

OPINION NO. 74-035

Syllabus:

The director of transportation has the authority to establish lower speed limits as provided by R.C. 4511.21, notwithstanding R.C. 4511.211.

To: J. Phillip Richley, Director, Ohio Department of Transportation, Columbus, Ohio

By: William J. Brown, Attorney General, May 3, 1974

I have before me your request for my opinion, which reads as follows:

"This is to advise you of pending requests, which are now on file, to the Department of Transportation from the District Deputy Directors, Boards of County Commissioners, and Boards of Township Trustees for speed limit reductions on streets and highways under their jurisdiction.

"In view of the recent enactment of Section 4511.211, Revised Code, I am in doubt

as to my previous authority under Section 4511.21 of the Revised Code to determine and declare lower speed limits than those specified in this statute.

"In view of the above, I request your opinion on the following question:

"Does the Director of Transportation still have authority to establish lower speed limits on sections of roadway which have limits as provided in paragraphs (E), (H) and (I) of Section 4511.21 of the Revised Code."

R.C. 4511.21, which grants the director of transportation authority to establish lower speed limits upon the basis of an engineering and traffic investigation, reads, in part, 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 highways and any other conditions, and no person shall drive any motor vehicle, trackless trolley, or streetcar in and upon any street or highways at a greater speed than will permit him to bring it to a stop within the assured clear distance ahead.

"It is 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:

* * * * *

(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 buses, streetcars, and trackless trolleys;

* * * * *

(H) Sixty miles per hour at all times on freeways with paved shoulders inside 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 and school buses;

(I) Seventy miles per hour at all times on freeways outside municipal corporations except fifty-five miles per hour for operators of trucks and commercial tractors weighing in excess of four thousand pounds empty and school buses.

"Whenever the director of transportation determines upon the basis of an engineering and traffic investigation that any prima-facie speed set forth in divisions (A) to (I) 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 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 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 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."

With respect to the authority of the director to change speed limits, I stated in Opinion No. 73-120, Opinions of the Attorney General for 1973 that:

"* * * R.C. 4511.21 gives the director of transportation the authority to make a determination that, because of conditions at any specific intersection or place along a highway, a greater or lower prima facie speed limit would be reasonable and safe. He may also approve similar determinations made by local authorities and declare changes in prima facie speed limits for such parts of the roads. It should be noted, however, that this authority applies only to situations where conditions would allow or necessitate changes in speed limits for a specific part of the highway system. * * *"

R.C. 4511.211, which has occasioned your request for an opinion, was enacted by the General Assembly in Amended Substitute House Bill No. 1052, effective March 1, 1974, as a temporary law to be repealed, effective June 30, 1975. It was an emergency measure to lower speed limits to conform with the national fuel conservation policy and the Federal Emergency Conservation Act. In pertinent part, it reads:

"Sec. 4511.211. (A) Notwithstanding divisions (E), (H), and (I) of Section 4511.21 of the Revised Code, no person shall operate a motor vehicle in and upon the streets and highways at a speed exceeding the following:

"(1) Fifty-five miles per hour for all types of motor vehicles on freeways outside of municipal corporations;

"(2) Fifty-five miles per hour during the daytime and fifty miles per hour during the nighttime on highways other than freeways 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 buses, streetcars, and trackless trolleys;

"(3) Fifty-five miles per hour at all times on freeways with paved shoulders inside 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 and school buses.

"Any prima-facie speed limits established for particular portions of a highway by the director or local authorities pursuant to engineering and traffic investigations as provided for in section 4511.21 of the Revised Code which are lower than those established in this section

shall remain in effect and are not altered by this section.

"The Director of Transportation shall provide for the alteration of existing speed limit signs posted pursuant to section 4511.21 of the Revised Code wherever necessary to conform to the provisions of this section as quickly as feasible after the effective date of this Act, but the presence of unaltered signs shall not affect the validity of the limits herein provided on or after the effective date."

(Emphasis added.)

Although this new Section did not repeal the powers granted the director of transportation in R.C. 4511.21, it did lower the maximum speed limits for motor vehicles to fifty-five or fifty miles per hour. In this respect, Division (C) of R.C. 4511.211 provides that:

"(C) Notwithstanding any other provisions of Section 4511.21 of the Revised Code relating to the prima-facie lawful operation of a motor vehicle, the speed limits established under Division (A) of this section shall be maximum lawful speeds, and no person shall drive a vehicle at a speed in excess of such maximum limits."

But the authority granted the director to lower speed limits pursuant to R.C. 4511.21 was not amended by R.C. 4511.211. On the contrary, the passage from that Section which I have emphasized above provides, specifically, that lower speed limits established by the director shall remain in effect and are not altered by this Section.

I conclude, therefore, that the director of transportation has the authority to lower speed limits as provided in R.C. 4511.21. However, neither the director nor local authorities may raise speed limits above the limits provided in R.C. 4511.211.

In specific answer to your question, it is my opinion and you are so advised, that the director of transportation has the authority to establish lower speed limits as provided by R.C. 4511.21, notwithstanding R.C. 4511.211.