

OPINION NO. 79-059**Syllabus:**

A traffic violations bureau is not required to allow an individual charged with an offense enumerated in Ohio Traffic Rule 13(B) to pay a fine without a court appearance, notwithstanding the provisions of R.C. 2935.26.

To: Vincent E. Gilmartin, Mahoning County Pros. Atty., Youngstown, Ohio
By: William J. Brown, Attorney General, September 27, 1979

I have before me your request for my opinion, wherein you incorporated a letter which reads as follows:

The problem which I am unable to resolve is the apparent conflict between the requirements of Section 2935.26(C) and Ohio Traffic Rule 13(B). The problem arises when an officer issues a traffic citation for an offense classified as a minor misdemeanor, either under a city ordinance or under Section 4511.99(C) and (D). Clearly, Section 2935.26(C) would require that the offender be permitted to plead "guilty", either in person or by mail, through traffic bureau, a procedure which has been followed throughout the state up to now, pursuant to Traffic Rule 13. However, Traffic Rule 13(B) provides thirteen specified traffic offenses which cannot be processed through traffic bureau; and of these, numbers (2), (4), (8), and (13) could easily be offenses classified as minor misdemeanors, depending on the controlling circumstances in the penalty statutes or ordinances. Now, in these cases, is the offender required to appear in Court pursuant to Traffic Rule 13(B); or must he be allowed to go through traffic bureau (or the equivalent) pursuant to Section 2935.26(C)?

As I understand it then, your question is the following:

Must a traffic violations bureau allow an individual charged with a minor misdemeanor to plead guilty and pay the fine without appearing in court under R.C. 2935.26(C), if the offense charged is one of those excluded from the traffic violations bureau's jurisdiction under Traffic Rule 13(B)?

Traffic Rule 13 gives to all courts other than juvenile courts the authority to establish a traffic violations bureau. The violations bureau may deal with all traffic violations except those enumerated by Rule 13(B)(1) through (13). These enumerated exceptions must be dealt with by the court itself. A defendant may dispose of any other traffic violation in the following manner set forth in Ohio Traffic Rule 13(D):

(1) Appear in person at the traffic violation bureau, sign a plea of guilty and waiver of trial provision of the ticket and pay the total amount of the fine and costs, or

(2) Sign the guilty plea and waiver of trial provision of the ticket and mail the ticket and a check or money order for the total amount of the fine and costs to the traffic violations bureau.

R.C. 2935.26 creates a parallel system for dealing with minor misdemeanors. R.C. 2935.26(A) provides for issuance of a citation to a person who might otherwise be arrested for a minor misdemeanor. In language almost identical to Ohio Traffic Rule 13(D), R.C. 2935.26(C) provides for disposition of the offense by the clerk of courts without appearance in court. R.C. 2935.26 specifies no exceptions. Thus, your question resolves itself into a conflict between a traffic rule and a provision of the Ohio Revised Code.

Authority for promulgation of rules of procedure is granted to the Ohio Supreme Court by the Ohio Constitution and the Revised Code. Art. IV, §5(B) of the Constitution provides in part as follows:

(B) The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right . . . All laws in conflict with such rules shall be of no further force and effect after such rules have taken effect.

R.C. 2937.46 provides that, in the interest of uniformity and expedience, the Supreme Court of Ohio may prescribe rules for courts inferior to the court of common pleas, naming specifically, inter alia, rules for the "[s]eparation of arraignment and trial of traffic and other types of cases." Further authority for the promulgation of traffic rules is granted by R.C. 2935.17. The present Ohio Traffic Rules were issued by the Supreme Court of Ohio to become effective January 1, 1975, to "prescribe the procedure to be followed in all courts of this state in traffic cases . . ." Ohio Traffic Rule 1(A).

R.C. 2935.26 does not expressly state that its provisions are applicable to traffic violations which are classed as minor misdemeanors. A possible inference is that, since a separate system for dealing with traffic violations already existed under the Rules, R.C. 2935.26 was not intended to apply to any traffic offense. However, pursuant to R.C. 2935.27, compliance with R.C. 2935.26(C) is expressly made applicable to traffic violations where a citation is issued to an individual who does not reside within the jurisdiction of the court. As such, any inference that the General Assembly did not intend that R.C. 2935.26 apply to traffic offenses is precluded. Accordingly, it must be determined whether the conflict between R.C. 2935.26 and Ohio Traffic Rule 13 is to be resolved in favor of the statute or the rule.

Ohio Const. art. IV, §5(B), which states that rules prescribed by the Supreme Court shall not "abridge, enlarge, or modify any substantive right," has been interpreted to mean that in matters of substance statutes take precedence, while in matters of procedure, the rules prevail. Boyer v. Boyer, 46 Ohio St. 2d 83 (1976). In Boyer, the court stated:

The [Modern Courts] Amendment, along with Civ. R. 1(A), recognizes that where conflicts arise between the Civil Rules and the statutory law, the rule will control the statute on matters of procedure and the statute will control the rule on matters of substantive law. Id. at 86.

Substantive law has been defined as "that body of law which creates, defines and regulates the rights of the parties," whereas procedural law "pertain[s] to the method of enforcing rights or obtaining redress." Krause v. State, 31 Ohio St. 2d 132, 145 (1972) (emphasis added). Both R.C. 2935.26 and Ohio Traffic Rule 13 prescribe methods by which an individual charged with certain offenses may dispose of the case. As such, each is procedural, rather than substantive, and with respect to traffic offenses Rule 13 must prevail.

You have also called my attention to the possible significance of the phrase "[n]otwithstanding any other provision of the Revised Code" in R.C. 2935.26(A), which requires the issuance of a citation for a minor misdemeanor in lieu of arrest. By its express terms, this section refers only to other provisions of the Revised Code, and therefore, does not apply to rules of procedure.

It is, accordingly, my opinion, and you are so advised, that a traffic violations bureau is not required to allow an individual charged with an offense enumerated in Ohio Traffic Rule 13(B) to pay a fine without a court appearance, notwithstanding the provisions of R.C. 2935.26.