OPINION NO. 90-036

Syllabus:

1. Gross overloads are subject to the penalty provisions of R.C. 5577.99(A).

2. An operator of a vehicle may be penalized, pursuant to R.C. 5577.99(A), for a gross overload, even though the overload on any axle does not exceed one thousand pounds, and an immediately preceding or following axle, excepting the front axle of the vehicle, is underloaded by the same or a greater amount.

To: William M. Denihan, Director, Department of Highway Safety, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, June 20, 1990

I have before me your request for my opinion regarding the application of R.C. 5577.99(A) to gross overloads. Information provided indicates that a gross overload is an exceeding of the maximum weight of vehicle and load that a vehicle may impose upon the road surface. Because of problems the Division of State Highway Patrol has been encountering in the enforcement of the weight provisions relating to gross overloads, you have submitted several questions for my consideration. For purposes of analysis, I have rephrased your questions, with the approval of a member of your staff, as follows:

1. Are the penalties contained in R.C. 5577.99(A) applicable to gross overloads?

2. If the answer to question one is in the affirmative, may an operator of a vehicle be penalized, pursuant to R.C. 5577.99(A), for a gross overload, when the overload on any axle does not exceed one thousand pounds, and an immediately preceding or following axle, excepting the front axle of the vehicle, is underloaded by the same or a greater amount?

I note initially that the General Assembly has set forth provisions for calculating the maximum weight of vehicle and load that pneumatic tired vehicles, R.C. 5577.04, and solid-tired vehicles, R.C. 5577.041, may impose upon the public highways, streets, bridges, and culverts of Ohio. R.C. 5577.04(B), which provides various provisions concerning the allowable weight of pneumatic tired vehicles, states in part:

> The weight of vehicle and load imposed upon the road surface by vehicles with pneumatic tires, by any three successive load-bearing axles designed to equalize the load between such axles and spaced so that each such axle of the three-axle group is more than four feet from the next axle in the three-axle group and so that the spacing between the first axle and the third axle of the three-axle group is no more than nine feet, shall be computed using either of the following methods:
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> (1) Such load-bearing three-axle group shall be weighed simultaneously as a unit and shall not exceed forty-eight thousand pounds. The *total weight of vehicle and load* shall not exceed thirty-eight thousand pounds plus an additional nine hundred pounds for each foot of spacing between the front axle and the rearmost axle of the vehicle provided, that the total weight of the vehicle and load imposed upon the road surface shall not exceed eighty thousand pounds.
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> (2) Such load-bearing three-axle group shall be weighed simultaneously as a unit and shall not exceed forty-two thousand five hundred pounds. The *total weight of vehicle and load* of a six-axle vehicle combination, with at least twenty feet of spacing between the front axle and rearmost axle, shall not exceed fifty-four thousand pounds plus an additional six hundred pounds for each foot of spacing between the front axle and the rearmost axle of the vehicle. provided, that the total weight of the vehicle and load imposed upon the road surface shall not exceed eighty thousand pounds.
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> The *total weight of vehicle and load* utilizing any combination of axles, other than as provided for three-axle groups in division (B) of this section, shall not exceed thirty-eight thousand pounds plus an additional nine hundred pounds for each foot of spacing between the front axle and rearmost axle of the vehicle, provided that the total weight of a vehicle and load imposed upon the road surface by vehicles with pneumatic tires shall not exceed eighty thousand pounds. (Emphasis added.)

R.C. 5577.041 makes similar provisions with respect to solid-tired vehicles. Such section, in relevant part, provides:

> the *total weight of vehicle and load* [shall not] exceed, for solid rubber tires, twenty-eight thousand pounds plus an additional six hundred pounds for each foot or fraction thereof of spacing between the front axle and the rearmost axle of the vehicle; nor shall the weight of vehicle and load imposed upon the road surface by any vehicle equipped with solid rubber tires, exceed eighty per cent of the permissible weight of vehicle and load as provided for pneumatic tires. (Emphasis added.)

Consequently, the operator of any vehicle which exceeds its maximum weight of vehicle and load, as calculated under either R.C. 5577.04(B) or R.C. 5577.041, may be cited for a gross overload.

