

It is apparent that the provisions of Section 13441, *supra*, relating to the procedure incident to the prosecution of criminal cases in the probate court are inconsistent with the later provisions of Section 6212-18, *supra*. They are in conflict with one another in their respective provisions relating to the necessity of the prosecuting attorney to file an information in such court in this class of criminal cases. Therefore, under the express provisions of the later act of 1920, Section 13441, *supra*, is repealed to the extent of such inconsistency in so far as it relates to the procedure incident to the prosecution of such cases in the probate court.

In view of the foregoing and answering your question specifically, it is my opinion that by the terms of Section 6212-18, General Code, it is unnecessary that any information be first filed by the prosecuting attorney in order to vest jurisdiction in a probate court to hear and determine prosecutions involving violations of the prohibition laws. I concur in the conclusion reached by you in this regard.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2600.

VEHICLE—DEFINITION OF—DISCUSSION OF VEHICLES IN EXCESS OF
TWELVE TONS BEING ALLOWED ON HIGHWAYS—PROSECUTION.

SYLLABUS:

A machine, such as a steam shovel, which is run upon caterpillar tracks or a band containing cleats, is not a vehicle run upon rails or tracks within the meaning of Section 7246, General Code. A person operating a vehicle of the caterpillar type over a public highway, without the consent of the County Surveyor, in the case of county roads, or the Director of Highways, in the case of state highways, in excess of a total weight of twelve tons, including weight of vehicle and load, may be prosecuted under the provisions of Section 13421-17, General Code, for violation of the provisions of Sections 7246 to 7250, inclusive, General Code.

COLUMBUS, OHIO, September 21, 1928.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as follows:

“A large steam shovel weighing twenty tons has been moved on our State Highway No. 11 in this County, by The Royal Sand and Clay Products Company, from one of its plants to another, a distance of a mile, more or less. Same is equipped with a caterpillar track twenty-four inches wide, the whole band or track being fourteen feet in length, the cross sections or cleats being about four inches wide.

Section 7246, General Code of Ohio, fixes the maximum weight not in excess of twelve tons permitted on public highway or street, but has a provision as to when same is not applicable, in this language:

‘This provision shall not apply to vehicles run upon *rails or tracks*’, etc.
(Italics the writer’s.)

It seems that the Superintendent of Maintenance of Highways in this County has been complained to and requested to bring action against the company for violation of this section of the law, and he has applied to me as to the advisability of so doing.

The question is: Does the exception or proviso, 'upon rails or tracks' cover on this steam shovel carrying its own rails or tracks, mechanically laying such track as it proceeds?

I have advised that it comes within this proviso, and that no action can be maintained against the company for having operated same upon the public highway.

The matter seems to be further regulated under Section 7248-2, as to dimensions, etc., of the vehicle, and to provide for a special permit to operate any such vehicle; but, as I understand the dimensions of this vehicle, it does not exceed the dimensions prescribed.

Will you kindly give me your opinion in this matter at your early convenience?"

You state that a steam shovel weighing twenty tons, or eight tons more than permitted for traction engines or steam rollers (Section 7246, General Code), was moved on State Highway No. 11 without a permit having been obtained as provided in Section 7247, General Code.

Under the provisions of Section 7246, General Code, the only exceptions made as to the maximum weight of vehicles of the kind here involved, to-wit: including vehicle and load, which is twelve tons, are traction engines or steam rollers which are run upon rails or tracks, and fire apparatus belonging to municipalities.

You state that permission was not obtained from the Director of Highways to move the steam shovel on the state highway under his jurisdiction, as provided in Section 7247, General Code. The question therefore arises whether, by virtue of the fact that the steam shovel is a caterpillar type, which moves on a twenty-four inch band on either side of said steam shovel, a part of which band automatically comes into contact with the highway prior to the movement of the steam shovel, it may be said, as a matter of law, that said shovel moves on a rail or track within the meaning of the exceptions contained in Section 7246, General Code.

In ordinary acceptation, and generally speaking, the term "rails" contemplates such rails as constitute a track over which steam, electric, gasoline or other railroad equipment is propelled. Webster's New International Dictionary defines the word "track" as

"* * *

A metal way for wheeled vehicles; specif. One or more pairs of parallel lines of rails with the fastenings, ties, etc."

