

payable in June, 1938, and thereafter, as to which there is a provision in this deed and covenant that "the grantee assumes and agrees to pay" such taxes and assessments. This provision in the deed indicates, perhaps, some agreement or understanding by and between the above named grantors and the authorities of Kent State University that these taxes and assessments are to be paid by the University out of available moneys held by the institution for this purpose. However this may be, some adjustment with respect to this matter should be made before this property is purchased by the issue of the warrant of the Auditor of State covering the purchase price of this property or the grantors' equity herein.

On examination of contract encumbrance record No. 2195, I find that the same has been properly executed and acknowledged and that there is shown thereby a sufficient unencumbered balance to the credit of the appropriation of Kent State University to pay the purchase price of this property, which purchase price is the sum of \$13,250.00. It likewise appears from a recital contained in this contract encumbrance record that the purchase of this property has been approved by the Controlling Board.

I am herewith returning to you the abstract of title and the several extensions thereof relating to the title to this property, the warranty deed above referred to, contract encumbrance record No. 2195 and the several copies thereof submitted to me, as well as the other files relating to the purchase of this property.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2619.

MOTOR VEHICLE- -SECTION 12603 G. C. LAWFUL SPEED- -
SCHOOL BUILDING—APPLICATION WHERE GROUNDS
NOT CONTIGUOUS TO PUBLIC STREET, ROAD OR HIGH-
WAY.

SYLLABUS:

The provisions of Section 12603 of the General Code, setting forth a prima facie lawful speed at which a motor vehicle may be operated in passing a school building or the grounds thereof at certain times, has no application in those instances where school buildings or the grounds thereof are not contiguous to a public street, road or highway.

COLUMBUS, OHIO, June 22, 1938.

HON. HUGO ALEXANDER, *Prosecuting Attorney, Steubenville, Ohio.*

DEAR SIR: Acknowledgment is made of your recent communication in which you request my opinion in regard to the following:

"Quite a controversy has arisen in our county, concerning Section 12603 of the General Code as applied to school zones. certain Constables and Justices of the Peace of this county having established a so-called 'Speed Trap' on State Route No. 7 in the Village of Costonia. At the point where the 'Speed Trap' is established a school house is situated in the Village approximately one block from the State Route; none of the school property or school grounds adjoin said highway. In fact, there are houses and other buildings in between the highway and the school.

I also beg to advise that on both sides of the Village the State Highway Department has placed signs which indicate a school zone. There are no school houses or school grounds here in this Village other than the one I have mentioned above.

It has been my contention that according to Section 12603 of the General Code, that the school building or the grounds must be contiguous to the highway before the twenty-miles an hour speed law, as applies to the school zone, can be enforced. Will you kindly give me an opinion herein, formally or informally, as to your interpretation of Section 12603 of the General Code as applies to this situation? There is great public demand in our county for an interpretation of this statute and your answer will be of great interest not only to this office but to all the constables, Justices of the Peace as well as the laymen."

Section 12603 of the General Code provides in part as follows:

"No person shall operate a motor vehicle in and upon the public roads and highways at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface and width of the road or highway and of any other conditions then existing, and no person shall drive any motor vehicle in and upon any public road or highway at a greater speed than will permit him to bring it to a stop within the assured clear distance ahead.

It shall be prima facie lawful for the operator of a motor vehicle to drive the same at a speed not exceeding the following:

Twenty miles per hour when passing a school building or the

grounds thereof during school recess and while children are going to or leaving school during the opening or closing hours.

* * *

It shall be prima facie unlawful for any person to exceed any of the foregoing speed limitations. In every charge or violation of this section the complaint, also the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven, also the speed, if any, which this section declares shall be prima facie lawful at the time and place of such alleged violation.

Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined as hereinafter provided."

The answer to the question which you have presented is dependent entirely upon the construction that is to be placed on the language "when passing a school building or the grounds thereof", as the same appears in Section 12603, supra. It is apparent that if this language is to be construed as to include only those school buildings or grounds which are contiguous to a public street, road or highway, an operator of a motor vehicle, in passing a school building or the grounds thereof which by reason of intervening lots or houses, is not contiguous to a public thoroughfare, would be under no obligation to reduce the speed of such vehicle to the maximum speed set forth in this section.

As Section 12603 as amended is a comparatively new enactment, no court, as far as I am able to ascertain, has as yet been called upon to pass upon a question similar to the one which you have presented. It is, therefore, necessary in order to arrive at a proper solution of the issue here under consideration to place full reliance on well recognized rules of statutory construction.

It is fundamental, both on authority and on principle, that in the interpretation or construction of statutes the primary and paramount rule is to ascertain and give effect to the intention of the Legislature, as gathered from the provisions enacted, 37 O. J. Sec. 274.

It might be persuasively argued that to construe the language "when passing a school building or the grounds thereof" as contained in Section 12603, supra, as meaning only school buildings or grounds which are contiguous to a public thoroughfare, would in reality partially defeat the very purpose for the enactment of this section. In other words, argument could be advanced to the effect that it was intended by the Legislature that the provisions of Section 12603, supra, were to be liberally construed so as to operate as a protection to all school children coming to and going from school regardless of the situs of the school attended and that unless

a school building was so far distant from a public thoroughfare so as to completely remove the possibility of any danger of physical injury by motor vehicles to the children attending such school, all operators of motor vehicles, in passing school buildings or the grounds thereof, would be required, regardless of the situs of such schools, to reduce the speed of their vehicles to twenty miles per hour.

However, in my opinion, such a construction can not be placed upon the provisions of this Section. As will be noted, the statute here under consideration is a penal measure, which under well recognized rules of statutory construction, must not be extended by implication or construction beyond the manifest intention of the Legislature. Surely, the Legislature in the enactment of this section, in using the language "when passing a school building or the grounds thereof", expressed no intent to include within the meaning of the phrase school buildings or the grounds thereof which are not situated along or contiguous to a public thoroughfare. If such had been the intent, it would have been, in my estimation, an easy matter in place of the provisions contained in Section 12603, *supra*, to have prohibited the operation of a motor vehicle at a speed in excess of twenty miles per hour in areas specifically designated by appropriate signs as school zones. Such a provision would then have the effect of imposing upon operators of motor vehicles the mandatory duty of operating their vehicles at a speed not in excess of that limited by Section 12603, regardless of the situs of the school buildings. However, the Legislature having failed to so provide, I am impelled to the conclusion that the phrase "when passing a school building or the grounds thereof" as used in Section 12603, *supra*, can only be construed as including within its meaning such school buildings or grounds as are contiguous to a public thoroughfare and from which ingress and egress to and from the school is had.

It is, therefore, my opinion in specific answer to your question that the provisions of Section 12603 of the General Code setting forth a *prima facie* lawful speed at which a motor vehicle may be operated in passing a school building or the grounds thereof at certain times, has no application in those instances where school buildings or the grounds thereof are not contiguous to a public street, road or highway.

Respectfully,

HERBERT S. DUFFY,

Attorney General.