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1. "STREETS OR HIGHWAYS"—SECTION 6307-20 G. C.—DO NOT INCLUDE PRIVATE ROADS AND STREETS.
2. STATUTE DEFINING CRIME OR OFFENSE—CAN NOT BE EXTENDED BY CONSTRUCTION TO PERSONS OR THINGS NOT WITHIN ITS DESCRIPTIVE TERMS.

SYLLABUS:

1. "Streets or highways," as used in Section 6307-20, General Code, do not include private roads and streets.
2. A statute defining a crime or offense cannot be extended, by construction, to persons or things not within its descriptive terms.

Columbus, Ohio, October 6, 1949

Hon. Harold K. Bostwick, Prosecuting Attorney
Geauga County, Chardon, Ohio

Dear Sir:

This will acknowledge receipt of your communication which requests my opinion, as follows:

"I have the situation of numerous private communities here in my county in which there are, of course, numerous private roads and streets leading from the main highway. These communities are bothered by speeding and recklessly driven automobiles, and

in checking Section 6307-20, the new reckless driving section, and 12603-1, the old reckless driving section, I note that the old one speaks of public roads and the new one speaks only of streets and highways.

"As long as the new section speaks only of streets or highways, I would like your opinion as to whether or not a person could be charged under Section 6307-20 for reckless driving on a street or road that is not a public highway."

Supplemental thereto you have forwarded the following information in another communication, which reads as follows:

"Replying to your recent letter in which you ask (1) an explanation of what is meant by the private communities I refer to. This is a non-profit corporation known as the Kiwanis Lake Community and is in good standing.

"As to (2) the definition of the private roads referred to in my letter, these are roads in the community under the control of the Board of Directors but not designated public highways.

"These so-called private roads are owned by the community and not by individuals and I would assume from what I have been able to learn that this being a so-called private community the Board of Directors would have the right to exclude the general public from the use of these roads as they are not designated public roads."

In view of the communications submitted, we now feel justified in assuming that the roads referred to have never been dedicated to the public or legally accepted as public thoroughfares.

Section 6307-20, General Code, referred to in your communication, reads as follows:

"No person shall operate a vehicle, trackless trolley or street car without due regard for the safety and rights of pedestrians and drivers and occupants of all other vehicles, trackless trolleys and street cars, and so as to endanger the life, limb or property of any person while in the lawful use of the streets or highways."

It thus becomes apparent that the crux of your problem turns on the legislative intent in the use of the term "streets or highways" in the statute, and whether such use anticipated private roads and streets.

It will be noted that Section 6307-20, General Code, is a part of the Uniform Traffic Act, and that terms used in this act are specifically defined in Section 6307-2, General Code.

The term "streets or highways" is defined in Section 6307-2 as follows:

"The entire width between the boundary lines of every way *open to the use of the public* as a thoroughfare for purposes of vehicular travel." (Emphasis added.)

The language of this definition as given in the act would indicate that "streets or highways" as used in Section 6307-20, General Code, refer exclusively to public streets and highways.

Strength is added to this contention by the fact that the act provides a particular definition for "private road or driveway," which reads as follows:

"Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons."

Further legal definitions of the terms "street" and "highway" may be found in Ohio Jurisprudence.

Vol. 20, page 630, Section 1, designates a highway as follows:

"A highway is a road or way *open to the public* at large, for the purpose of travel or the transportation of persons or property, *without distinction, discrimination or restriction*, except such as is incident to such reasonable regulations as may be promulgated by the public authority in the interest of the general public." (Emphasis added.)

Vol. 28, p. 522, Section 325, has this to say with reference to "street":

"The word 'street,' while included in the generic terms 'road' and 'highway,' is ordinarily used to designate a main way in a municipality, as distinguished from a rural highway."

In the light of these definitions, we can only conclude that "streets or highways," as used in Section 6307-20 of the General Code, refer to public thoroughfares and were never intended to include private roads or streets.

Your letter points out that Section 12603-1, the old reckless driving statute, speaks of public roads, while Section 6307-20, the new reckless driving statute, refers only to "streets or highways." I am not of the opinion that the omission of the word "public" in the latter statute necessarily implies that "streets or highways" include private roads and streets.

