

might be selected as a suitable person for appointment. However, that would be in a case where the unusual and improbable condition would exist that it would not be possible to appoint the wife or widow of an honorably discharged soldier, sailor or marine of the Civil War or of the Spanish-American War.

It is therefore my opinion that where it is possible for a suitable member of said commission to be appointed who is a wife or widow of an honorably discharged soldier, sailor or marine of the Civil War or of the Spanish-American War, it is mandatory upon the Court of Common Pleas in making such appointment to select such suitable person for appointment to said commission.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1687.

MOTOR TRUCKS—REDUCTION OF ALLOWABLE WEIGHT AND SPEED
UNDER SECTION 7250, GENERAL CODE—DIRECTOR OF HIGHWAYS
AUTHORIZED TO DIFFERENTIATE AMONG DIFFERENT CLASSIFI-
CATIONS.

SYLLABUS:

When exercising the discretion conferred upon him by Section 7250 of the General Code, as amended (112 v. 249), the Director of Highways is authorized to differentiate among the different classifications of vehicles enumerated in Sections 7248 and 7249, General Code, and is not required to make the same reductions of maximum weight of vehicle and load or maximum speed, or both, of motor vehicles equipped with tires of rubber or other similar substance and vehicles equipped with steel tires. In making such reductions, however, he is required to follow the classifications set forth in Sections 7248 and 7249, General Code, and cannot create new classifications.

COLUMBUS, OHIO, February 9, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as follows:

“I am attaching hereto letter received from Mr. T. R. D., vice president of the W. Company of Cleveland, Ohio, and also certain exhibits which accompany his communication.

The question I wish to refer to you for opinion is whether under the law the director of this department has been given the discretion to differentiate between different types of vehicles, particularly as to the type of tires, in making the reduction in load limits under Section 7250 of the General Code.

A conference was had with reference to this matter attended by Mr. D., Mr. G. M. of your department and the writer. I agree with Mr. D. that the amount of damage done to roads by balloon tires is much less than in the case of motor vehicles equipped with solid rubber or steel tires. The question in my mind, as stated before, is whether the law gives me the right to differentiate between motor vehicles equipped with various types of tires.

The W. Company, as you know, is one of the large industries of the state and is engaged in the manufacture of motor busses and trucks. They are especially interested, however, in connection with the six cylinder W. motor busses equipped with balloon tires, many of which are operating on the highways of the state. Please note that Mr. D. requests that his company be given an opportunity to file a brief on the question with you before your opinion is rendered. I trust that you can find it proper to grant this request."

The letter enclosed with your inquiry reads as follows :

"We hereby request that when, under Section 7250 of the General Code, you prescribe a reduction of maximum weight of traffic that you do not include motor busses equipped with balloon tires.

There are a large number of reasons which justify the granting of this request, a few of which are :

1. When the law referred to (Sections 7246 to 7250, inc.) was enacted by the Legislature, balloon tires had not been invented. Consequently the Legislature could not have had that type of tire in mind when it passed this law.
2. Vehicles equipped with balloon tires do not do half as much damage to improved highways as is caused by vehicles equipped with solid rubber tires. This statement is proven by actual tests conducted by the Bureau of Public Roads of the United States Department of Agriculture. The attached graphs show the results of these tests.

Damage to improved highways is caused by impact which is the result of speed and weight. A mere glance at the cross sections of a standard 6-inch solid rubber tire which is standard equipment on a 5-ton truck and a standard 9-inch balloon tire which is standard equipment on a 29-passenger six-cylinder bus prove to the eye that the tests of the Bureau of Public Roads proves to the engineer. (In both of the above cases the vehicles are equipped on the rear with dual wheels and tires).

3. Motor busses operate under the regulation of the Public Utilities Commission and specific vehicles are certificated to operate. If therefore, 29-passenger balloon tired busses are not permitted to operate during a certain period because their gross weight exceeds $7\frac{1}{2}$ tons, the bus operator is placed in a position where he cannot render service to the traveling public during that period as he cannot afford to purchase special equipment to operate for only a month or two.

Other reasons might be given, but I conclude from conversations with you that you are better advised of these practical reasons than I am and that the question which faces you is—have you the right or discretion under the law to make a distinction between different types of vehicles or traffic where the facts warrant it. That question, I understand, you desire to submit to the Attorney General for an opinion before giving consideration to this request.

