

Ohio, and the State of Ohio, acting by Carl G. Wahl, Director of Public Works, for the construction and completion of Contract for General Work for a project known as Revised August 14, 1937, Equipment for the State Highway Patrol Barracks, Cambridge, Ohio, as set forth in Item 1 of the form of proposal dated August 25, 1937, which contract calls for the total expenditure of four thousand eight hundred and fifty dollars (\$4,850.00).

You have also submitted the following papers and documents in this connection: Encumbrance estimate No. 1606, division of contract, notice to bidders, proof of publication, estimate of cost, the form of proposal containing the contract bond, the power of attorney for the signer, its financial statement and the certificate of compliance with the laws of Ohio relating to surety companies, the recommendations of the State Architect and Engineer, the Director of Highways and the Director of Public Works, the Controlling Board release of September 21, 1937, approval of the P.W.A., the tabulation of bids, and letter from the Auditor of State showing that the necessary papers and documents are on file in said office.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other documents submitted in this connection.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1291.

MOTOR VEHICLE MAY NOT HAVE MORE THAN THIRTY-TWO CANDLE-POWER LIGHTS ON FORWARD PART OF CAR—USE OF GREATER CANDLE-POWER FOG-LIGHTS—VIOLATION.

SYLLABUS:

1. *The inhibition contained in Section 6310-1 of the General Code, to the effect that no lamp or light prescribed by this section shall be more than thirty-two candle power, has application to any and all lights, regardless of designation, installed on the forward part of a motor vehicle.*

2. *The use of fog lights on the forward part of a motor vehicle carrying bulbs in excess of thirty-two candle power is in violation of the provisions of Section 6310-1, General Code, and therefore prohibited.*

COLUMBUS, OHIO, October 9, 1937.

COLONEL LYNN BLACK, *Suprintendent, Ohio State Highway Patrol, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

“I would like to respectfully request a formal opinion from your office regarding the legality of the use of lights commonly known as ‘fog lights’ in conjunction with, or in lieu of, ordinary headlights.

Section 6310-1 of the General Code of Ohio, among other things, provides in part:

‘No lamp or light prescribed in this section shall be more than thirty-two candle power.’

Many of those so-called ‘fog lights’ carry a fifty candle power bulb, producing dazzling rays or beams of reflected light, interfering with the visibility of oncoming or passing vehicular traffic. Most of the inferior courts, in passing upon this question, are of the opinion that this class of headlights does not come within the definition or regulation of said Section 6310-1 of the General Code.

There being no independent section covering the use of these ‘fog lights’, and with the recognition of the use of same in many cases creating a real hazard on a highway, we would like to have you advise us as to the application of Section 6310-1 and the powers of the director of highways in reference to the regulations thereof.”

Section 6310-1, General Code, provides in part as follows:

“Every motor vehicle, except a commercial vehicle as hereinafter provided, or a motorcycle, driven upon the public highways of the state, during the period from one-half hour after sunset to one-half hour before sunrise, and whenever fog renders it impossible to see at least two hundred feet ahead of such motor vehicle, shall display, while running, at least two lighted lamps on the forward part of such vehicle, one on each side and approximately of equal candle power; * * *.

No headlights shall be used on any motor vehicle upon the highway except after the installation of a device to prevent glare, which device has been certified and approved by the director of highways, in accordance with the provisions of Section 6310-2 of the General Code, which device shall be applied and adjusted in accordance with the requirements of a certificate of approval to be issued by said director of highways. No such certificate of approval of any device shall be issued by said director of highways unless such device, by actual test conducted under his direction, complies with the following requirements for lights:

Whenever there is not sufficient light within the limits of the traveled portion of the highway to make all vehicles, persons, or substantial objects clearly visible within a distance of at least two hundred feet, the forward lights which a motor vehicle, except commercial vehicles, as hereinafter provided, is required to display, shall, when the motor vehicle is in motion, throw sufficient light ahead to show any person, vehicle, or substantial object upon the roadway straight ahead of the motor vehicle for a distance of at least two hundred feet.

Any light thrown directly ahead or sideways shall be so arranged that no dazzling rays or beams of reflected light from it or from any reflector shall at any time be more than three and one-half feet above the ground on a level road a distance of seventy-five feet ahead of such vehicle; and such light shall be sufficient to enable the operator of the motor vehicle to see any person, vehicle, or substantial object upon the roadway or at the side of the road within ten feet of each side of the motor vehicle.

No lamp or light prescribed in this section shall be more than thirty-two candle power.

No spotlight shall be used when another approaching vehicle is in sight, except when projecting its rays directly on the ground at a distance not exceeding fifty feet in front of the vehicle using such spotlight to the right of the center of the highway."

As will be noted, the provisions of Section 6310-1, *supra*, impose upon the operator of a motor vehicle the mandatory duty to display while driving during the period of time specified in this section or when fog renders it impossible to see at least two hundred feet ahead, two lighted lamps on the forward part of each vehicle, one on each side and approximately of equal candle power.

It will further be noted from a reading of the provisions above quoted that the use of any light or lamp prescribed by the section in excess of thirty-two candle power is expressly prohibited.

