

OPINION NO. 87-098

Syllabus:

A board of county commissioners is not authorized to impose route regulation upon trucks traveling upon state highways within the county.

To: James L. Flannery, Warren County Prosecuting Attorney, Lebanon, Ohio
 By: Anthony J. Celebrezze, Jr., Attorney General, December 28, 1987

I have before me your request for my opinion on the question whether county commissioners have the authority to regulate truck traffic on a state highway within the county. You have asked about a situation in which tank trucks carrying gasoline and other fuels travel on a state route from a storage facility, past a retirement community, and then to an interstate highway. Members of your staff have informed me that there is a curve in the state route near the retirement community, and that there is concern that there may be accidents involving the tank trucks. An alternate route that trucks might use would add approximately two miles to the trip and would not require the trucks to travel through any other county or municipality prior to their entrance to the interstate highway. You have, accordingly, asked whether the county commissioners are authorized to require the trucks to take an alternate route.

Boards of county commissioners are creatures of statute and, as such, may exercise only those powers that are delegated to them by statute. See State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). R.C. 4511.07 governs the ability of local authorities to regulate the use of streets and highways. This section reads, in part, as follows:

Sections 4511.01 to 4511.78, 4511.99, and 4513.01 to 4513.37 of the Revised Code do not prevent local authorities from carrying out the following activities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power:

...

(I) Regulating the use of certain streets by vehicles, streetcars, or trackless trolleys.

R.C. 4511.01(AA) defines "local authorities" so as to include boards of county commissioners. See, e.g., 1979 Op. Att'y Gen. No. 79-058; 1954 Op. Att'y Gen. No. 4644, p. 661; 1948 Op. Att'y Gen. No. 3139, p. 230. Further, while R.C. 4511.07 is phrased in terms of "not prevent[ing] local authorities from carrying out" the listed activities, it has been construed as a grant of authority to perform those activities. See 1981 Op. Att'y Gen. No. 81-008; Op. No. 79-058. The question to be answered is whether state roads within the county are under the jurisdiction of the county commissioners.

While "jurisdiction" is not defined in R.C. Chapter 4511, a review of Revised Code sections relating to traffic and highways makes it clear that county commissioners have jurisdiction over county roads and that the Ohio Department of Transportation has jurisdiction over state roads. R.C. 5535.01 divides the public highways of the state into three classes, as follows:

The public highways of the state shall be divided into three classes: state roads, county roads, and township roads.

(A) State roads include the roads and highways on the state highway system.

(B) County roads include all roads which are or may be established as a part of the county system of roads as provided in sections 5541.01 to 5541.03,

inclusive, of the Revised Code, which shall be known as the county highway system. Such roads shall be maintained by the board of county commissioners.

(C) Township roads include all public highways other than state or county roads. The board of township trustees shall maintain all such roads within its township. The board of county commissioners may assist the board of township trustees in maintaining all such roads. This section does not prevent the board of township trustees from improving any road within its township. (Emphasis added.)

R.C. 5501.31 states expressly that "[t]he director of transportation shall have general supervision of all roads comprising the state highway system." For purposes of R.C. Chapter 4511, R.C. 4511.01(II) defines "state highway" as "a highway under the jurisdiction of the department of transportation, outside the limits of municipal corporations," and R.C. 4511.01(JJ) defines "state route" as "every highway which is designated with an official state route number and so marked."

The conclusion that county commissioners have jurisdiction over county roads and not over state roads is supported by various provisions relating to roads and traffic. For example, R.C. 5535.08 states: "The state, county, and township shall each maintain its roads, as designated in section 5535.01 of the Revised Code...." (Emphasis added.) R.C. 5553.02 authorizes a board of county commissioners to locate, establish, alter, or vacate roads and states: "This power extends to all roads within the county, except that as to roads on the state highway system the approval of the director of transportation shall be had." R.C. 5555.02 reads as follows:

The board of county commissioners may construct a public road by laying out and building a new road, or by improving, reconstructing, or repairing any existing public road....The board may purchase or lease, erect, and maintain automatic traffic signals at such intersections of public highways outside municipal corporations as are necessary for the protection of the public traveling upon such highways. Automatic traffic signals shall not be placed at intersections of public highways on the state highway system unless the board first obtains the approval of the director of transportation.

This section does not apply to roads or highways on the state highway system, except such portions as the board constructs under plans and specifications approved by the director and under his supervision and inspection. (Emphasis added).

See also, e.g., R.C. 4511.10; R.C. 5577.08; 1982 Op. Att'y Gen. No. 82-012; 1974 Op. Att'y Gen. No. 74-053; 1954 Op. No. 4644.