* * *

May I suggest that the Attorney General be requested to render an opinion on:

Does Section 7250 of the General Code give the Director of Highways the discretion—

- (1) To determine when improved highways would be injured by traffic during seasons of thaw or excessive moisture?
- (2) To determine what kind of traffic would tend to injure or destroy such highways during such seasons?

(3) To impose restrictions as to the use of the highways with regard to the weight and speed of traffic moving over them during such seasons within the limitations of the law, as for instance, could he determine that the allowable weight of steel wheeled vehicles should be reduced 25%, those having solid rubber tires 10%, and those having pneumatic or balloon tires 5%, or not at all, he finding as a fact that pneumatic or balloon tired vehicles would cause no appreciable damage during such seasons, while those with steel wheels or solid rubber tires would cause damage?

Of course I only suggest some such wording of the question if such wording covers what you have in mind, as I am primarily interested not in the form of the question, but in the answer to it by the Attorney General, satisfying you as to your discretion under the law in order that you may feel fully justified in exercising such discretion in accordance with the facts.

* * * "

Your inquiry involves a consideration of the provisions of Section 7250, General Code, and presents the question as to whether the Director of Highways, in exercising the discretion conferred upon him by such section, may differentiate between motor vehicles equipped with various types of tires when making reductions in the maximum weight of vehicles and loads and the maximum speed limits during times of thaws or excessive moisture.

Section 7250, General Code, as amended by the 87th General Assembly (112 v. 249), provides:

"When thaws or excessive moisture render the improved highways of this state or any sections of the same insufficient to bear the traffic thereon, or when such improved highways or any sections of them would be damaged or destroyed by heavy traffic during the period of thawing or excessive moisture, the maximum weight of vehicle and load, or the maximum speed, or both, for motor vehicles as prescribed by law shall be reduced in the following manner:

On main market roads and inter-county highways of the state, which have been taken over by the state, the Director of Highways and Public Works shall prescribe such reduction which shall not be more than twenty-five per cent; on improved highways and all other roads in the county, other than main market roads and inter-county highways taken over by the state, the county commissioners shall prescribe such reduction as the condition of the road or highway would justify, but in no case shall such reduction be more than fifty per cent. Such schedule of such reduction of maximum weights and speeds shall be filed for the information of the public in the office of the county commissioners of each county in which such schedule is operative and in the office of the Director of Highways and Public Works. The Director of Highways and Public Works, or the county commissioners at least one day before such reduction shall become effective, shall cause to be placed and retained on said improved highways or roads or sections thereof, at both ends and at the points of intersections by principal roads during the period of such reduced limitation of weight, or speed, or both, signs of substantial construction which will conspicuously indicate the limitation of weight of vehicle and load, and speed, which will be allowed on such highway or section thereof, and the date on which such limitations shall go into effect, and it shall be unlawful to operate upon any such highway, a motor vehicle whose maximum weight or speed is in excess of the limitations so prescribed. The expense

of the purchase and erection of signs provided for in this section shall be paid for from funds for the maintenance and repair of roads."

This section in its present form was first enacted on April 4, 1923 (110 v. 319) in an act entitled:

"An Act—To amend Sections 7246, 7248, 7248-1, 7248-2, 7249, 7250, 7251 and 13421-17 and to enact supplemental Sections 7249-1 and 7251-1 of the General Code, relative to the protection of the improved highways of the state by limiting the weight and speed of motor vehicles and providing for the appointment of highway police to enforce the traffic laws of the state."

Sections 7246, 7248 and 7249 as amended in this act respectively read in part as follows:

Sec. 7246. "No traction engine or steam roller weighing in excess of twelve tons, or no trailer, semi-trailer, wagon, truck, automobile truck, commercial tractor, or other vehicle, whether propelled by muscular or motor power, weighing in excess of ten tons, including weight of vehicle and load, shall be operated over and upon the improved public streets, inter-county highways, main market roads, bridges or culverts within the state, except as provided in this chapter.

* * * "

Sec. 7248. "No person, firm or corporation shall transport over the improved public streets, alleys, inter-county highways, main market roads, bridges or culverts in any vehicle propelled by either muscular, motor or other power, any burden, including weight of vehicle and load, greater than the following:

In vehicles having metal tires three inches or less in width a load of five hundred pounds for each inch of the total width of tire on all wheels. When the tires on such vehicles exceed three inches in width an additional load of eight hundred pounds shall be permitted for each inch by which the total width of the tires on all wheels exceeds twelve inches.

