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UNIFORM TRAFFIC ACT — DIRECTOR OF HIGHWAYS — MAY NOT DETERMINE AND DECLARE DIFFERENT PRIMA FACIE SPEED LIMITS FOR NIGHT AND DAYTIME DRIVING — SECTION 6307-21 G.C.

SYLLABUS:

The Director of Highways in the exercise of the powers granted him under section 6307-21, General Code, may not determine and declare different prima facie speed limits for night and daytime driving.

Columbus, Ohio, May 21, 1942.

Hon. H. G. Sours, Director of Highways,  
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your recent communication which reads as follows:

“A question has been submitted to me, as Director of Highways, from the City of Cincinnati by and through its City Man-

ager, the Honorable C. O. Sherrill, and probably other similar requests will be forwarded to me for my consideration pertaining to the problem hereinafter set forth. This problem pertains to an interpretation under the recently enacted Uniform Traffic Act.

By the terms of said enactment, the Director of Highways has authority to establish certain speed limits where conditions warrant the same. Hence, the following question: Do I, as Director of Highways, have the authority to establish different speed limits at night than those established during the daytime? (Upon the basis of an engineering and traffic investigation.)

Question 2. Can I, as Director of Highways, when requested by municipal or local authorities, alter the speed limits within the municipal or local jurisdictions setting forth different speed limits for night and daytime driving?"

Section 6307-21 of the General Code, which contains the speed regulations governing the operation of motor vehicles and powers granted to the Director of Highways with respect thereto, reads as follows:

"(a) No person shall operate a motor vehicle, trackless trolley or street car in and upon the streets and highways at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface and width of the street or highway and of any other conditions then existing, and no person shall drive any motor vehicle, trackless trolley or street car in and upon any street or highway at a greater speed than will permit him to bring it to a stop within the assured clear distance ahead.

It shall be prima facie lawful for the operator of a motor vehicle, trackless trolley or street car to operate the same at a speed not exceeding the following:

Twenty miles per hour when passing a school building or the grounds thereof during school recess and while children are going to or leaving school during the opening or closing hours, and when appropriate signs giving notice thereof are erected.

Twenty-five miles per hour in all other portions of a municipal corporation, except on state routes and on through highways outside business districts.

Thirty-five miles per hour on state routes or through highways within municipalities outside business districts.

Fifty miles per hour on highways outside of municipal corporations.

It shall be prima facie unlawful for any person to exceed any of the speed limitations in this or in other sections of this

act. In every charge of violation of this section the affidavit and warrant shall specify the time, place and the speed at which the defendant is alleged to have driven, also, the speed, if any, which this section declares shall be prima facie lawful at the time and place of such alleged violation.

(b) Whenever the director shall determine upon the basis of an engineering and traffic investigation that any prima facie speed hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place upon any part of a state route, said director shall determine and declare a reasonable and safe prima facie speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or part of the state route.

(c) Whenever local authorities shall determine upon the basis of an engineering and traffic investigation that the prima facie speed permitted under this act on any part of a highway under their jurisdiction is greater than is reasonable and safe under the conditions found to exist at such location, such local authorities may by resolution request the director to determine and declare a reasonable and safe prima facie speed limit thereat. Upon receipt of such request the director is authorized to determine and declare a reasonable and safe prima facie speed limit at such location, and if the director shall alter the prima facie speed limit, then such altered speed limit shall become effective only when appropriate signs giving notice thereof are erected at such location by the local authorities. The director is hereby authorized to withdraw his declaration of any altered prima facie speed limit whenever in his opinion any altered prima facie speed becomes unreasonable and upon such withdrawal such altered prima facie speed shall become ineffective and the signs relating thereto shall be immediately removed by the local authorities.

(d) Local authorities in their respective jurisdictions may in their discretion, but subject to subsection (e) of this section, authorize by ordinance higher prima facie speeds than those stated in this section upon through highways or upon highways or portions thereof where there are no intersections or between widely spaced intersections provided signs are erected giving notice of the authorized speed, but local authorities shall not **have authority to modify** or alter the basic rule set forth in the first paragraph of subdivision (a) of this section or in any event to authorize by ordinance a speed in excess of fifty miles per hour.

