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SPEED LIMITS—CHANGE IN PRIMA FACIE SPEED LIMITS—DETERMINATIONS HERETOFORE MADE BY DIRECTOR OF HIGHWAYS—REMAIN IN FULL FORCE AND EFFECT AS TO AREAS AND LOCATIONS DESCRIBED IN PARAGRAPHS A, B, C, D, SECTION 4511.21 RC, AM. SB 175, 101 GA—DETERMINATIONS AS TO AREAS AND LOCATIONS DESCRIBED IN PARAGRAPHS E, F, OF SECTION WILL BECOME INVALID OCTOBER 1, 1956.

SYLLABUS:

Such determinations as have heretofore been made by the director of highways whereby a change in the prima facie speed limits has been effected under the provisions of Section 4511.21, Revised Code, will remain in full force and effect as to areas and locations described in paragraphs (A), (B), (C) and (D) of such section as amended effective October 1, 1956, by Amended Senate Bill No. 175, 101st General Assembly; and any such determinations as relate to areas and locations described in paragraphs (E) and (F) of such section as amended will become invalid upon the effective date of such amendment, October 1, 1956.

Columbus, Ohio, September 27, 1955

Hon. S. O. Linzell, Director, Department of Highways
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"In September, 1941, the Uniform Traffic Act became effective as Sec. 6307 of the General Code (now Sec. 4511, Revised Code). In Sec. 6307.21 (now 4511.21) the legislature established various prima facie speed limits, some applicable on highways within the corporate limits of municipalities, and some applicable on highways outside those municipalities.

"The same section also delegated authority to the Director of Highways to alter those statutory limits after an engineering and traffic investigation had convinced him that in specific cases the speed limit established by legislative act was greater or less than was reasonable and proper. He then could determine and declare a more appropriate speed limit.

"From September, 1941, to date the Director has seen fit to alter the original prima facie speed limits in nearly seven hundred instances. Some of the revisions affected municipal streets, some involved county highways and, of course, some were made on rural state highways.

"Now comes the 101st General Assembly which passes a bill over the Governor's veto wherein new speed limits are established on rural highways and which also establishes an area defined as an 'urban district' in municipalities; on state routes outside 'urban districts' (but within the corporation limits) a new speed limit is established. The effective date of the new legislation is set for October 1, 1956.

"The Engineer of Traffic anticipates a sizeable influx of requests for alterations of the new speed limits on both urban

and rural highways and he is seeking to set up a system for handling the expected volume of such requests. Among other details, he has prepared for the Director's use a proposed 'policy' statement outlining procedures, etc., governing proposed speed limit revisions.

"In an early paragraph of the policy appears this statement :

" 'The Director of Highways recognizes that Senate Bill No. 175, passed by the 101st General Assembly and effective on October 1, 1956, is not retroactive. Hence, the amended speed limit law has no effect upon those speed limits altered by him prior to its effective date.'

"Our legal counsel has raised the question of the validity of this statement upon the contention that the repeal of a portion of original Sec. 4511.21 (revised) and the enactment of altogether new and also amended speed limits (enforceable under police power) may actually constitute a retroactive provision. If such be the case, the several hundred instances wherein alterations have previously been made may then become void. The result would obviously create considerable confusion in the various levels of political subdivisions and could conceivably cause the additional burden of re-studying hundreds of cases.

"The questions now propounded to you are these :

"(1) Are the provisions of Senate Bill No. 175 retroactive when the effective date arrives?

"(2) Will the amended law, when effective, abrogate such official revisions of the original speed limit that the Director has previously recorded in his official journal?

"(3) If the answer to question number 2 is in the affirmative, will the Director be required to officially notify each political subdivision that his previous action has been voided by the recent legislation?"

Section 4511.21, Revised Code, reads as follows :

"No person shall operate a motor vehicle, trackless trolley, or streetcar in and upon the streets and highways at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions, and no person shall drive any motor vehicle, trackless trolley, or streetcar in and upon any street or highway at a greater speed than will permit him to bring it to a stop within the assured clear distance ahead.

"It shall be prima facie lawful for the operator of a motor vehicle, trackless trolley, or streetcar to operate the same at a speed not exceeding the following :

“(A) Twenty miles per hour when passing a school building or the grounds thereof during school recess and while the children are going to or leaving school during the opening or closing hours, and when appropriate signs giving notice of the existence of the school are erected.

