

2327

PIPE—TRUCK AND LOAD LIMITATIONS—SECTION 7248-2  
G. C. EXCEPTS FROM HEIGHT, WIDTH AND LENGTH,  
TRUCK AND LOAD LIMITATIONS—EVERY PIPE, ONE OR  
MORE OF DIMENSIONS OF WHICH MAKE IMPOSSIBLE  
TRANSPORTATION WITHIN LIMITATIONS OVER HIGH-  
WAYS AND STREETS IN STATE—STATUTE EXCEPTS FROM  
LIMITATIONS NO PIPE ONE OR MORE OF DIMENSIONS OF  
WHICH DO NOT MAKE IMPOSSIBLE ITS TRANSPORTATION  
WITHIN LIMITATIONS OVER HIGHWAYS AND STREETS.

## SYLLABUS:

Section 7248-2 of the General Code of Ohio excepts from the height, width and length truck and load limitations prescribed therein every pipe, one or more of the dimensions of which make impossible its transportation within such limitations over the highways and streets in the state; such statute excepts from such limitations no pipe one or more of the dimensions of which do not make impossible its transportation within such limitations over said highways and streets.

Columbus, Ohio, September 27, 1950

Colonel George Mingle, Superintendent, Ohio State Highway Patrol  
Columbus, Ohio

Dear Sir:

I have your request for my opinion relative to the interpretation of Section 7248-2 of the General Code, dealing with maximum width, height and length of vehicles with particular reference to the provision included

in said section relative to the transportation of pipes. Specifically, your letter is as follows:

“We respectfully request an interpretation relative to Section 7248-2 of the General Code which deals with maximum width, height and length of vehicles.

You will note from the contents of this section of law that there are certain exceptions such as fire engines, fire trucks, or other vehicles or apparatus belonging to any municipality or to any municipal volunteer fire department or salvage company organized under the laws of Ohio or used by such department or company in the discharge of its functions; nor shall this section apply to vehicles engaged in the transportation of poles to or from the place of installation from or to the nearest practicable loading place, when required for public utility or service facilities or properties, nor to the transportation of pipes or well drilling equipment.

The question concerning us is the definition and general interpretation of pipe.

For general clarification I am attaching herewith exhibits showing the problem at hand. If, according to your interpretation, the concrete pipe shown in the attached exhibit comes within the category of pipe no permit will be necessary for operators transporting this type of load.”

Such statute, Section 7248-2 of the General Code, so prescribing maximum vehicle and load dimensions, reads as follows:

“No vehicle shall be operated upon the public highways and streets, bridges and culverts within the state, whose width is greater than ninety-six inches, including load, except motor vehicles of the passenger bus type, operated exclusively within municipalities, whose width shall not exceed one hundred and four inches, and except traction engines whose width shall not exceed one hundred and thirty-two inches, and no vehicle unladen or with load shall be operated on such highways, streets, bridges and culverts of a greater height than twelve feet six inches, except that in loaded height motor vehicles designed to transport other motor vehicles shall not exceed thirteen feet six inches when loaded, or of a greater length than thirty-five feet, except motor vehicles of the passenger bus type, operated exclusively within municipalities, whose length shall not exceed forty-eight feet, nor shall any commercial tractor and semi-trailer be operated in combination of a greater length than forty-five feet, including load, and no other combination of vehicles coupled together shall be so operated whose total length, including load, shall be greater than sixty feet; provided, that in special cases vehicles whose dimensions exceed the foregoing may operate under a written permit granted as provided by law.

Provided, that this section shall not apply to fire engines, fire trucks, or other vehicles or apparatus belonging to any municipality or to any municipal volunteer fire department or salvage company organized under the laws of Ohio or used by such department or company in the discharge of its functions; nor shall this section apply to vehicles engaged in the transportation of poles to or from the place of installation from or to the nearest practicable loading place, when required for public utility or service facilities or properties, nor to the transportation of pipes or well drilling equipment. Provided further, that nothing herein contained shall be construed to require the state, a municipality, county, township, or any railroad or other private corporation to provide sufficient vertical clearance to permit the operation of such vehicle, or make any changes in or about existing structures now crossing streets, roads and other public thoroughfares in the state of Ohio."

The photographs, which you attached to your letter as exhibits, depict a truck of apparently legal length and width loaded with concrete pipes approximately four feet in length and one foot in diameter, on one end of each of which is a flange of sufficiently greater diameter, to enclose the plain end of a similar pipe for coupling. The pictures disclose that the pipes are loaded crosswise on the truck in pairs and tiers, the lower tier having the plain ends of each pair butted together or nearly butted together near the center of the truck and the flanged ends slightly extending over the edges of the truck; the middle tier having the flanged ends of the pipes so butted and the plain ends extending outward; and the upper tier like the lower tier having the plain ends butted and the flanged ends so extending outward. The pictures disclose that the overall width of the load is approximately 8 feet 10 inches; or 10 inches in excess of the maximum width prescribed by the statute.

You state that the question concerning you is the definition and general interpretation of "pipe"; and that if according to the requested interpretation the concrete pipe shown in your exhibit comes within the category of "pipe", no permit will be necessary for operators transporting this type of load. I infer that you wish to know:

1. Generally, whether any and all articles in transport, falling within the category of "pipe", regardless of dimension are, when loaded, excepted or exempted from the height, width and length limitations imposed by the statute; and
2. Specifically, whether concrete pipes of the approximate dimensions indicated may be so loaded as to exceed the maximum width limitation imposed by the statute, and thus

transported over the highways without a permit for such transportation being first obtained.

It is to be observed that the reference in the statute to pipes is in the form of a proviso. Specifically, that provision of the statute is as follows:

“Provided that this section shall not apply \* \* \* to the transportation of pipes \* \* \*.”