(e) Alteration of prima facie limits on state routes by local authorities shall not be effective until such alteration has been approved by the director. The director is hereby authorized to withdraw his approval of any altered prima facie speed limit whenever in his opinion any altered prima facie speed becomes unreasonable and upon such withdrawal such altered prima facie speed shall become ineffective and the signs relating thereto shall be immediately removed by the local authorities."

At the outset it should be pointed out that the provisions of the above statute conferring powers upon the Director of Highways and local authorities do not in any manner authorize such officers to fix a speed limit. The statute itself fixes no definite speed limit. The statute in unambiguous terms merely states what speeds shall be prima facie lawful and declares that any speed in excess thereof shall be prima facie unlawful and the powers conferred thereunder upon the Director of Highways and local authorities authorize such officers under certain conditions to determine and declare that the operation of a motor vehicle in excess of certain speeds shall be prima facie unlawful.

I therefore assume that your question deals with your authority to declare prima facie unlawful speed limits rather than different speed limits.

Obviously, the power to regulate the speed and prescribe the manner of operating motor vehicles is lodged in the Legislature.

While the general rule is well settled that legislative power cannot be delegated, it is equally well settled that such general rule does not preclude the conferring upon administrative officers the power to prescribe regulations concerning motor vehicles used on the highways, provided of course that the Legislature in conferring such power definitely sets the limits, fixes the standards and states the rules within which such delegated powers may be exercised.

Therefore, if prima facie speed limits governing the operation of motor vehicles, differing from those fixed by the General Assembly, are to be established by the Director of Highways, the authority to do so must be expressly delegated to him and the definite limitations fixed by the General Assembly in delegating such power may not be exceeded.

The authority for the Director of Highways to declare a reasonable and safe prima facie speed limit either upon his own determination or that of local authorities is contained in paragraphs b and c of the above section. It will be noted that in each instance the determination must be made upon the basis of an engineering and traffic investigation. If it is determined by the Director upon such investigation that the prima facie speed provided for in the statute is greater or less than is reasonable and safe under the conditions found to exist at any intersection or other place

upon any part of a state route, the Director shall determine and declare a reasonable and safe prima facie speed limit at such intersection or place.

Paragraph c provides that if it is determined by local authorities upon such investigation that the prima facie speed permitted under the statute or any part of a highway under their jurisdiction is greater than is reasonable and safe under the conditions found to exist at such location, such local authorities may request the Director to declare a reasonable and safe prima facie speed limit at such location.

The standard is definitely fixed by the General Assembly. The limitation prescribed by that body permits a change in the prima facie speed limit fixed by the statute, at any location where it has been determined upon the basis of an engineering and traffic investigation that the prima facie speed fixed by the General Assembly is greater or less than is safe under the conditions found to exist at such location. Nothing more is said. No power is granted whereunder a distinction may be made between day and night driving. That portion of the statute which fixes prima facie speed limits makes no provision for different speeds at different times of the day. The statute merely provides that the Director shall have authority to declare a prima facie speed limit different from that set forth in the statute under certain conditions.

Therefore, the General Assembly having delegated powers which authorize a change only in the prima facie lawful speed fixed by it, it must be concluded that the Director is without authority to declare one prima facie speed limit for day driving and another for night driving.

It will not be disputed that many factors may be taken into consideration in determining what is a proper speed at a given place. It is likewise true that a given rate of speed in many locations may be safe in the daytime and not at night. It is also conceivable that it might be in the interest of safety if the Director had authority to fix different prima facie speed limits with reference to different hours of the day. However that may be, such authority has not been granted and it is neither the function nor the privilege of the Attorney General to annul the plain language of the statute in order to accomplish an end that might be desirable. If the provisions of law enacted by the General Assembly are inadequate to meet existing conditions, the only place where the remedy can be found is in the General Assembly.

Therefore, in specific answer to your question, it is my opinion that the Director of Highways in the exercise of the powers granted him under section 6307-21, General Code, may not determine and declare different prima facie speed limits for night and daytime driving.

Respectfully,

THOMAS J. HERBERT  
Attorney General.