A clear statutory distinction between regulation of traffic on county roads and regulation of traffic on state highways becomes apparent through a comparison of R.C. 4511.07 and R.C. 4711.10. After empowering local authorities, including counties, to regulate the use of certain streets by vehicles, see R.C. 4511.07(I), R.C. 4511.07 goes on to provide:

No ordinance or regulation enacted under division...(I) of this section shall be effective until signs giving notice of the local traffic regulations are posted upon or at the entrance to the

highway or part of the highway affected, as may be most appropriate.

The General Assembly has thus imposed as a condition upon the regulation of certain traffic activities the requirement that the local authority post signs upon highways under its jurisdiction to notify travelers of the regulation. Such signs constitute "traffic control devices" as that term is used in R.C. Chapter 4511. See R.C. 4511.01(QQ) ("'[t]raffic control devices' means all signs, signals, markings, and devices placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic, including signs denoting names of streets and highways"). Under R.C. 4511.10, however, only the Director of the Ohio Department of Transportation has authority to place, or permit placement of, traffic control devices upon highways within the state highway system. R.C. 4511.10 provides:

The department of transportation may place and maintain traffic control devices, conforming to its manual and specifications, upon all state highways as are necessary to indicate and to carry out sections 4511.01 to 4511.78 and 4511.99 of the Revised Code, or to regulate, warn, or guide traffic.

No local authority shall place or maintain any traffic control device upon any highway under the jurisdiction of the department except by permission of the director of transportation.

The language of R.C. 4511.10, when read in conjunction with R.C. 4511.07, makes it clear that, as applied to a board of county commissioners, the phrase "streets and highways under their jurisdiction" does not refer to state highways. R.C. 4511.07. See also R.C. 4511.11; Op. No. 74-053. Therefore, it is my conclusion that county commissioners do not have the authority to regulate or prohibit the transportation of gasoline or other fuels on state highways passing through their counties.

Your letter makes reference to communications with the Ohio Department of Transportation and the Public Utilities Commission of Ohio (PUCO). As noted above, state highways are under the jurisdiction of the Department of Transportation. See, e.g., R.C. 5501.31; R.C. 5535.01. The PUCO has certain authority to regulate truck transportation. R.C. Chapter 4921 grants the PUCO regulatory power over motor transportation companies and includes, under R.C. 4921.04, the authority to supervise and regulate such companies; the authority to fix, alter, and regulate rates; the authority to regulate the service and safety of operation; and the authority to prescribe safety regulations and designate stops for service and safety on established routes. See R.C. 4921.02(A) (defining "motor transportation company"). R.C. Chapter 4923 grants the PUCO regulatory power over private motor carriers and includes, under R.C. 4923.03, the authority to supervise and regulate such carriers, to prescribe reasonable safety rules, and to prescribe rules for the enforcement of relevant statutory provisions. See R.C. 4923.02(A) (defining "private motor carrier"). The PUCO also has authority to adopt and enforce rules concerning the safety of operation of certain commercial

motor vehicles by private motor carriers operating on a not-for-hire basis. R.C. 4923.20.¹

Both R.C. 4921.04 and R.C. 4923.03 recognize the authority of local subdivisions to adopt regulations that affect truck traffic. R.C. 4921.04 states, in part:

The public utilities commission is hereby vested with power and authority to:

...
(G) Supervise and regulate motor transportation companies in all other matters affecting the relationship between such companies and the public to the exclusion of all local authorities, except as provided in this section and section 4921.05 of the Revised Code [pertaining to motor transportation companies that carry persons wholly within municipal corporations].

The commission, in the exercise of the jurisdiction conferred upon it by Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and 4925. of the Revised Code may prescribe rules and regulations affecting such motor transportation companies, notwithstanding the provisions of any ordinance, resolution, license, or permit enacted, adopted, or granted by any municipal corporation, municipal corporation and county, or county. In case of conflict between any such ordinance, resolution, license, or permit, the order, rule, or regulation of the commission shall prevail.

Local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with such chapters. (Emphasis added.)

¹ By the enactment of 7 Ohio Admin. Code 4901:2-5-02, the PUCO has adopted federal motor carrier safety regulations and federal hazardous materials transportation regulations. See, e.g., 49 U.S.C. app. §§1801-1813 (1982 & Supp. III 1985); 49 C.F.R. Parts 171, 173, 177, 397 (1986). These provisions may be relevant to the regulation of tank trucks carrying fuels. See 49 C.F.R. §172.101 (1986) (designating materials considered to be hazardous materials for the purpose of transportation in commerce); 49 C.F.R. §397.9(a) (1986) ("[u]nless there is no practicable alternative, a motor vehicle which contains hazardous materials must be operated over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys"). See generally National Tank Truck Carriers, Inc. v. Burke, 608 F.2d 819 (1st Cir. 1979).