In vehicles having tires of rubber or other similar substances, for each inch of the total width of tires on all wheels, as follows: For tires three inches in width, a load of four hundred and fifty pounds; for tires three and one-half inches in width a load of four hundred and fifty pounds; for tires four inches in width, a load of five hundred pounds; for tires five inches in width, a load of six hundred pounds; and, for tires six inches and over in width, a load of six hundred and fifty pounds. The total width of tires on all wheels shall be, in case of solid tires of rubber or other similar substance, the actual width in inches of all such tires between the flanges at the base of the tires, but in no event shall that portion of the tire coming in contact with the road surface be less than two-thirds the width so measured between the flanges. And in the case of pneumatic tires of rubber or other similar substance, the total width of all tires on all wheels shall be the actual width of all such tires measured at the widest portion thereof when inflated and not bearing a load.

In no event shall the load, including the proportionate weight of vehicle that can be concentrated on any wheel, exceed six hundred and fifty pounds to each inch in width of the tread as defined above for solid tires; or each

inch in the actual diameter of pneumatic tires measured when inflated and not bearing a load.”

Sec. 7249. “No commercial cars of the kinds and weights enumerated in this section shall be operated in the business and closely built up portions of a municipality or in any other portions thereof, or outside of municipalities at a greater rate of speed than is reasonable and proper having regard for the width, traffic, use and the general and usual rules of such road or highway. A greater rate of speed than the following shall be prima facie evidence of a rate of speed greater than is reasonable and proper for general safety and protection of the roadway :

1. For vehicles equipped with solid rubber tires whose maximum weight of vehicle and load does not exceed four tons, twelve miles an hour in the business or closely built up portions of a municipal corporation, fifteen miles an hour in other portions thereof, or twenty miles an hour outside of a municipal corporation, and whose maximum weight of vehicle and load exceeds four tons, twelve miles an hour in the business of (or) closely built up portions of a municipal corporation, fifteen miles an hour in other portions thereof, or fifteen miles an hour outside of a municipal corporation.

2. For vehicles equipped with pneumatic tires designed for the transportation of property, whose maximum weight of vehicle and load is three tons and not more than six tons, fifteen miles an hour in the business and closely built up portions of municipal corporations, twenty miles an hour in other portions thereof, or twenty-five miles an hour outside of municipal corporations.

For vehicles equipped with pneumatic tires designed for the transportation of property, whose maximum weight of vehicle and load is more than six tons, twelve miles an hour in the business and closely built up portions of municipal corporations, eighteen miles an hour in other portions thereof, or twenty miles an hour outside of municipal corporations.

3. For motor vehicles drawing more than one trailer or one semi-trailer, twelve miles an hour.

4. For vehicles equipped with iron or steel tires whose maximum weight of vehicle and load exceeds six tons, ten miles an hour.

5. For vehicles equipped with pneumatic tires designed for the transportation of persons, fifteen miles an hour in the business or closely built up portions of municipal corporations, twenty miles an hour in other portions of cities, twenty-five miles an hour in other portions of villages, or thirty-five miles an hour outside of municipal corporations.”

It will be seen from the provisions of Section 7250, *supra*, that discretion is vested in the Director of Highways in two respects: First, he must determine when thaws or excessive moisture render the improved highways of the state insufficient to bear the traffic thereon, or when such improved highways would be damaged or destroyed by heavy traffic during the period of thawing or excessive moisture; and, second, what reduction shall be made of the maximum weight of vehicle and load, or the maximum speed, or both, for motor vehicles as prescribed by law, which reduction shall not, however, be more than twenty-five per cent.

Section 7250 is *in pari materia* and must be read in connection with Sections 7246, 7248, 7249 and related sections.

By the terms of Section 7248 the Legislature has classified vehicles with reference to the material of which the tires on such vehicle are made and to the size of such tires, distinction being made between metal tires and tires of rubber or other similar

substances and between tires of different sizes. Further distinction is made with respect as to how solid tires of rubber or similar substances on the one hand and pneumatic tires on the other shall be measured.

