

2836.

APPROVAL, BONDS OF MIAMISBURG CITY SCHOOL DISTRICT, MONTGOMERY COUNTY, OHIO—\$4,000.00.

COLUMBUS, OHIO, June 19, 1934.

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

2837.

APPROVAL, BONDS OF CUYAHOGA COUNTY, OHIO—\$21,000.00.

COLUMBUS, OHIO, June 19, 1934.

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

2838.

TRUCK—WIDTH OF LOAD NOT LIMITED WHERE JURISDICTION OF PUBLIC UTILITIES COMMISSION NOT APPLICABLE.

SYLLABUS:

There is no limitation by virtue of Section 7248-2, General Code, as to the width of the load on a truck where the truck operations are not within the jurisdiction of the Public Utilities Commission.

COLUMBUS, OHIO, June 20, 1934.

HON. LYMAN R. CRITCHFIELD, JR., *Prosecuting Attorney, Wooster, Ohio.*

DEAR SIR:—I am in receipt of your recent communication which reads as follows:

“I have been requested to ask your opinion on the following proposition.

Truck owners operating under a Certificate of the Public Utilities Commission are limited by reason of the rule adopted by that Commission to the use of a truck not greater in width than nine feet including the load on the truck. Does this limitation apply to persons operating

trucks which are wholly privately owned and operated, hauling entirely their own products or property?

Section 7248-2 of the General Code of Ohio as enacted by the legislature in 1933 provides that no vehicle shall be operated whose width is greater than ninety-six inches and also regulating the length of such trucks. Nothing is stated in this section limiting the width of trucks, including the load, upon the truck.

An official of the Bureau of Motor Vehicles in a talk here stated that the limitation as provided by the rule of the Public Utilities Commission does not apply where the trucks are privately owned and hauling only their own products or property. I understand that the State Patrol Officers have received instructions from the head of that Department to arrest all persons operating trucks that do not come within the rule adopted by the Public Utilities Commission, regardless of whether such trucks are being operated under the Certificate of the Public Utilities Commission or whether they are privately owned trucks hauling only their own goods.

The question apparently evolves itself into whether the word 'vehicle' used in the above cited section means the actual width of the truck itself or includes the width of the truck plus the load if the width of the load is greater than the width of the truck."

Section 7248-2 of the General Code of Ohio reads in part as follows:

"No vehicle shall be operated upon the improved public highways and streets, bridges and culverts within the state, whose width is greater than ninety-six inches, except traction engines whose width shall not exceed one hundred and thirty-two inches, and no vehicle shall be operated on such highways, streets, bridges and culverts of a greater height than twelve feet six inches, or of a greater length than thirty-five feet, nor shall any commercial tractor and semi-trailer be operated in combination of a greater length than forty 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 for the life of the vehicles and not to exceed two years from the effective date of this act and only as to vehicles owned and in use on April 1, 1933, a combination of vehicles may be operated consisting only of a motor power truck without loading platform and one semi-trailer, the semi-trailer of which combination shall not be more than fifty feet long, and which combination vehicle including load shall not be greater in length than sixty feet over all, and any other combination of vehicles coupled together, no single vehicle of which is of greater length than thirty-five feet, may be so operated whose total length, including load, is not greater than seventy feet; nor shall any two such combinations of vehicles be so operated closer together than five hundred feet, provided that in special cases vehicles whose dimensions exceed the foregoing may operate under a written permit granted as provided in this chapter.
* * *"
(Italics the writer's.)

The penalty provided for a violation of this section is found in Section 13421-17, General Code of Ohio, which provides:

"Whoever violates any of the provisions of section 7246 to 7250 inclusive, of the General Code shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars for the first offense, and for each subsequent offense shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not more than ninety days, or both fined and imprisoned."

In an opinion of my predecessor, found in Opinions of the Attorney General for 1922, Vol. I, page 337 it was held as disclosed by the syllabus:

"Section 7248-2, G. C., in prescribing a maximum height for vehicles operated upon the public highways, is to be taken as referring to the *vehicles alone*, and not to the height of vehicle and load." (Italics the writer's.)

At page 388 it is stated:

"Moreover, the Burke Bill, while regulatory in character and hence not perhaps subject to the same strict construction in favor of an accused as the courts give criminal statutes, nevertheless provides rather drastic penalties for a violation of its terms; so that the terms of the act are certainly not to be extended beyond their fair import. At all events, whatever may have been the intent of the legislature, it has used language in section 7248-2 going only to the extent of limiting the height of vehicles, and has not made provisions in said section 7248-2 or elsewhere for a limitation upon the height of vehicle and load combined."

In my opinion the same reasoning is applicable to the width of a truck, the operation of which truck is not within the jurisdiction of the Public Utilities Commission. It should also be noted from a reading of Section 7248-2, General Code, *supra*, that the words "including load" are not used in connection with the width of the truck as they are in connection with the other subject matter therein contained.

The question of whether or not the extension of the load beyond the width of the vehicle; to such an extent as to obstruct the left side of the road, is or is not negligence, is not presented by your inquiry and is not herein considered.

In specific answer to your inquiry, it is my opinion that there is no limitation by virtue of Section 7248-2, General Code, as to the width of the load on a truck where the truck operations are not within the jurisdiction of the Public Utilities Commission.

Respectfully,
JOHN W. BRICKER,
Attorney General.