It will be noted that Section 12603-1, General Code, was not a part of a uniform traffic act and that no definition of terms was attached to this statute which might have assisted in the interpretation thereof. "Streets or highways" are defined in the Uniform Traffic Act as ways open to the public, so that any further use of the word "public" in Section 6307-20, General Code, which is a part of the Uniform Traffic Act, would have been superfluous and unnecessary.

It must then be concluded that "public roads," as used in Section 12603-1, and "streets or highways," as used in Section 6307-20, were intended by the legislature to serve substantially the same purpose and refer to public thoroughfares.

Your attention is thus directed to the case of *State v. Root*, 132 Ohio St. 229, which refers to Section 12603-1, the old reckless driving statute. The syllabus in this case recites as follows:

"Where a driveway, leading into and located wholly upon state hospital grounds, is built, maintained and controlled by such hospital for its own use and the public having business therewith, and where such driveway was never dedicated or legally accepted as a public thoroughfare, it does not come within the purview of 'roads or highways' as found in Section 12404-1, General Code, defining manslaughter in the second degree."

It will be noted that the legal aspects of this case are in many respects analogous to the legal aspects of your problem.

The Supreme Court has found that Section 6308-6, General Code (the guest statute), applies to the operation of vehicles over private ways or avenues of travel. *Kitchens v. Duffield*, 149 Ohio St. 500. But the court points out that Section 6308-6, General Code, is a separate and independent act, complete in itself. It is not a part of the Uniform Traffic Act. The Traffic Act, Section 6307-1 et seq., is designed to establish uniform rules of conduct on avenues specifically defined and identified by the various sections included within the act itself. Highways and streets are defined and classified. Private roads and driveways are defined but not otherwise controlled except where they connect with public streets and highways.

In *Glaser v. Dunlap*, 52 O.L.A. 296, the court said in the first branch of the syllabus:

"Section 6307-40, General Code, of the Uniform Traffic Act has no application to the operation of motor vehicles of employees

on the passageways within a private out door parking lot maintained by an employer for the exclusive use of its employees.”

Although Section 6307-40 referred to in this case governs a different violation than Section 6307-20, General Code, it stands in the same position in relation to the Uniform Traffic Act itself.

In the case of *Dow v. Latham*, 80 N. H. 492, a statute required that on approaching any intersecting way or curve, or corner in a way, persons operating motor vehicles should slow down and give timely signal. By another provision, a way, as used in the statute, was defined as any public highway, street, avenue, road, alley, park or parkway, or any private way laid out under authority of statute. Construing the provisions, the court found that a private way did not fall within the definition of the statute unless it was laid out under statutory authority.

Section 6307-107, General Code, discloses that Section 6307-20 is a penal statute, and the interpretation of penal statutes by the courts of Ohio is no longer a matter of controversy.

The Supreme Court of Ohio in *State v. Meyers*, 56 Ohio St. 340, has said:

“A statute defining a crime or offense cannot be extended, by construction, to persons or things not within its descriptive terms, though they appear to be within the reason and spirit of the statute.”

Thus informed that penal statutes demand strict construction, your attention is directed to Ohio Jur. Vol. 37, p. 719, Sec. 401, which recites as follows:

“Strict construction of a statute is one which refuses to extend the law by implication, inference, or construction, and confines its operation to cases which fall fairly within the letter of the statute, as well as within its spirit or reason, and recognizes nothing that is not expressed. The statute should not be made to extend beyond the manifest intention of the legislature as indicated by the clear, plain, obvious, or natural import of the language used. Accordingly, it would be a departure from well-recognized principles of construction to read into a statute which should be strictly construed words not found in its text for the purpose of giving it an interpretation in conformity to its supposed policy.”

To apply any other construction to Section 6307-20 would greatly encroach upon the rights of private property.

It seems obvious that public funds could not be used to maintain private drives.

It also seems logical to believe that the control of the private drives is the responsibility of the board of directors of the corporation.

And by what authority might public funds be used to enforce regulatory measures in a private community?

We are aware of the fact that courts of many other states extend their traffic regulations to include private roads and streets, but the basis for their conclusions is found in the interpretation of their own statutory law, and it cannot be questioned that the legislatures of the various states weigh and consider varied possibilities in the formation of their laws.

Regardless, I am of the opinion in reply to your specific question:

1. That "streets or highways," as used in Section 6307-20, General Code, do not include private roads and streets.
2. That Section 6307-20, General Code, being a penal statute, must be strictly construed.

Respectfully,

HERBERT S. DUFFY,
Attorney General.