section 3 of this article, exercise thereunder all powers of local self-government.”

In the case of *Wilson vs. City of Zanesville*, 130, O. S. 286, it was held in the first and second branches of the syllabus as follows:

“1. By the terms of Sections 3 and 7 of Article XVIII of the Constitution of Ohio, municipalities have power and authority to pass local police, sanitary and other similar regulations, provided they are not in conflict with general laws.

2. Regulations which are reasonable and have a definite relation to the public health, morals and safety, or to the general welfare, constitute a valid exercise of the police power.”

It is also stated at page 288:

“* * * under the prevailing constitutional provisions all municipalities derive their power of local self-government and their local police power from the Constitution itself. *Village of Perrysburg vs. Ridgway*, 108 Ohio St., 245, 140 N. E., 595; *Village of Struthers vs. Sokol*, 108 Ohio St., 263, 140 N. E., 519.”

A city or village ordinance fixing a reasonable minimum age requirement before a person may operate a motor vehicle on the streets of the particular municipality is without doubt an exercise of the police powers for the safety and well being of the inhabitants of said municipality. However, it becomes necessary in the determination of the question here considered, to ascertain whether the enactment of such an ordinance is in conflict with general laws. The test laid down in the case of *Village of Struthers vs. Sokol*, 108 O. S. 263, and followed in subsequent cases, is well stated in the second and third branches of the syllabus:

“2. In determining whether an ordinance is in ‘conflict’ with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.

“3. A police ordinance is not in conflict with a general law upon the same subject merely because certain specific acts are

declared unlawful by the ordinance, which acts are not referred to in the general law, or because certain specific acts are omitted in the ordinance but referred to in the general law, or because different penalties are provided for the same acts, even though greater penalties are imposed by the municipal ordinance.”

It is also stated in the course of the opinion of the case of *Schneiderman vs. Secanstein*, 121 O. S. 80, at pages 85 and 86:

“In determining whether the provisions of the ordinance in question conflict with the general law covering the same subject, a proper test may be applied by the inquiry: Does the ordinance prohibit an act which the statute permits, or permit an act which the statute prohibits? *Village of Struthers vs. Sokol, supra.*”

A short review of the two fairly recent cases in Ohio will show the application of the test laid down in the Sokol case, *supra*, and will serve to shed light on the specific question at hand. In the Schneiderman case, *supra*, the statement of facts discloses that the city of Akron passed a speed ordinance with relation to the operation of motor vehicles on the streets of the municipality within certain specified distances of schools or public playgrounds. In this case the Supreme Court had under consideration the provisions of Sections 12603, 12603-1 and 12608, General Code. Section 12603 of the General Code provides that it is illegal to operate a motor vehicle upon the public roads and highways at a speed greater than is reasonable and proper, having due regard to the traffic, surface and width of such road or highway, Section 12603-1 makes it a misdemeanor to operate a motor vehicle on the public roads or highways without due regard for the safety and rights of pedestrians, drivers and occupants of all other vehicles in the lawful use of such roads and highways. Section 12608, General Code, provides:

“The provisions of Section 12603 shall not be diminished, restricted or prohibited by an ordinance, rule or regulation of a municipality or other public authority.”

In the second branch of the syllabus of the Schneiderman case, *supra*, because of the express limitation placed on the powers of municipalities to diminish, restrict or prohibit the provisions of Section 12603 of the General Code, as contained in Section 12608, *supra*, it was held:

“The provision of an ordinance of a municipality which makes unlawful a rate of speed fifteen miles per hour, regardless of whether such speed is greater than reasonable and proper, considering the width, traffic, use and the general and usual rules of such road or highway, is in conflict with Section 12603, General Code, and therefore invalid.”