“(B) Twenty-five miles per hour in all other portions of a municipal corporation, except on state routes and through highways outside business districts.

“(C) Thirty-five miles per hour on state routes or through highways within municipal corporations outside business districts and which are not controlled-access highways;

“(D) Fifty miles per hour on controlled-access highways within municipal corporations;

“(E) Fifty miles per hour on highways outside of municipal corporations.

“It shall be prima facie unlawful for any person to exceed any of the speed limitations in sections 4511.01 to 4511.78, inclusive, and 4511.99 of the Revised Code. In every charge of violation of this section the affidavit and warrant shall specify the time, place, and the speed at which the defendant is alleged to have driven, and also the speed which this section declares shall be prima facie lawful at the time and place of such alleged violation.

“Whenever the director of highways determines upon the basis of an engineering and traffic investigation that any prima facie speed set forth in divisions (A) to (E), inclusive, of this section is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place upon any part of a state route, the director shall determine and declare a reasonable and safe prima-facie speed limit, which shall be effective when appropriate signs giving notice are erected at the intersection or other part of the state route.

“Whenever local authorities determine upon the basis of an engineering and traffic investigation that the prima-facie speed permitted under sections 4511.01 to 4511.78, inclusive, and 4511.99 of the Revised Code, on any part of a highway under their jurisdiction is greater than is reasonable and safe under the conditions found to exist at such location, the local authorities may by resolution request the director to determine and declare a reasonable and safe prima-facie speed limit. Upon receipt of such request the director may determine and declare a reasonable and safe prima-facie speed limit at such location and if the director alters the prima-facie speed limit, then such altered speed limit shall become effective only when appropriate signs giving notice thereof are erected at such location by the local authorities. The

director may withdraw his declaration of any altered prima-facie speed limit whenever in his opinion any altered prima-facie speed becomes unreasonable, and upon such withdrawal the altered prima-facie speed shall become ineffective, and the signs relating thereto shall be immediately removed by the local authorities.

“Local authorities in their respective jurisdictions may authorize by ordinance higher prima-facie speeds than those stated in this section upon through highways, or upon highways or portions thereof where there are no intersections, or between widely spaced intersections, provided signs are erected giving notice of the authorized speed, but local authorities shall not modify or alter the basic rule set forth in the first paragraph of this section or in any event (to) authorize by ordinance a speed in excess of fifty miles per hour.

“Alteration of prima-facie limits on state routes by local authorities shall not be effective until the alteration has been approved by the director. The director may withdraw his approval of any altered prima-facie speed limits whenever in his opinion any altered prima-facie speed becomes unreasonable and upon such withdrawal the altered prima-facie speed shall become ineffective, and the signs relating thereto shall be immediately removed by the local authorities.”

Amended Senate Bill No. 175, passed by the 101st General Assembly, amended Sections 4511.01 and 4511.21, Revised Code. Section 4511.01, Revised Code, is the definition section of the Uniform Traffic Act and was amended by adding the following definition :

“(NN) ‘Urban district’ means the territory contiguous to and including any street or highway which is built up with structures devoted to business, industry or dwelling houses situated at intervals of less than one hundred feet for a distance of a quarter of a mile or more, and the character of such territory is indicated by official traffic control devices.”

Paragraphs (C) and (E) of Section 4511.21, Revised Code, were amended and a new paragraph (F) was added, as follows :

“(C) Thirty-five miles per hour on all state routes or through highways within municipal corporations outside business districts, except as provided in paragraphs (D) and (F) of this section : * * *

“(E) Sixty miles per hour during the daytime and fifty miles per hour during the nighttime on highways outside of municipal corporations except fifty miles per hour at all times

for operators of trucks and commercial tractors weighing in excess of four thousand pounds empty weight, school busses, street cars and trackless trolleys;

“As used in this section nighttime means any time when lighted lights are required by section 4513.03 of the Revised Code. Daytime means any other time;

“(F) Fifty miles per hour on state routes within municipal corporations outside urban districts unless a lower prima facie speed is established as further provided in this section.” * * *

The language setting out the authority of the Director of Highways to declare a reasonable and safe prima-facie speed limit either upon his own determination or that of local authorities as set forth in existing Section 4511.21, Revised Code, was not changed in this enactment.

