

Note from the Attorney General's Office:

1981 Op. Att'y Gen. No. 81-008 was overruled by
2010 Op. Att'y Gen. No. 2010-008.

OPINION NO. 81-008**Syllabus:**

A township regulation of the use of township streets or highways which does not conflict with standards set by statute or specific powers vested in other authorities is a valid exercise of police power pursuant to R.C. 4511.07(I), provided that the regulation is reasonable, is not discriminatory, is of uniform operation, has a real and substantial relation to its purpose, and does not interfere with private rights beyond the necessities of the situation. The determination of the validity of a particular regulation is a judicial function and depends not upon the form of the regulation but upon its operation and effect.

To: George E. Pattison, Clermont County Pros. Atty., Batavia, Ohio
By: William J. Brown, Attorney General, March 13, 1981

I have before me a request from your predecessor for my opinion concerning whether a township regulation prohibiting commercial truck traffic from using a township road to reach a commercial tract of real estate which also has frontage on a state highway constitutes a valid exercise of the authority of a board of township trustees to regulate traffic under R.C. 4511.07(I). The facts underlying your request indicate that the board of township trustees of Pierce Township seeks to regulate commercial truck traffic on Sycamore Lane, a seventeen foot wide residential street in Pierce Township which is under the jurisdiction of the board of trustees. Although Sycamore Lane was supposedly constructed and designed for residential vehicular traffic, a commercial business subsequently located on the westwardly terminus of Sycamore Lane and utilized said road as an ingress and egress to its property for trucks and tractor-trailers. The company's property also has a means of ingress and egress via a developed driveway from State Route 125, a four lane thoroughfare. Concerned about the danger to the safety and welfare of residents along Sycamore Lane, the township trustees proposed a resolution pursuant to R.C. 4511.07(I) regulating the use of township roads by trucks over a specified length. An informal opinion, dated April 15, 1980, was provided to your predecessor by a member of my staff on the question of the validity of the resolution. That letter indicated that township regulations may not conflict with standards set by statute or specific powers vested in other authorities, R.C. 1.51 (specific grants of power control when both general and specific grants have been made); e.g., R.C. 5577.05 (setting maximum width, height, and length limits for vehicles operated on public streets); R.C. 5577.08 (requiring board of county commissioners to classify improved county and township roads with respect to the maximum weights and speeds permitted), but concluded that, within this limitation, "the township may exercise any of the actions in R.C. 4511.07, including the regulation of 'the use of certain streets by vehicles,' as long as no arbitrary or

unreasonable judgment is evidenced." Another informal opinion, dated July 23, 1980, was provided to your predecessor concerning an amended resolution prohibiting commercial truck and tractor-trailer traffic on Sycamore Lane from a point at the intersection of Arcadia Lane eastwardly along Sycamore Lane to its terminus. Your predecessor later requested a formal opinion on the validity of this amended resolution.

The April, 1980 informal opinion determined that the authority to regulate the use of township streets or roads has been delegated to township boards of trustees by the General Assembly. The statute pertinent to this determination is R.C. 4511.07, which reads:

Sections 4511.01 to 4511.78, 4511.99, and 4513.01 to 4513.37 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:

(A) Regulating the stopping, standing, or parking of vehicles, trackless trolleys, and streetcars;

(B) Regulating traffic by means of police officers or traffic control devices;

(C) Regulating or prohibiting processions or assemblages on the highways;

(D) Designating particular highways as one-way highways and requiring that all vehicles, trackless trolleys, and streetcars thereon be moved in one specific direction;

(E) Regulating the speed of vehicles, streetcars, and trackless trolleys in public parks;

(F) Designating any highway as a through highway and requiring that all vehicles, trackless trolleys, and streetcars stop before entering or crossing the same, or designating any intersection as a stop intersection and requiring all vehicles, trackless trolleys, and streetcars to stop at one or more entrances to such intersection;

(G) Regulating or prohibiting vehicles and trackless trolleys from passing to the left of safety zones;

(H) Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;

(I) Regulating the use of certain streets by vehicles, streetcars, or trackless trolleys.

No ordinance or regulation enacted under divisions (D), (E), (F), (G), or (I) 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. (Emphasis added.)

R.C. 4511.01(AA) defines "local authorities" as "every county, municipal, and other local board or body having authority to adopt police regulations under the constitution and laws of this state." A court of appeals has held that a board of township trustees is a local authority for the purposes of R.C. 4511.07. Slicker v. Trustees of Boardman Township, 25 Ohio Op. 2d 75, 187 N.E.2d 392 (Ct. App. Mahoning County 1961), appeal dismissed, 173 Ohio St. 119, 180 N.E.2d 10 (1962).