The powers of a municipality to pass general police regulations and the general test to be applied in determining whether such regulations conflict with general laws is stated at pages 82 and 83:

“The claimed invalidity of the ordinance in question is based upon its conflict with general law. It is a police regulation, such as municipalities are authorized to adopt and enforce under authority of Section 3, Article XVIII, of the Constitution of the state. The police power thus conferred by the Constitution cannot be denied municipalities by statute, but that power is restricted, in that such ‘local police, sanitary and other similar regulations’ must not be ‘in conflict with general laws.’ Thus the legislative branch of the state government enacts laws to safeguard the peace, health, morals, and safety, and to protect the property of the people of the state, and these are the general laws referred to. They apply to all parts of the state alike. Municipalities may adopt and enforce local regulations covering the same subject so long and so far as the same are not in conflict with general laws. That was clearly determined in *City of Fremont vs. Keating*, 96 Ohio St., 468, 118 N. E., 114.”

A statement of the pertinent facts in the Zanesville case, *supra*, discloses that the city of Zanesville enacted an ordinance which prohibited the opening of barber shops before eight A. M. and after six P. M. on Monday, Tuesday, Wednesday and Friday, before eight A. M. and after twelve o'clock noon on Thursday and before eight A. M. and after eight P. M. on Saturday and days (other than Sunday) prior to certain named holidays. Prior to the enactment of this ordinance, the General Assembly had enacted a comprehensive State Barber Law (Sections 1081-1 to 1081-27, both inclusive of the General Code). It was held in this case that the ordinance was a valid exercise of the police power and not in conflict with the provisions of the State Barber Law. At page 289, it was stated:

“The Legislature of this state has passed a regulatory measure relating to barbers. Sections 1081-1 to 1081-27, General Code. This act, however, does not purport to cover hours of labor by barbers or the number of hours in a day or week barber shops may be kept open. This latter field has therefore not been preempted by the state law-making body and the provisions under consideration are not in conflict with general laws.”

From a review of the cases heretofore cited, it is well-settled as a general rule that municipalities having express power to regulate the use of streets (Section 3714, General Code), may enact ordinances for the government of motor vehicles within the municipalities as long as they are not in conflict with or repugnant to legislative enactments governing the use of such vehicles. Thus, it becomes necessary in determining the question here considered to apply the test laid down in the Schneiderman case, namely, whether an ordinance, the provisions of which stipulate a minimum age requirement before a person may operate a motor vehicle upon the streets of the municipality, prohibits an act which the statute permits or permits an act which the statute prohibits.

At the outset of this opinion, it was stated that there is no condition precedent set forth in the said driver's license law that a person must have attained a certain age before being able to procure a driver's or operator's license; nevertheless under the provisions of paragraph (c) of Section 6296-11, General Code, it is not permissible for the Registrar to issue a driver's or operator's license to a minor under eighteen years of age without examination. Consequently, it is apparent that the state by reason of the enactment of paragraph (c) of Section 6296-11, *supra*, has preempted the field insofar as regulating the operation of motor vehicles by minors under eighteen years of age is concerned. The issuance of a state driver's license or operator's license to a minor under eighteen years of age pursuant to an examination, constitutes a certification or a finding by the state that such minor who passed the examination is capable and qualified to operate a motor vehicle in a reasonably safe manner. Thus it is obvious that an ordinance, the provisions of which decree that such a minor is not so capable of operating a motor vehicle, would be in direct conflict with the general law and therefore invalid.

It is therefore my opinion, in specific answer to your question, that a city or village may not in the exercise of its police power enact an ordinance, the provisions of which attempt to fix a minimum age require-

ment before a person may legally operate a motor vehicle upon the streets of the municipality.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1876.

APPROVAL—BONDS CITY OF TOLEDO, LUCAS COUNTY,
OHIO, \$2,000.00, PART OF ISSUE DATED MARCH 1, 1927.

COLUMBUS, OHIO, February 4, 1938.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of City of Toledo, Lucas County, Ohio,
\$2,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated March 1, 1927. The transcript relative to this issue was approved by this office in an opinion rendered to the Teachers Retirement System under date of June 11, 1935, being Opinion No. 4331.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1877.

APPROVAL—BONDS VILLAGE BELPRE, WASHINGTON
COUNTY, OHIO, \$29,000.00, DATED JANUARY 15, 1938.

COLUMBUS, OHIO, February 4, 1938.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of Village of Belpre, Washington County,
Ohio, \$29,000.00.