This provision authorizes the director to make a change in the prima-facie speed limit fixed by the statute at any location where it has been determined upon the basis of an engineering and traffic investigation that the prima-facie speed fixed by the General Assembly is greater or less than is safe under the conditions found to exist at such location.

As indicated in your letter the Director of Highways has made numerous alterations of such prima-facie speed limits on municipal streets, county highways and rural state highways.

The prima-facie speed limits set forth in paragraphs (A), (B) and (D) of Section 4511.21, Revised Code, were not changed by Amended Senate Bill No. 175. As to these provisions it may be noted that the prevailing view in Ohio is that where a statute is repealed and all or some of its provisions are at the same time reenacted, the reenactment neutralizes the repeal and the provisions of the repealed act which are thus reenacted continue in force without interruption. Re: Allen, 91 Ohio St., 315; Re: Hesse, 93 Ohio St., 230; State, ex rel. Taylor v. Cowen, 96 Ohio St., 277; State, ex rel. City Loan and Savings Co. v. Moore, 124 Ohio St. 256. The part which remains unchanged is to be considered as having continued the law from the time of its original enactment, and the new or changed portion to have become the law only at and subsequent to the passage of the amendment. Re: Allen, 91 Ohio St., 315; Mendelson, ex rel. Cleveland v. Miller, 11 O.N.P. (N.S.), 586.

It would appear, therefore, that the alterations previously made of prima-facie speed limits as to areas and locations described in paragraphs (A), (B) and (D) of Section 4511.21, Revised Code, would not be af-

fected by the enactment here under consideration. This is partially true also of areas and locations described in paragraph (C) of this section. In the amendment effected by Amended Senate Bill No. 175, *supra*, the words "and which are not controlled-access highways" have been deleted and the words "except as provided in paragraphs (D) and (F) of this section" have been substituted for those deleted. This reference to "paragraph (D) * * * of this section" is obviously made to restore to paragraph (C) the limiting proviso which had been deleted; but the reference to "paragraph * * * (F) of this section" is just as clearly designed to limit further the areas and locations to which the thirty-five miles per hour *prima-facie* speed limit had theretofore applied, and to indicate that such speed limit was no longer applicable as to areas and locations described in paragraph (F). Except as to such areas and locations thus withdrawn from the operative effect of this paragraph, therefore, there has been no change in this portion of the prior law; and here, too, it may be concluded for this reason that the alterations heretofore made by the director, as to the remainder of such areas and locations, *i.e.*, as described in paragraph (C) as amended, will be unaffected by the amendment.

As to the areas and locations described in paragraphs (E) and (F) of this section, however, we are confronted with an entirely different situation. As to these the legislature has clearly expressed its own notion of what constitutes a safe *prima-facie* speed limit, and although it has provided for an alteration thereof by the director following an engineering and traffic investigation, it cannot be supposed that the fixing by law of a new *prima-facie* limit would be ineffective to invalidate a prior alteration by the director in such *prima-facie* speed limits as to the areas and locations thus described.

By thus changing the statutory *prima-facie* speed limits as to these areas and locations, the legislature has provided a new statutory standard from which the deviations to be effected by determination of the director are to be made, and in effect has provided, by expressing its own notion of what is a safe *prima-facie* speed limit, a new element to be considered by the director in making such determination. Moreover, in describing certain new classifications in paragraphs (E) and (F) the legislature has provided new bases and criteria upon which and by reference to which the director's engineering and traffic investigation must be made. I conclude, therefore, that as to areas and locations described in these paragraphs, any determinations as to altered *prima-facie* speed limits therein

which have heretofore been made by the director will become inoperative upon the effective date of the new enactment here under consideration.

Accordingly, in specific answer to your question, it is my opinion that such determinations as have heretofore been made by the director of highways whereby a change in the prima-facie speed limits has been effected under the provisions of Section 4511.21, Revised Code, will remain in full force and effect as to areas and locations described in paragraphs (A), (B), (C) and (D) of such section as amended effective October 1, 1956, by Amended Senate Bill No. 175, 101st General Assembly; and any such determinations as relate to areas and locations described in paragraphs (E) and (F) of such section as amended will become invalid upon the effective date of such amendment.

Respectfully,

C. WILLIAM O'NEILL
Attorney General