I turn now to your first question which asks whether the penalties of R.C. 5577.99(A) apply to gross overloads. Division (A) of R.C. 5577.99 provides:

> *Whoever violates the weight provisions of sections 5577.01 to 5577.07* or the weight provisions in regard to highways under section 5577.04 of the Revised Code shall be fined eighty dollars for the first two thousand pounds, or fraction thereof, of overload; for overloads in excess of two thousand pounds, but not in excess of five thousand pounds, such person shall be fined one hundred dollars, and in addition thereto one dollar per one hundred pounds of overload; for overloads in excess of five thousand pounds, but not in excess of ten thousand pounds, such person shall be fined one hundred thirty dollars and in addition thereto two dollars per one hundred pounds of overload, or imprisoned not more than thirty days, or both. For all overloads in

> excess of ten thousand pounds such person shall be fined one hundred sixty dollars, and in addition thereto three dollars per one hundred pounds of overload, or imprisoned not more than thirty days, or both. Whoever violates the weight provisions of vehicle and load relating to gross load limits shall be fined not less than one hundred dollars. No penalty prescribed in this division shall be imposed on any vehicle combination if the overload on any axle does not exceed one thousand pounds, and if the immediately preceding or following axle, excepting the front axle of the vehicle combination, is underloaded by the same or a greater amount. For purposes of this division, two axles on one vehicle less than eight feet apart, shall be considered as one axle. (Emphasis added.)

The language of R.C. 5577.99(A) clearly mandates that violators of the weight provisions of R.C. 5577.01 to R.C. 5577.07 are to be fined a certain amount, or imprisoned, or both, depending upon the amount of overload. *See generally Dorrian v. Scioto Conserv. Dist.*, 27 Ohio St. 2d 102, 107, 271 N.E.2d 834, 837 (1971) ("shall" is generally interpreted as imposing a mandatory duty). As stated above, the weight provisions relating to gross overloads are provided for in R.C. 5577.04(B) and R.C. 5577.041. As such, it readily appears from the plain language that the penalties of R.C. 5577.99(A) apply to gross overloads. *See generally Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five) ("[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted"); *State ex rel. Stanton v. Zangerle*, 117 Ohio St. 436, 439, 159 N.E. 823, 824–25 (1927) ("[t]here is no dispute...as to what the law specifically provides with respect to these matters. There is practically no occasion for any construction of the statutes. They are very definite and very plain, and need only to be read to ascertain their meaning").

I note, however, that in your letter you indicate that some authority exists for the proposition that the penalties of R.C. 5577.99(A) are not applicable to gross overloads, but pertain only to axle overloads. Specifically, the Third District Court of Appeals of Ohio in *State v. Angel*, No. 5–79–1, slip op. at 15, 17 (Ct. App. Hancock County 1979) (unreported), in interpreting the final two sentences of R.C. 5577.99(A),[1] summarized that:

> An examination of the penalty section for violations involving maximum gross weight indicate that the *two quoted sentences* of R.C. 5577.99 are not applicable to cases involving gross weights but pertain only to maximum axle loads....
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> ....
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> The *two [final] sentences* from current R.C. 5577.99(A),...relate only to the permitted weight distribution in regard to the axles and are not related to the gross load limit. The purpose of the legislature is obvious that gross overload violations should be penalized separately from the penalty provided for violations as to axle loads. (Emphasis added.)

Accord State v. Daymon, No. WD–79–12, slip op. at 4–6 (Ct. App. Wood County 1979) (unreported) (quoting from *State v. Angel* with approval).

While it may appear that the court sought to exclude gross overloads from the penalties contained in R.C. 5577.99(A), the language used by the court is more limited. The court specifically stated that only the last two sentences of R.C. 5577.99(A) are not applicable to gross overloads. Thus, it is my opinion that the court in *State v. Angel* did not intend to except gross overloads from all the

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[1] R.C. 5577.99(A) has been amended since the court's issuing of its decision in *State v. Angel*, No. 5–79–1 (Ct. App. Hancock County 1979) (unreported). *See* 1987–1988 Ohio Laws, Part II, 3596 (Am. Sub. H.B. 409, eff. May 31, 1988). The change in language, however, does not effect the conclusion reached by the court in *State v. Angel*.

penalty provisions of R.C. 5577.99(A), but rather intended to limit the effect of the final two sentences to axle overloads. I have been unable to find any other authority which lends support to the proposition that gross overloads are excepted from the penalty provisions of R.C. 5577.99(A). Accordingly, I find that gross overloads are subject to the penalties of R.C. 5577.99(A).

