

Section 6298 is a qualified certificate, the qualification being that such certificate does not authorize the use of a motor vehicle upon the public roads and highways of this state in violation of the law. Section 7246, General Code, as amended by the 88th General Assembly, places a limitation upon the weight of a vehicle, including load, which may be operated on the improved highways, streets and bridges in this state. It does not follow, because of this limitation, that the certificate of registration of a truck, for instance, shall contain any statement as to the limitation of the load which such truck may carry. The limitations in regard to this matter are effective without the necessity of being incorporated in the certificate of registration.

Specifically answering your questions, it is my opinion that:

1. When a permit has been issued under Section 7247, General Code, authorizing a motor vehicle in excess of thirty feet in length to be operated on the public roads and highways of this state, such vehicle must also be registered as provided in Sections 6294 and 6298, General Code.

2. Such registration should not contain a provision that it is conditionally issued subject to a permit being secured for the operation of such vehicle, since such vehicle may, under the provisions of Section 7248-2, General Code, only be operated pursuant to the issuance of a permit irrespective of the registration thereof.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1638.

APPROVAL, BONDS OF EUCLID VILLAGE SCHOOL DISTRICT, CUYA-HOGA COUNTY—\$114,000.00.

COLUMBUS, OHIO, March 19, 1930.

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

1639.

HOUSE BILL NO. 343—PROVISO ADDED TO SECTION 4696, GENERAL CODE, RELATES ONLY TO TRANSFERS OF SCHOOL TERRITORY AUTHORIZED BY SAID SECTION.

SYLLABUS:

The proviso or exception added to Section 4696, General Code, by amendment in House Bill No. 343 of the 88th General Assembly, relates to the subject matter immediately preceding it in the same section, and therefore relates only to transfers of school territory authorized by said Section 4696, General Code.

COLUMBUS, OHIO, March 19, 1930.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“This office desires to know whether House Bill No. 343, enacted by the last general assembly, and more especially the paragraph of said act entitled: ‘Re-transfer of property prohibited.’ and which reads as follows:

‘Any territory which has been transferred to another district, or any part of such territory, shall not be transferred out of the district to which it has been transferred during a period of five years from the date of the original transfer without the approval of the state director of education to such a transfer,’
applies to an action taken under either Section 4696 or Section 4692, General Code.”

Section 4692, General Code, relates to the transfer of school territory from or to a village or rural school district which transfers may be made on the initiative and at the will of the county board of education, subject to the filing of remonstrances by interested electors.

Section 4696, General Code, refers to transfers of school territory from or to exempted village, city or county school districts, and may be made only if the transfer is to such districts, upon petition being filed therefor in accordance with the statute.

By the terms of said House Bill No. 343, of the 88th General Assembly, Section 4696, General Code, was amended by the addition thereto of the paragraph quoted in your letter. This paragraph constitutes the entire amendment of the section. That is to say, the section, as amended by said House Bill No. 343, is precisely the same as it was before, with the addition of the paragraph quoted in your letter. This paragraph constitutes a proviso or an exception to the right to transfer the school territory to which it refers. The difficulty in determining whether or not it refers to transfers authorized by Section 4692, General Code, as well as those authorized by Section 4696, General Code, comes about by reason of the general language in which the exception is stated.

The cardinal rule for the construction of statutes is to determine the intent of the Legislature, and inasmuch as the Legislature has provided by this amendment that, “any territory which has been transferred to another district or any part of such district, shall not be transferred, etc.,” it is somewhat difficult to determine from the language itself whether it was meant to include all transfers or only those provided for by the section of which it forms a part.

The natural and appropriate office of a proviso or an exception, such as this, being to restrain or qualify some action which had already been authorized, it is the general rule, as stated by Lewis Sutherland on *Statutory Construction*, Section 352, that,

“it should be confined to what precedes it unless it clearly appears to have been intended to apply to some other matter. It is to be construed in connection with the section of which it forms a part, and it is substantially an exception. If it be a proviso to a particular section, it does not apply to others unless plainly intended. It should be construed with reference to the immediately preceding parts of the clause to which it

is attached. In other words, the proviso will be so restricted in the absence of anything in its terms, or the subject it deals with, evidencing an intention to give it a broader effect. It is not an arbitrary rule to be enforced at all events, but is based on the presumption that the meaning of the law-maker is thereby reached."

It has been held that where a proviso has been added to a section by amendment it will be applied to that section only, unless the contrary intent is very plain. *DeGraff vs. Went*, 164 Ill. 485.

There is little, if anything, in the language of this statute to indicate the intention of the lawmakers either one way or the other, except perhaps the title of the act and the application of the rule of construction stated above, which the author says is not an arbitrary rule to be enforced at all events.

The title of the act, House Bill No. 343, reads:

"An Act to amend Section 4696 of the General Code, relative to a time limit on the transfer of certain school property."

The fact that the lawmakers stated in the title of this act that the amendment related to a time limit on the transfer of *certain* school property indicates that it was not intended to apply to all transfers of school property.

I am of the opinion, therefore, that the proviso or exception added to Section 4696, General Code, by amendment in House Bill No. 343 of the 88th General Assembly, relates to the subject matter immediately preceding it in the same section, and therefore relates only to transfers of school territory authorized by said Section 4696, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1640.

APPROVAL, CONTRACT FOR ELIMINATION OF GRADE CROSSING
WEST OF TOLEDO, LUCAS COUNTY—NEW YORK CENTRAL AND
TOLEDO, ANGOLA & WESTERN RAILWAY COMPANIES.

COLUMBUS, OHIO, March 20, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter under date of March 13, 1930, submitting for my approval a copy of a proposed agreement between the Director of Highways and Lucas County, and the New York Central Railroad Co., and the Toledo Angola and Western Railway Co., covering the elimination of the grade crossing over the tracks of said railway companies on State (Inter-County) Highway No. 21 at a point about four miles west of the City of Toledo in Lucas County.

I have carefully examined said proposed contract and find it correct in form and legal. I am, therefore, returning the same to you with my approval indorsed thereon.

Respectfully,

GILBERT BETTMAN,
Attorney General.