Certainly R.C. 4511.07 is the source for the power of a township to formulate a regulation to protect its streets, but it does not authorize a township to formulate any particular regulation. In other words, the exercise of delegated power in the area of regulation of streets is not susceptible to precise guidelines. See Weber v. Board of Health, 148 Ohio St. 389, 74 N.E.2d 331 (1947). Thus, R.C. 4511.07 must be construed as authorizing only constitutional regulations, R.C. 1.47, and is not authority for a township to pass an arbitrary, unreasonable or otherwise unconstitutional ordinance.

Your predecessor has asked me to look at and determine the validity of the particular regulation proposed by the Pierce Township Board of Trustees. As indicated above, a township's authority to regulate its streets and roads is limited by the condition that its regulation may not conflict with standards set by a statute or specific powers vested in other authorities. I am not aware of any such statute or power which might conflict with the proposed regulation. Hence, the question before me is, in essence, whether the regulation is reasonable and constitutional.

The Cuyahoga County Court of Appeals has stated that a fundamental principle in determining the validity of municipal legislation regulating truck traffic is that the validity depends upon the legislation's operation and effect and not upon the mere form of the legislation. Cleveland v. Antonio, 100 Ohio App. 334, 124 N.E.2d 846 (Ct. App. Cuyahoga County 1955). Furthermore, the final decision upon the question of reasonableness or constitutionality of any particular legislation depends upon the particular facts of each case, and the making of that decision is, as a matter of law, a function of the courts. Since there is no general rule to guide the courts in distinguishing unconstitutional from constitutional legislation, the issue usually becomes one of reasonableness in the circumstances. Cincinnati Motor Transp. Ass'n v. City of Lincoln Hts., 25 Ohio St. 2d 203, 267 N.E.2d 797 (1971) ("reasonableness of a municipal ordinance. . . is a question of law for the court and depends upon the peculiar facts in each case"); Richter Concrete Corp. v. City of Reading, 166 Ohio St. 279, 142 N.E.2d 525 (1957) ("[t] here is no general rule by which to distinguish reasonable and lawful from unreasonable and arbitrary classification, the question being a practical one, dependent on experience and varying with the facts in each case" (quoting 16A C.J.S. 242 §489)); State v. Boone, 84 Ohio St. 346, 95 N.E. 924 (1911). Therefore, I decline to say whether a particular township regulation is constitutional or valid because the ultimate question is one which must be decided by the judicial arm of government. Although the legislation may be presumed constitutional, this office cannot usurp the judicial function of determining whether the resolution is constitutional in actual operation and effect.

This inability to advise that the particular resolution of the Pierce Township Board of Trustees is not subject to challenge on constitutional grounds does not prevent me from discussing the constitutional limits in the area of traffic regulation as construed by Ohio courts. Unfortunately, I am not aware of any Ohio case law, other than the Slicker case, that discusses constitutional limitations in the context of township regulation of roads. Even the court in Slicker did not speak in specific terms of the constitutionality of the township resolution; rather, the court professed that the powers of a board of trustees under R.C. 4511.07 are unlimited except that they must be exercised for a valid reason and not in an arbitrary manner. Despite this lack of case law dealing with the authority of townships, there is an abundance of court decisions in the analogous area of municipal legislation regulating the use of streets and roads pursuant to Ohio Const. art. XVIII, §3 (one of the Home Rule Amendments), R.C. 723.01, and R.C. 737.022.

Three Ohio Supreme Court cases, in particular, serve to explain the constitutional limits of ordinances regulating truck traffic on municipal streets. City of Niles v. Dean, 25 Ohio St. 2d 284, 268 N.E.2d 275 (1971); Cincinnati Motor Transp. Ass'n v. City of Lincoln Hts., 25 Ohio St. 2d 203, 267 N.E.2d 797 (1971); Richter Concrete Corp. v. City of Reading, 166 Ohio St. 279, 142 N.E.2d 525 (1957). Invariably in these types of cases, it is contended that the ordinances regulating truck traffic are arbitrary and unreasonable in violation of the due process clause, and discriminatory in violation of the equal protection clause. To determine the constitutionality of the ordinances in these instances, the courts of Ohio have consistently applied the following statement of law from Froelich v. Cleveland, 99 Ohio St. 376, 391, 124 N.E. 212, 216 (1919):

It must be remembered that neither the state in the passage of general laws, nor the municipality in the passage of local laws, may make any regulations which are unreasonable. The means adopted

must be suitable to the ends in view, they must be impartial in operation and not unduly oppressive upon individuals, must have a real and substantial relation to their purpose, and must not interfere with private rights beyond the necessities of the situation. (Citations omitted.)

This test of the constitutionality of legislation enacted pursuant to the police power was approved and redefined in the following three part test established by the Ohio Supreme Court: "(1) the legislation must concern an area in which government has a right to exercise some degree of control, (2) it must be reasonable and nondiscriminatory and (3) it must bear a substantial relation to the purpose sought to be effectuated." Teegardin v. Foley, 166 Ohio St. 449, 453, 143 N.E.2d 824, 827 (1957).