Provisos included in statutes are to be interpreted in the light of the intention of the legislature as expressed in the act. They are to be interpreted in the light of the context of the statute in which they are found, as well as the spirit and purpose of the law. Common terms included therein are not to be interpreted in a purely technical sense:

“In the interpretation of a proviso, as in the interpretation of any other part of a statute, the controlling factor is the intention of the legislature as expressed in the act. Aid in determining the meaning of the language used in the proviso to express the legislative intent may be derived from the context of the statute in which it is found, as well as from the spirit and purpose of the law. Common terms found in a proviso are not to be interpreted in a purely technical sense.”

37 O. Jur., Page 786, Section 457.

The act in which the proviso under consideration is included and in the light of which the meaning of such proviso must be determined is a police measure enacted for the safety of the traveling public. For such purpose it provides limitations upon the height, width and length of vehicles including loads using vehicular thoroughfares in the state whether inside or outside of municipalities. The proviso under consideration is one of several included in the statute. In legal effect all of them are exceptions from the operation of the regulatory measure; and they are to be interpreted according to the rules governing the interpretation of exceptions.

Exceptions to the operation of laws, whether statutory or constitutional, are not favored in law. They should be strictly construed:

“I. Exceptions to the operation of laws, whether statutory or constitutional, should receive strict, but reasonable construction.”

State ex rel. v. Forney, 108 O. S., 463.

“The rule is well and wisely settled that exceptions to a general law must be strictly construed. They are not favored in law, and the presumption is that what is not clearly excluded from the

operation of the law is clearly included in the operation of the law.”

Per Wanamaker, J.

State ex rel. v. Forney, supra, Page 467.

The proviso under consideration which according to the rule cited, must so be construed in the light of the context of the statute of which it is a part, and which being an exception from the operation of a law must so be strictly construed, does not expressly provide that “all” pipes are so excepted; nor is there an express designation of the type, dimension or other attribute of the pipes so excepted. Since there is no express indication that either all or if less than all, which pipes are so to be excepted, the determination of such matters must be made in accordance with such rules of interpretation.

Construing the exception strictly and in the light of the context of the entire statute, it would be unreasonable to believe that the legislature intended to exclude from this regulatory measure musical instruments falling within the pipe category, organ pipes, smoking pipes, stove pipes or other similar articles included in the lexicographical definition of “pipe”. The very evident purpose and intent of the legislature was to safeguard the traveling public by so limiting truck and loads. There is no conceivable reason why any of the articles mentioned should be excepted from the operation of the statute. To so except articles for no conceivable reason would be arbitrary and discriminatory and for that reason an interpretation which would except such articles must be rejected:

“A classification must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.”

8 O. Jur., Page 637, Section 494.

Such enlarged interpretation so to include the articles mentioned in particular and any and all pipe or pipes in general would render the provision under consideration inconsistent with the statute generally; and for that reason should not be adopted; because the very evident purpose of the statute is to safeguard the public by limiting vehicular and load dimensions and the exclusion from such limitations of articles for exclusion of which there is no conceivable need would be inconsistent, almost a contradiction.

“Consistency in statutes is of prime importance, and it is the duty of the court to attempt to harmonize and reconcile laws. \* \* \* Moreover a construction of a statute which destroys the consistency thereof is to be avoided. The statute should, if possible, be so construed that its different parts are in harmony so as to render it a consistent and harmonious whole in subserviency to a common policy. These rules are based upon the presumption, or inference, that the legislature intended to be consistent and harmonious in the making of laws.”

37 O. Jur., Pages 620, 622 and 623, Section 342.

It is apparent thus that the exception under consideration may not be interpreted to include the articles mentioned. But there is no more reason why the exception should be interpreted to include any other kind of a pipe, whose dimensions do not exceed the prescribed dimensions for truck and load. Whether a pipe be made of concrete, crockery, iron or steel and whether it be designed for the conduction of oil, gas, water or sewage, if its dimensions do not exceed the allowable dimensions, its exception from the operation of this safety statute would be no less unreasonable, arbitrary, discriminatory and inconsistent. And the excepting provision under consideration must be interpreted not to include them.

Since the exception under consideration thus does not expressly provide that all pipes are to be excepted and does not expressly specify the type of pipe or pipes which are to be excepted, or the dimension thereof, and since no pipe may be excepted whose dimensions do not exceed allowable load limitations, it must follow that it was the legislative intent that pipes, including every article within the pipe category, whose dimensions do exceed such limitations are excepted; and that pipes, and every article within the pipe category, whose dimensions do not exceed limitations, are not excepted.

To so except pipes whose dimensions exceed allowable limitations is a reasonable, not an arbitrary or discriminatory classification. To so interpret the exception is a strict but reasonable interpretation such as the Supreme Court in the case of *State ex rel. v. Forney*, supra, indicated ought to be given.

It harmonizes and is consistent with the purpose which the statute is designed to accomplish and is so in accord with the rule cited above requiring such harmony and consistency. And it does not violate or detract from the literal meaning of the word “pipes” in the statute since there is no expression therein to the effect that “all” pipes are excepted.

It is my opinion, therefore, that :

1. Generally, every article in transport falling within the category of "pipe", the dimensions of which makes impossible its transportation over the highways and streets in the state within the height, width and length truck and load limitations prescribed by Section 7248-2 of the General Code of Ohio, is excepted from the limitations imposed by such statute; and no article in such category whose dimensions do not make such transportation impossible is excepted from such limitations; and

2. Specifically, concrete pipes approximately four feet in length and one foot in diameter may not be so loaded as to exceed the maximum width limitation imposed by said statute and so transported over the highways without a permit for such transportation being first obtained.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.