Pursuant to R.C. 3734.12 and related provisions, see, e.g., R.C. 3734.15; R.C. 3734.17, the Ohio Environmental Protection Agency has been given certain authority over the transportation of hazardous wastes. See, e.g., 42 U.S.C. §§6921-6926 (1982 & Supp. III 1985). Rules governing transporters of hazardous wastes appear in 4 Ohio Admin. Code Chapter 3745-53. It does not appear that tank trucks carrying fuels are subject to provisions governing hazardous wastes. See R.C. 3734.01(J) and 4 Ohio Admin. Code 3745-51-03 (defining "hazardous waste"); 4 Ohio Admin. Code 3745-51-02 (defining "waste").

R.C. 4923.03 contains similar provisions relating to private motor carriers:

The public utilities commission may:

...
(E) Supervise and regulate the operation of such private motor carriers to the exclusion of all local authorities in this state except as provided in this section.

In the exercise of the jurisdiction conferred upon it by such chapters, the commission may prescribe rules and regulations affecting such private motor carriers, notwithstanding any ordinance, resolution, license, or permit enacted, adopted, or granted by any municipal corporation, city and county, or county. In case of conflict between any such ordinance, resolution, license, or permit, the order, rule, or regulation of the commission shall prevail. Local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with sections 4921.18, 4921.30, 4921.32, and 4923.02 to 4923.17, inclusive, of the Revised Code. (Emphasis added.)

Further, R.C. 4923.13 states:

The fees and charges provided under section 4923.11 of the Revised Code shall be in addition to taxes, fees, and charges fixed and exacted by other general laws of this state, except the assessments required by section 4905.10 of the Revised Code and the taxes imposed by section 4921.18 of the Revised Code, but all fees, license fees, annual payments, license taxes, taxes, or other money exactions, assessed, charged, fixed, or exacted by local authorities, such as municipal corporations, townships, counties, or other local boards, or by the officers of such subdivisions, are deemed illegal and superseded by sections 4921.18, 4921.30, 4921.32, and 4923.02 to 4923.17, inclusive, of the Revised Code. Upon compliance by such private motor carrier with sections 4921.18, 4921.30, 4921.32, and 4923.02 to 4923.17, inclusive, of the Revised Code, all local ordinances, resolutions, bylaws, and rules in force shall cease to be operative as to such carrier, except that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with such sections. (Emphasis added.)

The underlined language of R.C. 4921.04, 4923.03, and 4923.13 is broad and, if read literally, would permit local subdivisions to enact police regulations on any subject, so long as such regulations are not inconsistent with the referenced PUCO statutes. This language is, however, in pari materia with other provisions governing the respective local subdivisions and must be read together with those provisions. See generally State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 132 N.E. 2d 191 (1956). It is evident, as discussed above, that R.C. 4511.07(I) permits a board of county commissioners to regulate the use of certain county roads by vehicles, streetcars, or trackless trolleys, and that the authority to regulate the use of state highways is delegated to the Department of Transportation. No statutory provisions dealing with regulation of roads grants a board of county commissioners authority to regulate traffic on state highways, and it would be anomalous to read the provisions of R.C.

4921.04, 4923.03, and 4923.13 as containing such a grant of power. Cf. City of Nelsonville v. Ramsey, 113 Ohio St. 217, 148 N.E. 694 (1925) (suggesting, under the statutory scheme then in existence, that G.C. 614-86, predecessor to R.C. 4921.04, constituted a grant of authority to a municipality to enact reasonable police regulations relating to the use of the streets of the municipality and the control of traffic, and striking down the ordinance in question); Lorain Street Rd. Co. v. Public Utilities Commission, 113 Ohio St. 68, 148 N.E. 577 (stating that G.C. 614-86 recognized the power of municipalities to make reasonable local police regulations within their respective boundaries). See generally State ex rel. Ohio Motorists Association v. Masten, 8 Ohio App. 3d 123, 456 N.E.2d 567 (Cuyahoga County 1982). Rather, when viewed in light of the statutory scheme discussed above, R.C. 4921.04, 4923.03, and 4923.13 must be read as recognizing the authority of local subdivisions to exercise such police powers as they hold under other provisions of law, provided that the exercise of those powers is not inconsistent with the referenced PUCO provisions. The grant of authority that is relevant to your question is that set forth in R.C. 4511.07, permitting a board of county commissioners to regulate traffic on roads under their jurisdiction - i.e., on county roads.

It is therefore, my opinion, and you are hereby advised, that a board of county commissioners is not authorized to impose route regulation upon trucks traveling upon state highways within the county.