Since the answer to your first question is in the affirmative, I turn now to your second question. You ask whether an operator of a vehicle may be penalized, pursuant to R.C. 5577.99(A), for a gross overload, when the overload on any axle does not exceed one thousand pounds, and an immediately preceding or following axle, excepting the front axle of the vehicle, is underloaded by the same or a greater amount. Your question has been prompted by the language of the last two sentences of R.C. 5577.99(A). These two sentences provide:

> *No penalty prescribed in this division shall be imposed* on any vehicle combination if the overload on any axle does not exceed one thousand pounds, and if the immediately preceding or following axle, excepting the front axle of the vehicle combination, is underloaded by the same or a greater amount. For purposes of this division, two axles on one vehicle less than eight feet apart, shall be considered as one axle. (Emphasis added.)

These sentences, thus, establish an exception to the application of the penalty provisions of R.C. 5577.99(A).

As indicated above, the court in *State v. Angel* has determined that the final two sentences of R.C. 5577.99(A) do not apply to gross overloads. *Accord State v. Daymon.* Applying the maxim of construction that a statute is to be given a construction consistent with its general purpose and which effectuates such purpose, the court found, in *State v. Angel*, that in order to effectuate the purpose of R.C. 5577.99(A) vis-a-vis the penalizing of gross overloads, the last two sentences of such section must be limited to axle overloads. *State v. Angel*, slip op. at 17-18; *accord State v. Daymon*, slip op. at 6. In addition, the court stated that "[i]f the legislature had intended to repeal the long standing, ever increasing penalties for gross overload, it could have done so in express terms." *State v. Angel*, slip op. at 18; *accord State v. Daymon*, slip op. at 6. The court in *State v. Angel*, clearly was of the opinion that the last two sentences of R.C. 5577.99(A) do not provide an exception to the penalty provisions of such section with respect to gross overloads. *Accord State v. Daymon.*

I note that the opinion of the court in *State v. Angel* is an unpublished opinion. As such, this unpublished opinion is not considered controlling authority. *See* Supreme Court Rules for the Reporting of Opinions, Rule 2(G)(1); *see also State ex rel. Graves v. State*, 9 Ohio App. 3d 260, 262, 459 N.E.2d 913, 917 (Ct. App. Franklin County 1983) ("the Supreme Court has recently adopted Rules for the Reporting of Opinions, Rule 2(G)(1) of which provides that an unpublished opinion shall not be considered controlling authority"); *cf. Bumiller v. Walker*, 95 Ohio St. 344, 351, 116 N.E. 797, 800 (1917) ("[o]rdinarily this court does not regard its unreported cases as judicial authority"). Such unpublished opinion, however, is considered persuasive authority on a court. *See* Supreme Court Rules for the Reporting of Opinions, Rule 2(G)(2); *cf. Bumiller v. Walker*, 95 Ohio St. at 351, 116 N.E. at 800 ("where a single question was involved, and that succinctly stated and decided, it cannot be said that such unreported case is wholly without influence"). Further, an opinion by an Ohio court of appeals is given a great deal of respect and generally, unless inherently wrong, is followed by the other courts of appeals. *See Pilkington v. Saas*, 25 Ohio Law Abs. 663, 667 (Ct. App. Franklin County 1937) ("[d]ecisions of Courts of Appeal[s] of other districts are not binding upon us, but in the interest of stability of law are to be followed, unless in our judgment the principles announced are inherently wrong"); *Dawson v. Kemper*, 1 Ohio Dec. 556, 561 (C.P. Hamilton County 1894) ("'[w]hen a question of law has been directly decided by one of the circuit courts of Ohio, it should be followed by the other circuits, unless it clearly appears to the court that the decision is wrong'" (quoting *State ex rel. Wentzell v. Fosdick*, 1 Ohio C.C. 265, 1 Ohio Cir. Dec. 145 (Cir. Ct. Hamilton County 1885) (syllabus))), *aff'd*, 11 Ohio C.C. 180, 5 Ohio Cir.