The ordinances in the Reading, Lincoln Hts., and Dean cases share a common purpose with the proposed ordinance your predecessor has presented to me. The purpose of these ordinances is to protect the safety and welfare of the inhabitants of a neighborhood by removing truck traffic from the more residential areas in order to maintain the tranquility necessary to preserve the residential character of the streets. In Reading and Lincoln Hts., the means to achieve this purpose was to prohibit the operation of vehicles exceeding a specified weight. On both occasions when the Reading and Lincoln Hts. ordinances were before the lower court, the Court of Appeals for Hamilton County reversed the findings of the trial court by holding that the ordinances were arbitrary, unreasonable and violative of the equal protection clause. The Ohio Supreme Court, on review of these cases, applied the basic test of Froelich v. Cleveland to both the ordinances, but reached a different result in each case. The Ohio Supreme Court in Reading, by affirming the "well-reasoned opinion" of the Court of Appeals, determined that "[t]he ordinance is illegal in that it imposes restrictions and penalties on those using the streets engaged in through traffic and imposes no such regulations upon those using the streets for other than through traffic." Reading at 283, 142 N.E.2d at 527 (quoting court of appeals judgment entry of reversal). The Ohio Supreme Court held at 284, 142 N.E.2d at 528: "The ordinance prohibits all other trucks over the specified weight from attempting to pass through the city from or in any other direction, which effects an unreasonable classification." In Lincoln Hts., the more recent decision of the Ohio Supreme Court, the Court of Appeals was reversed and the ordinance was upheld. Whereas the ordinance in Reading applied to all streets of the municipality, the Lincoln Hts. ordinance simply prohibited truck traffic on one exclusively residential street. This is a factual situation similar to the one surrounding the proposed resolution of the Pierce Township Trustees, which would also prohibit certain traffic on just one street. Applying the Froelich v. Cleveland test of reasonableness to the Lincoln Hts. situation, the court stated at 208, 267 N.E.2d 797 at 801:

The reasonableness of this ordinance is dependent upon whether it is fairly appropriate to the purpose under all the circumstances reflected by the record and whether it represents a bona fide exercise of the reasonable discretion of the council. The means adopted must be suitable to the end in view, must be impartial in operation, must not be unduly oppressive upon individuals, must have a real and substantial relation to their purpose, and must not interfere with private rights beyond the necessities of the situation.

The court found that the ordinance was necessary and suitable to preserve the residential character of the community and that it bore a real and substantial relation to this purpose. Perhaps the most decisive factor in favor of the ordinance, however, was the existence of alternative routes to accommodate the diverted traffic. The court said that "inconvenience to truckers necessarily will follow any regulation of truck traffic by a municipality," but the "mere existence of these available routes supports the reasonableness of the ordinance." Lincoln Hts. at 207-08, 267 N.E.2d at 800. I note that the proposed township resolution underlying your predecessor's request takes into consideration the existence of an alternate route via a major state highway.

March 1981

Finally, in the Dean case, the Ohio Supreme Court was faced with an ordinance similar in some respects to the proposed township resolution. The Dean ordinance did not prohibit truck traffic by weight but set out to merely regulate which streets trucks may use. By subjecting both local and nonresidential trucks to the same regulations, this ordinance overcame the objections posed in Reading that local truckers were being favored over through truckers. Nevertheless, it is common for traffic ordinances to exempt certain types of traffic from the provisions of the regulation. This can be found in the Pierce Township proposed resolution as well as the Dean and Reading ordinances. Such exemptions, however, make a traffic regulation or ordinance vulnerable to equal protection arguments. Ohio Const. art. I, §2 and the fourteenth amendment of the United States Constitution require the imposition of equal treatment by all branches and agencies of government. Yet, proper classification for legislative purposes, if reasonable, is not prohibited. Richter Concrete Corp. v. City of Reading, 103 Ohio App. 67, 136 N.E.2d 422 (Ct. App. Hamilton County 1956), aff'd 166 Ohio St. 279, 142 N.E.2d 525 (1957). The United States Supreme Court has stated that where an ordinance restricting certain traffic from particular streets applies equally to all members of a class similarly situated, the ordinance cannot be said to be unfairly discriminatory or violative of the equal protection of laws. Bradley v. Public Utilities Commission of Ohio, 289 U.S. 92 (1933), aff'g 125 Ohio St. 381, 181 N.E. 668 (1932). Therefore, it seems apparent that if an ordinance is of uniform operation it may withstand an equal protection argument.

In conclusion, it is my opinion, and you are advised, that a township regulation of the use of township streets or highways which does not conflict with standards set by statute or specific powers vested in other authorities is a valid exercise of police power pursuant to R.C. 4511.07(I), provided that the regulation is reasonable, is not discriminatory, is of uniform operation, has a real and substantial relation to its purpose, and does not interfere with private rights beyond the necessities of the situation. The determination of the validity of a particular regulation is a judicial function and depends not upon the form of the regulation but upon its operation and effect.