It might be contended that the Legislature in the use of the language "prescribed in this section," intended that the inhibition contained in Section 6310-1, *supra*, against the use of lights of more than thirty-two candle power had application only to those lights installed on motor vehicles, commonly known as "headlights," and that the use of any other light on the forward part of such vehicles would not be subject to the limitation prescribed by the section. However, in my opinion, a careful consideration of the provisions of Section 6310-1, *supra*, renders untenable such a contention.

It is obvious from a reading of this section, that the legislature in its enactment, did not attempt to limit or restrict the use of more than two lights on the forward part of a motor vehicle. Consequently, in the absence of such a limitation or restriction, an operator of a motor vehicle may display while driving at night as many lights on the forward part of such vehicle as may be deemed necessary or advisable. However, to construe the provisions of Section 6310-1, *supra*, so as to permit an operator of a motor vehicle to display such lights without taking into consideration the inhibition therein contained, would, in my opinion, negative the primary object for its enactment.

It is a well established rule of statutory construction that in construing all statutes, the intent of the Legislature should be sought in every legitimate way. This rule is particularly applicable in cases where the provisions of a statute are doubtful and susceptible of two constructions, one of which would defeat and the other carry out the obvious purpose of the Legislature. Concerning this well recognized rule of statutory construction, your attention is directed to the text appearing in 37 O. Jur., section 362, wherein it is stated:

"Statutes are to be given a fair and reasonable construction in conformity to their general object, in order to effectuate such object and purpose, and should not be given such an interpretation as would thwart that purpose. If the words and language are susceptible of two constructions, one of which will carry out, and the other defeat, such manifest object and purpose, they should receive the former construction. Accordingly, it is not surprising to find the courts frequently referring to the legislature's purpose, or plan, or aim, or end, or motive."

Applying the foregoing rule to the provisions of Section 6310-1, *supra*, it is manifest that to adopt a construction which would in effect

limit in application the inhibition contained in Section 6310-1, supra, to only those lights installed on the forward part of a motor vehicle, commonly designated as "headlights", would, to a great extent, render the provisions of the section nugatory, and, in my judgment, defeat the very purpose for which the section was enacted.

In the application of the rules of statutory construction, it is always to be presumed that a definite purpose prompted the enactment of all legislation and that all statutes have been enacted for the public welfare. From a consideration of the provisions of Section 6310-1, supra, it is obvious that the Legislature in its enactment fully realized that the use of any lights on the forward part of a motor vehicle in excess of thirty-two candle power would by reason of the dazzling rays of reflected light tend to create a serious hazard in so far as the safe operation of motor vehicles over the public roads and highways of this state at night is concerned, and for the safety of all, the use of such lights should be prohibited.

That such was the intent of the Legislature is manifest from a reading and consideration of the provisions of Section 6310-1, supra, in its entirety. It will be specifically noted that the section provides that any lights thrown ahead or *sideways* shall be so arranged so that no dazzling rays or beams of reflected light from it or from any reflector shall at any time be more than three and one-half feet above the ground on a level road. In my judgment, this provision of the section alone dispels any doubt that might exist that the inhibition therein contained relative to the use of lights of more than thirty-two candle power, has application only to those lights commonly designated "headlights" and which comprise part of the equipment of a motor vehicle at the time of purchase.

Although in your communication you request advice as to the power of the Director of Highways with reference to the regulatory provisions of Section 6310-1, supra, I do not deem it necessary in view of the conclusion heretofore reached pertaining to the use of fog lights on the forward part of a motor vehicle, to enter into a lengthy discussion concerning this particular question. Suffice to say, the provisions of Section 6310-1 only confer upon the Director of Highways the authority to issue certificates of approval of devices installed on motor vehicles to prevent glare when after actual tests it is determined that such devices comply with the requirements for lights provided for by the section.

It is therefore my opinion, in specific answer to your question that:

1. The inhibition contained in Section 6310-1 of the General Code, to the effect that no lamp or light prescribed by this section shall be more than thirty-two candle power, has application to any and all lights, regardless of designation, installed on the forward part of a motor vehicle.

2. The use of fog lights on the forward part of a motor vehicle carrying bulbs in excess of thirty-two candle power is in violation of the provisions of Section 6310-1, General Code, and therefore prohibited.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1292

TEACHER RETIRED ON PENSION—EMPLOYMENT BY
BOARD OF EDUCATION, WHEN.

SYLLABUS:

A teacher who has been retired on a pension as provided for in Section 7896-25, General Code, may be employed by a board of education in a position which comes under membership in the State Public School Employes' Retirement System.

COLUMBUS, OHIO, October 11, 1937.

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

GENTLEMEN: This will acknowledge receipt of your recent communication, which reads as follows:

"A situation has been called to my attention in which a retired teacher is an applicant for the position of assistant truant officer, which position would carry with it membership in the new State Public School Employes' Retirement System. The question therefore arises:

Is it possible for a retired teacher to be employed by a board of education in a position which comes under membership in the School Employes' Retirement System?

I shall thank you for your opinion on this point."

For the purpose of answering your communication, I assume that the "retired teacher" to whom you refer, is retired on a pension as provided for in the State Teachers' Retirement System Act (Sections 7896-1 to 7896-63, inclusive, General Code). If this assumption is correct, the membership of said "retired teacher" in the retirement system has ceased, by reason of the following provision contained in Section 7896-25, General Code: