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1) PROVISIONS OF DIVISION (C) OF SECTION 4511.75, R.C. APPLY ONLY TO SCHOOL BUSES OPERATING OUTSIDE CITY LIMITS.

2) PROVISIONS OF SAID DIVISION APPLY TO SCHOOL BUSES TRANSPORTING HIGH SCHOOL STUDENTS TO AND FROM SCHOOL FUNCTIONS.

3) WHETHER A ROADWAY HAS BEEN DIVIDED INTO TWO ROADWAYS SO AS TO IMPEDE VEHICULAR TRAFFIC IS A QUESTION TO BE DETERMINED IN EACH PARTICULAR CASE—§§4511.75, 4511.35, R.C.

SYLLABUS:

1. The provisions of division (C) of Section 4511.75, Revised Code, relative to school buses, apply only to school buses operating outside of the limits of municipal corporations.

2. The provisions of said division (C) apply to board of education buses transporting high school students to or from a school session, or to or from a school function and also apply to school buses chartered by the board for that purpose.

3. Whether a roadway has been divided into two roadways by an intervening space, by a physical barrier, or a clearly indicated dividing section so constructed as to impede vehicular traffic within the purview of Section 4511.35, Revised Code, is a question of fact to be determined in each particular case.

Columbus, Ohio, June 24, 1961

Hon. John T. Corrigan, Prosecuting Attorney  
Cuyahoga County, Cleveland, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Paragraph C of Section 4511.75 of the Revised Code of Ohio reads as follows:

“(C) School buses operating on divided highways or on highways with four or more traffic lanes shall receive and discharge all school children on their residence side of the highway.

“My specific requests are:

“(1) Does the above section of the Revised Code apply when school buses are operating within the municipal corporation limits?

“(2) Does the above quoted section of the law apply when the board operated school buses are transporting high school students?

“(3) Does the above quoted section apply when the school board charters school buses for the transportation of high school students?

“(4) What constitutes a divided highway referred to in Section 4511.75 of the Revised Code?”

Section 4511.75, Revised Code, reads as follows:

“(A) The driver of a vehicle upon a highway outside the limits of a municipal corporation, upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school child, shall stop the vehicle not less than ten feet from such school bus and shall not proceed until such school bus resumes motion, or until signaled by the driver to proceed.

“(B) Where a highway has been divided into two roadways as set forth in section 4511.35 of the Revised Code a driver of a vehicle proceeding on one roadway of said highway need not stop when approaching a school bus which has stopped on the other roadway of said highway for the purpose of receiving or discharging any school child. The driver of any vehicle proceeding on the same roadway of said highway as the school bus shall comply with division (A) of this section.



Because of the above-named form of construction of Section 4511.75, *supra*, there is certainly at least a question as to whether or not division (C), *supra*, applies to school buses operating within municipal corporations. To determine this question, therefore, it appears advisable to ascertain what, if any, has been the policy of the state in this regard.

As to policy of the state, it is stated in 37 Ohio Jurisprudence, Section 366, commencing on page 665:

“\* \* \* As a general rule, where the legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, and they should be construed so as to harmonize with the general tenor or purport of the system unless a different purpose is plainly shown.”

And in the same volume, in Section 372, commencing on page 677, it is stated:

“Authority is not wanting to the effect that in the interpretation of ambiguous statutes the courts may, among other matters, take into consideration the settled policy of the state in so far as it may throw light on the legislative intention. That is to say, legislative policy clearly deducible from the consistent legislation of the general assembly is a legitimate factor in determining the meaning of subsequent acts open to construction. Accordingly, there are numerous instances in the reported cases in which the general public policy of the state has been taken into consideration in construing a particular statute. Indeed, it has even been presumed that the legislature did not intend, by its enactment, to modify or change a settled public policy except in so far as it has therein declared such intention either in express terms or by unmistakable implication. \* \* \*”

On reviewing the history of laws dealing with the stopping of a motor vehicle for a school bus, I note that the original law dealt solely with areas *outside* the limits of municipal corporations. This law was enacted in 1929 (Section 12604-1, General Code, 113 Ohio Laws, 546) and read:

“The driver of a vehicle, when approaching the front or rear of a school bus that has come to a stop on a road or highway, *outside the limits of a municipal corporation*, while in the act of receiving or discharging school children, shall stop such vehicle not less than ten feet from such school bus and keep said vehicle

stationary until such children have entered said bus or have alighted and reached the nearest adjacent side of such road or highway.” (Emphasis added)

In 1941, Section 1260-1, General Code, was repealed and Section 6307-73, General Code, was enacted (119 Ohio Laws, 766, 790). The law as enacted still applied only to areas outside of the limits of municipal corporations, reading:

“The driver of a vehicle, when approaching the front or rear of a school bus that has come to a stop upon a highway outside the limits of a municipal corporation, while in the act of receiving or discharging any school child shall stop such vehicle not less than ten feet from such school bus and keep such vehicle stationary until such child has entered said bus or has alighted and reached the side of such highway. *No school bus driver shall start his bus until after any child who may have alighted therefrom shall have reached a place of safety.*”

(Emphasized language was added in 1941)

In 1949, Section 6307-73, *supra*, was amended (123 Ohio Laws, 614). In this amendment the section was separated into divisions, division (B) being concerned with four-lane highways. The references to “a highway outside the limits of a municipal corporation” was retained in division (A), but not inserted in division (B). As amended in 1949, Section 6307-73, General Code, read:

“(A) Except as provided in paragraph ‘B’ of this section, the driver of a vehicle upon a highway outside the limits of a municipal corporation, upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school child shall stop the vehicle not less than ten feet from such school bus and shall not proceed until such school bus resumes motion, or until signaled by the driver to proceed.