Dec. 130 (Cir. Ct. Hamilton County 1896); *cf. Gustin v. Sun Life Assur. Co. of Canada*, 154 F.2d 961, 962-63 (6th Cir. 1946) (where an unreported opinion of a court of appeals of Ohio is the only available data as to what the state law is on the issue presented in a federal court case, and there is no reason to suppose that the court of appeals will depart from its ruling or that the Ohio Supreme Court will grant a review thereon, the federal court will follow such unreported opinion), *cert. denied*, 328 U.S. 866 (1946); *State v. George*, 50 Ohio App. 2d 297, 309, 362 N.E.2d 1223, 1231 (Ct. App. Franklin County 1975) ("[i]t seems to be a well established general rule that what a given court has stated in the past on a subject is important to the litigants, as well as to the court. In this regard, legal precedents provide a guiding principle in the presenting and arguing of cases, as well as in their decisions. We believe this to be so whether or not a previously announced position concerning the law is contained in an officially reported case"). *But see* R.C. 2503.20.[2] Thus, when a court of competent jurisdiction has rendered an opinion, whether officially or unofficially published, or unpublished, on the interpretation of a particular statute, the interpretation of the statute by the court of competent jurisdiction should be followed. I find, accordingly, that the interpretation of R.C. 5577.99(A) by the Third District Court of Appeals of Ohio in *State v. Angel* should be followed and that an operator of a vehicle may be penalized, pursuant to R.C. 5577.99(A), for a gross overload, even though the overload on any axle does not exceed one thousand pounds, and an immediately preceding or following axle, excepting the front axle of the vehicle, is underloaded by the same or a greater amount. *Accord State v. Daymon.*

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2 R.C. 2503.20, which provides for the publication of court reports, reads in part, "[a]ll such cases shall be reported in accordance with this section before they are recognized by and receive the official sanction of any court." Some courts have construed this language to mean that "recognition and sanction are not to be accorded to unofficially reported opinions." *Bevan v. Century Realty Co.*, 64 Ohio App. 58, 66, 27 N.E.2d 777, 781 (Ct. App. Mahoning County 1940), *appeal dismissed mem. for the reason that no debatable constitutional question exists*, 136 Ohio St. 549, 27 N.E.2d 148 (1940); *accord National Surety Corp. v. Blackburn*, 62 Ohio Law Abs. 158, 159, 106 N.E.2d 780, 780-81 (Ct. App. Franklin County 1951), *appeal dismissed mem. for the reason that no debatable constitutional question exists*, 154 Ohio St. 564, 97 N.E.2d 8 (1951). Other courts, however, have stated that the above quoted language from R.C. 2503.20 is directory, rather than mandatory. *Gustin v. Sun Life Assur. Co. of Canada*, 154 F.2d 961 (6th Cir. 1946), *cert. denied*, 328 U.S. 866 (1946); *State v. George*, 50 Ohio App. 2d 297, 362 N.E.2d 1223 (Ct. App. Franklin County 1975).

Further, since the issuance of both the *Bevan v. Century Realty Co.* and *National Surety Corp. v. Blackburn* opinions, the Ohio Supreme Court has promulgated the Supreme Court Rules for the Reporting of Opinions. Said rules, clearly provide that unofficially published opinions and unpublished opinions are to be considered persuasive authority on a court. Supreme Court Rules for the Reporting of Opinions, Rule 2(G)(2). In addition, the rules provide that

> [n]otwithstanding any provision to the contrary in Section (G), unofficially published opinions or unpublished opinions of one appellate district may be cited by the Court of Appeals of another appellate district for purposes of certifying to the Supreme Court a conflict question within the provisions of Sections 3(B)(4) and 2(B)(2)(e) of Article IV of the Ohio Constitution.

Supreme Court Rules for the Reporting of Opinions, Rule 2(H). The Ohio Supreme Court, thus, recognizes and sanctions the use of unofficially published opinions and unpublished opinions by courts.

Therefore, it is my opinion and you are hereby advised that:

1. Gross overloads are subject to the penalty provisions of R.C. 5577.99(A).

2. An operator of a vehicle may be penalized, pursuant to R.C. 5577.99(A), for a gross overload, even though the overload on any axle does not exceed one thousand pounds, and an immediately preceding or following axle, excepting the front axle of the vehicle, is underloaded by the same or a greater amount.