In Section 7249, relating to the speed of commercial cars, a classification was made by the Legislature, different speeds being prescribed according to the weight of the vehicle, the nature of the tires used on such vehicles, whether or not such vehicle is used to carry property or to carry passengers, and whether or not the vehicle is used to draw trailers, and different maximum speeds being fixed for the business or closely built up portions of municipal corporations, for the other portions of cities, for the other portions of villages and for roads outside of municipal corporations.

The maximum weight of vehicles and loads prescribed in Section 7248 for the various kinds of motor vehicles therein classified and the maximum speeds fixed by Section 7249 for the various kinds of motor vehicles therein enumerated were determined by the Legislature with the operation of motor vehicles on roads and highways in normal condition in mind; and the Legislature had delegated to the Director of Highways the power to reduce the prescribed maximum weight for vehicles and loads, or maximum speeds, or both, when because of thaws or excessive moisture the roads and highways are not in a normal condition.

The power to delegate such authority and discretion, as is here involved, in an administrative officer or board has been repeatedly sustained by the courts on the theory that the power to legislate and declare the policy of the law is not being conferred, but only the authority to ascertain the facts and conditions to which the declared policy of the Legislature and principles of law enacted thereby shall apply.

Mr. E. F. Albertsworth in writing on the subject of judicial review of administrative action in 35 Harvard Law Review at page 135 states as follows:

“Somewhere in the discretionary power given to an administrative official there must be a standard to govern his action. If this standard is not expressly stated in the statute under which the official acts, it must be determined from its purpose; that is, the general object it is seeking to accomplish and the circumstances which called it forth. It would be impossible for any state Legislature or for Congress to issue detailed orders covering all conceivable cases; the leaving to administrative officials of discretionary power to fill in details will not necessarily lead to injustice. Unless there has been an arbitrary exercise of discretion, through bias, fraud, or discrimination, judicial review of administrative discretion should be confined within narrow limits.”

In *Buttfield vs. Stranahan*, 192 U. S. 470, the court in considering the extent of the authority of the Secretary of the Treasury to prescribe standards for tea imported, said at page 496:

“Congress legislated on the subject as far as was reasonably practicable, and from the necessities of the case was compelled to leave to executive officials the duty of bringing about the result pointed out by the statute.”

In *U. S. vs. Antikamnia Chemical Co.*, 231 U. S. 654, in passing upon the power of the Secretaries of the Treasury of Agriculture and of Commerce and Labor acting jointly to make rules under the pure food and drug act the court said at page 665:

“The purpose of the act is to secure the purity of food and drugs, and

to inform purchasers of what they are buying. Its provisions are directed to that purpose and must be construed to effect it."

and continued at page 666:

"First, as to the power of the Secretaries. It is undoubtedly one of regulation only,—an administrative power only,—not a power to alter or add to the act. The extent of the power, however, must be determined by the purpose of the act and the difficulties its execution might encounter."

In *Mutual Film Company vs. Industrial Commission*, 236 U. S. 230, at page 245, the Supreme Court in upholding the Ohio law providing for motion picture censorship, stated:

"Undoubtedly the Legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative body may be invested with the power to ascertain the facts and conditions to which the policy and principles apply. If this could not be done there would be infinite confusion in the laws, and in an effort to detail and to particularize, they would miss sufficiency both in provision and execution."

In *Locke's Appeal*, 72 Pa. 491, the court said:

"The Legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some facts or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the law making power, and must, therefore, be a subject of inquiry and determination outside of the halls of legislation."

The intent of the Legislature in enacting Section 7150, General Code, and the purpose of the section are manifest both from the title of the act in which the section was enacted and from the context of the statute as well. It is clear beyond cavil that the purpose of the statute is, by the reduction of the maximum weights of vehicles and loads, or the maximum speeds of such vehicles, or both, to prevent damage to the public highways during periods of thaws or excessive moisture. Recognition of the consequent damage to highways because of the excessive weight of motor vehicles or the excessive speed thereof had led to the passage of similar statutes by other states, including among others, Michigan, Indiana and Kentucky.

