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THE USE OF FLASHING LIGHTS ON A VILLAGE FIRE TRUCK WHICH IS RETURNING FROM AN EMERGENCY CALL IS NOT PROHIBITED—§§4513.17, 4511.01, 701.02, R.C.

SYLLABUS:

The use of flashing lights on a village fire truck which is returning from an emergency call is not prohibited by Section 4513.17, Revised Code.

Columbus, Ohio, April 28, 1962

Hon. Paul J. Mikus, Prosecuting Attorney
Lorain County, Elyria, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Pursuant to a request by the Solicitor of the Village of South Amherst, we are submitting for your opinion the following question which involves the state statutes on the operation of motor vehicles on public roads:

“Is it reasonable and proper for fire trucks of the Village of South Amherst to operate their flashing devices when returning from a fire call?

“It should be pointed out that there is no question involved as to audible signals or as to other course of conduct to be followed by said emergency vehicle upon its return from an emergency call. The only question in which answer is being sought concerns the propriety of using flashing lights. It has been felt that such use could be a traffic hazard. On the other hand, some believe that displaying the flashing warning lights in this manner is a protection for those firemen riding the fire equipment.’”

As to red lights and flashing lights on motor vehicles, Section 4513.17, Revised Code, appears to be the only pertinent provision of law. That section reads in part:

“* * *

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“(C) No person shall drive or move vehicle or equipment upon any highway with any light or device thereon displaying a

red light mounted on the front thereof. This division does not apply to emergency vehicles, school buses, traffic line strippers, snow plows, rural mail delivery vehicles, state highway survey vehicles, funeral escort vehicles, and similar equipment operated by the department of highways or local authorities.

“(D) Flashing lights are prohibited on motor vehicles, except as a means for indicating a right or a left turn, or in the presence of a vehicular traffic hazard requiring unusual care in approaching, or overtaking or passing. This prohibition does not apply to emergency vehicles, disabled vehicles, school buses, traffic line strippers, snow plows, rural mail delivery vehicles, state highway vehicles, funeral escort vehicles, and similar equipment operated by the department or local authorities, nor to vehicles or machinery required by section 4513.11 of the Revised Code to have a flashing red light.”

As noted, the above provisions do not apply to emergency vehicles. The definition of emergency vehicles as used in Section 4513.17, *Supra*, is found in division (D) of Section 4511.01 Revised Code, and reads:

“* * * * * * * * *

“(D) ‘Emergency vehicle’ means fire department, police, and state highway patrol vehicles, ambulances, vehicles of salvage corporations organized under sections 1709.01 to 1709.07, inclusive, of the Revised Code, emergency vehicles of municipal or county departments or public utility corporations when identified as such as required by law, the director of highways, or local authorities, motor vehicles when commandeered by a police officer, and motor vehicles when used by volunteer firemen responding to emergency calls in the fire department service when identified as required by the director.

“* * * * * * * * *”

Thus, it is clear that a village fire truck is an emergency vehicle and that the restrictions of Section 4513.17, *supra*, do not apply to such a truck.

It might be argued that in enacting Section 4513.17, *supra*, the legislature intended to exempt emergency vehicles from the restrictions contained therein only when such vehicles are used in situations requiring emergency action. For example, a fire truck proceeding to the scene of a fire would certainly be in an emergency situation requiring all possible safeguards, while the same truck returning from such scene would be in an entirely different situation.

Under the law as written, however, the legislature has exempted fire trucks and has not limited the exemption to times when the truck is

proceeding to a fire. Further, since a violation of Section 4513.17, *supra*, entails the imposition of a criminal penalty, (See Section 4513.99, Revised Code), and that section should be interpreted strictly against the state and liberally in favor of the accused (15 Ohio Jurisprudence 2d, Section 20, page 254).

I might further note that in at least one instance the legislature has recognized a difference in the situation where a fire truck is proceeding to a fire from that where such a truck is returning from a fire; but in that instance specific language was used to show that the law was to apply only when the truck was proceeding to the fire. In this regard, Section 701.02 Revised Code, reads in part:

“ * * * * * * * * *

“The defense that the officer, agent, or servant of the municipal corporation was engaged in performing a governmental function, shall be a full defense as to the negligence of:

“ * * * * * * * * *

“(B) Members of the fire department while engaged in duty at a fire, or while proceeding toward a place where a fire is in progress or is believed to be in progress, or in answering any other emergency alarm.

“ * * * * * * * * * ”

It might reasonably be assumed that if under Section 4513.17, *supra*, fire department vehicles were to be exempt from the restrictions of that section only when proceeding to the scene of a fire or other emergency, the legislature would have used language such as is found in Section 701.02, *supra*, making such specification. But in the absence of any such specific language I can only conclude that the exemption was intended to apply at all times.

To conclude, therefore, it is my opinion and you are advised that the use of flashing lights on a village fire truck which is returning from an emergency call is not prohibited by Section 4513.17, Revised Code.

Respectfully,
MARK McELROY
Attorney General