“(B) School busses operating on highways with four or more traffic lanes shall receive and discharge all school children on their residence side of the highway.

“No school bus driver shall start his bus until after any child who may have alighted therefrom shall have reached a place of safety on his residence side of the road.”

In 1953, Section 6307-73, General Code, was designated as Section 4511.75, Revised Code, and was amended to read as set forth at the outset of this opinion (125 Ohio Laws, 167).

From 1929 until 1949, therefore, there was no doubt that the state law as to stopping for a school bus applied only to areas *outside of municipal corporations*. During this period, however, the law did not require that school buses, operating on highways with four or more traffic lanes, receive and discharge school children on their residence side of the highway, said requirement being inserted as division (B) in 1949 and now being found in division (C).

It appears logical to assume that the legislature, in making the 1949 amendment noted above, intended to add another provision to the existing law as pertaining to highways *outside of municipal corporations*. That is, in specifying the type of highways to be covered in division (A), any other reference in the section to a highway or highways would be to that particular type of highway. While I do not know of any court cases interpreting the question, the administrative practice of state and local authorities has been to consider that all of Section 4511.75, *supra*, applies only to highways outside of the limits of municipal corporations. As to the value of administrative practice in construing a statute, it is stated in 37 Ohio Jurisprudence, Section 387, page 698:

“In interpreting a statute, it is a well-settled rule that a resort may, under proper circumstances, be had to the construction given thereto by those charged with its execution and application, especially where it has long prevailed. Judicial notice may be taken of such construction for such purpose.”

A further indication of intent as to Section 4511.75, *supra*, is found in the recently passed Amended House Bill No. 78 of the 104th General Assembly (effective August 11, 1961). That bill amends Section 4511.07, Revised Code, to read in part:

“Sections 4511.01 to 4511.78, inclusive, 4511.99 and 4513.01 to 4513.37, inclusive, of the Revised Code do not prevent local authorities from carrying out the following activities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power:

“\* \* \*

\* \* \*

\* \* \*

“(J) Regulating traffic in reference to school buses.

“No ordinance or regulation enacted under divisions (D), (E), (F), (G), \* \* \* (I), or (J) of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrance to the highway or part thereof affected, as may be most appropriate.”

The language of the above section clearly shows that the legislature assumed that municipal corporations have the power to provide their own traffic laws relating to the operation of school buses.

In view of the foregoing, therefore, I conclude that the provisions of division (C) of Section 4511.75, Revised Code, do not apply to school buses operating within the limits of a municipal corporation.

Considering your second and third questions, division (E) of Section 4511.01, Revised Code, reads:

“(E) ‘School bus’ means every motor vehicle which is operated exclusively for the transportation of school children to or from a school session, or to or from a school function, and which is marked on both front and rear with the words ‘school bus’ in plain lettering not less than six inches in height.”

I am unable to find any statutory definition of the words “school children”; however, I have no doubt that high school students are included in that term. Thus, division (C) of Section 4511.75, *supra*, applies to board operated school buses transporting high school students, and also applies to a school bus chartered by the board to transport high school students. Assuming, of course, that the remainder of the definition of “school bus” as contained in division (E) of Section 4511.01, *supra*, applies to the buses in question.

As to what is a divided highway under Section 4511.75, *supra*, division (B) of that section reads in part:

“(B) Where a highway has been divided into two roadways *as set forth in section 4511.35 of the Revised Code* a driver of a vehicle proceeding on one roadway of said highway need not stop when approaching a school bus which has stopped on the other roadway \* \* \*.” (Emphasis added)

Section 4511.35, Revised Code, thus referred to, reads in pertinent part:

“Whenever any highway has been divided into two roadways by an intervening space, or by a physical barrier, or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway, and no vehicle shall be driven over, across, or within any such dividing space, barrier, or section, except through an opening, crossover, or intersection established by public authority.  
\* \* \*”

The answer to your fourth question is, therefore, a question of fact. Section 4511.35, *supra*, indicates that highways which are divided by grass median strips, solid concrete barriers, guard rails or raised islands which constitute a barrier are divided highways. The situations which present perplexing and difficult questions of fact are those highways which have small circular buttons or small precast concrete dividers between the lanes of traffic. In such cases, if the devices clearly create a barrier (which is not always the case) or clearly indicate a dividing strip which impedes vehicular traffic, I would consider the highway to be a divided highway within the meaning of Section 4511.35, Revised Code. But the answer to the question, of course, depends upon the facts in each particular case and I can only outline the problems which are apparent and indicate that the definition contained in Section 4511.35, Revised Code, must be applied in each case.

In conclusion, it is my opinion and you are advised :

1. The provisions of division (C) of Section 4511.75, Revised Code, relative to school buses, apply only to school buses operating outside of the limits of municipal corporations.

2. The provisions of said division (C) apply to board of education buses transporting high school students to or from a school session, or to or from a school function, and also apply to school buses chartered by the board for that purpose.

3. Whether a roadway has been divided into two roadways by an intervening space, by a physical barrier, or a clearly indicated dividing section so constructed as to impede vehicular traffic within the purview of Section 4511.35, Revised Code, is a question of fact to be determined in each particular case.

Respectfully,

MARK MCELROY

Attorney General