The same dictionary defines "rails" as

"* * *

A bar, now usually of rolled steel, forming a runway or track for wheeled vehicles, etc. Sometimes the wheels run in a depression in the rail; more commonly the bearing surface or track of the wheel is raised, and the wheels are kept in place by a flange on their inner edge. * * *"

It is quite clear that the Legislature enacted certain statutory provisions pertaining to the permissive maximum load and speed of vehicles upon public highways for the purpose of preserving and protecting said highways.

Sections 7246 and 7247 of the General Code provides respectively as follows:

7246. "No traction engine or steam roller weighing in excess of twelve tons, or no trailer, semi-trailer, wagon, truck, automobile truck, commercial tractor, or other vehicle, whether propelled by muscular or motor power, weighing in excess of ten tons, including weight of vehicle and load, shall be operated over and upon the improved public streets, inter-county highways, main market roads, bridges or culverts within the state, except as provided in this chapter.

This provision shall not apply to vehicles run upon rails or tracks or to fire engines, fire trucks or other vehicles or apparatus belonging to any municipal or volunteer fire department or used by such department in the discharge of its functions. No object shall be moved over or upon such streets, highways, bridges or culverts upon wheels, rollers or otherwise, except as provided in this chapter, in excess of a total weight of twelve tons, including weight of vehicle, object or contrivance, and load."

7247. "The county surveyor of any county, upon application in writing by the owner or person having charge thereof, may grant permission for the moving of vehicles, objects or structures in excess of a total weight of twelve tons, including weight of vehicle, object or contrivance, structure and load, over the improved inter-county highways, main market roads, bridges or culverts within such county and located outside of any municipal corporation or corporations therein situated. Such permission shall be in writing and the county surveyor may grant the same subject to such conditions and restrictions as in his judgment are necessary for the preservation and protection of such highways, bridges and culverts. The director of public service of a city or mayor of a village may in like manner grant such permission as to the improved public highways, streets, bridges or culverts within such city or village.

The director of the department of highways and public works may in like manner grant such permission as to the improved public highways, streets, bridges or culverts within this state in regard to all inter-county movements of such vehicles, objects or structures, or in regard to any such movement wholly upon any portion of the inter-county highways, bridges or culverts."

In Section 7246, supra, there is a general limitation as to the maximum weight permitted on our public highways, and the only exception here applicable is in those instances where engines or steam rollers, or other vehicles, are run over rails or tracks, or, as provided in Section 7247, General Code, in so far as state highways are concerned where permission is given by the Director of Highways, upon such conditions as he may prescribe.

It seems to me that from the ordinary acceptance of the meaning of the words "rails" and "tracks" and as these words are defined by standard dictionaries, the Legislature did not have in mind specifically excepting from the provisions of Section 7246, General Code, the caterpillar type of vehicle. In other words, the band or track spoken of by you, which forms the caterpillar part of the vehicle in question, does not constitute rails or tracks within the meaning of the sections here in question it being my opinion that those terms, as used in Section 7246, General Code, supra, clearly refer to rails or tracks which are laid upon ties, or other supports, of the kind over which steam, gasoline or electric vehicles are run.

Therefore, answering your question specifically, it is my opinion that a vehicle, such as a steam shovel, which is run upon caterpillar tracks or a band containing

cleats, is not a vehicle run upon rails or tracks within the meaning of Section 7246, General Code. A person operating a vehicle of the caterpillar type over a public highway, therefore, without the consent of the County Surveyor, in the case of county roads, or the Director of Highways, in the case of state highways, in excess of a total weight of twelve tons, including weight of vehicle and load, may be prosecuted under the provisions of Section 13421-17, General Code, for violation of the provisions of Sections 7246 to 7250, inclusive.

Respectfully,
 EDWARD C. TURNER,
Attorney General.

2601.

APPROVAL, BONDS OF HANOVER TOWNSHIP RURAL SCHOOL DISTRICT,
 BUTLER COUNTY, OHIO—\$50,000.00.

COLUMBUS, OHIO, September 21, 1928.

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

2602.

APPROVAL, BONDS OF THE VILLAGE OF PARMA, CUYAHOGA COUNTY,
 OHIO—\$38,000.00.

COLUMBUS, OHIO, September 21, 1928.

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

2603.

APPROVAL, BONDS OF SOUTH POINT VILLAGE SCHOOL DISTRICT, LAW-
 RENCE COUNTY, OHIO—\$28,750.00.

COLUMBUS, OHIO, September 21, 1928.

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