It is a fundamental rule of statutory construction that statutes must always be construed with reference to the object intended to be accomplished by them. In 36 Cyc., 1110, with reference to the policy and purpose of an act of the Legislature, it is said as follows:

"Every statute must be construed with reference to the object intended to be accomplished by it. In order to ascertain this object it is proper to consider the occasion and necessity of its enactment, the defects or evils in the former law, and the remedy provided by the new one; and the statute should be given that construction which is best calculated to advance its object, by suppressing the mischief and securing the benefits intended. * * * "

As above stated, the discretion vested by Section 7250 in the Director of Highways relates to two subjects: First, the condition of the highways; and, second, the extent of the reduction of the maximum weight of vehicle and load or speed of the vehicle, or both, which reduction must not be more than twenty-five per cent of the maximum limits fixed by statute. Before the limitations provided for in this section can be placed upon the traffic using the public highways, it must be determined that the conditions prescribed in the statute exist, namely, that because of thaws and excessive moisture the highways are insufficient to bear the traffic thereon, and that said highways would be damaged or destroyed. Although not expressly stated, it is clear that the existence or non-existence of these conditions is to be determined by the Director of Highways. This is consistent with other sections of the General Code, namely, Section 1179, which in prescribing the qualifications of the Director of Highways, provides that he must be "a competent civil engineer, experienced in all branches of highway construction, such as the building, constructing and maintaining of roads and bridges," and Section 1184, General Code, by which the Director of Highways is given "general supervision of the construction, improvement, maintenance and repair of all roads comprising the state highway system, and the bridges and culverts thereon."

In so far as determining the condition of the highways is concerned, the statute contains no limitation whatever upon the discretion vested in the director. He may determine that because of thaws or excess of moisture the highways are insufficient to bear the traffic thereon and that they would be damaged or destroyed by heavy traffic during any period of thawing or excessive moisture in any month in the year. His discretion in this respect is unlimited. In so far as reducing the maximum weights of vehicles and loads or the maximum speed of vehicles, however, he is limited by the terms of Section 7250 to the reduction of the maximum weight or the maximum speed, or both, "for motor vehicles as prescribed by law," although the statute does not expressly require a reduction on all classes of vehicles at the same time. Having vested the director with absolute discretion to determine the condition of the highways at times of thaws and excessive moisture, it seems reasonable to conclude that the Legislature intended to empower him with full power and discretion to determine that the highways might be in such condition as to require a reduction of the maximum weights of vehicles and loads and maximum speeds of vehicles equipped with metal tires without making any corresponding reduction with reference to vehicles equipped with solid tires of rubber or similar substance or pneumatic tires.

It must be remembered that the classifications contained in Sections 7248 and 7249 have relation to highways under normal conditions, and while the director may only make reductions on the maximum weights and speeds of vehicles as classified by the Legislature, I find nothing to require the same reduction to be made as to all classifications at the same time. To so hold would result in limiting if not entirely destroying the director's discretion to determine the condition of the highways and to some extent at least would defeat the purpose of the act under consideration. It might well be that the condition of the highways at a certain period might be such as vehicles equipped with metal tires would entirely ruin the highways unless a reduction of the maximum weight and speed of this class of vehicles were brought about, while at the same time vehicles equipped with solid rubber tires or with pneumatic tires might in nowise injure the highway.

For these reasons and in specific answer to your question it is my opinion that when exercising the discretion conferred upon him by Section 7250 of the General Code, as amended (112 v. 249), the Director of Highways is authorized to differentiate among the different classifications of vehicles enumerated in Sections 7248 and 7249,

General Code, and is not required to make the same reductions of maximum weight of vehicle and load or maximum speed, or both, of motor vehicles equipped with tires of rubber or other similar substance and vehicles equipped with steel tires. In making such reductions, however, he is required to follow the classifications set forth in Sections 7248 and 7249, General Code, and cannot create new classifications.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1688.

APPROVAL, NOTE OF HIGHLAND VILLAGE SCHOOL DISTRICT, HIGHLAND COUNTY, OHIO—\$40,000.00.

COLUMBUS, OHIO, February 9, 1928.

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

1689.

APPROVAL, NOTES OF NEWARK RURAL SCHOOL DISTRICT, LICKING COUNTY, OHIO—\$55,000.00.

COLUMBUS, OHIO, February 9, 1928.

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

1690.

APPROVAL, BONDS OF THE VILLAGE OF BEXLEY, FRANKLIN COUNTY, OHIO—\$10,300.00.

COLUMBUS, OHIO, February 9, 1928.

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