1848

AVIATION—MAXIMUM SPEED LIMIT, FIFTEEN MILES PER HOUR, SECTION 479, RULE 45 G. C., AS TO BOATS AND WATER CRAFT OF ALL KIND UPON STATE RESERVOIR, PUBLIC PARK AND PLEASURE RESORT AND PENALTIES, SECTION 479-1 G. C. DO NOT APPLY TO OPERATION OF AIR-CRAFT LANDING UPON AND TAKING OFF FROM SUCH WATERS.

SYLLABUS:

The maximum speed limit of fifteen miles per hour provided in Rule 45 of Section 479, General Code, for the operation of "boats, and water craft of all kind, upon any state reservoir, dedicated and set apart as a public park and pleasure resort," and the penalties for violations found in Section 479-1, General Code, do not apply to the operation of aircraft while in the process of landing upon and taking off from such waters.

Columbus, Ohio, May 2, 1947

Hon. C. E. A. Brown, Director of Aviation
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, which reads as follows:

> "Your official opinion is requested as to whether the fifteen mile an hour speed limit for water craft, as set forth in Rule 45, Section 479 of the General Code, entitled Speed of Water-craft in Canal, applies to the speed of aircraft in the process of taking off and landing on such waters."

In 1915 the Eighty-first General Assembly adopted House Bill No. 456 (106 O. L., 380) which was entitled:

> "AN ACT
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> To provide for the control and management of the public parks of the state; to define the duties of police patrolmen and to establish rules for the navigation of the state reservoirs by power or sail boats, and all other water craft located or operated thereon, and to repeal Section 479 of the General Code."

Section 1 thereof, which was thereafter codified as Section 479, General Code, so far as applicable to your inquiry, read as follows:

> "The following rules are hereby adopted for the guidance of the superintendent of public works and of the police patrolmen appointed by said superintendent, in the discharge of their official duties: * * *
>
> "GENERAL RULES RELATING TO THE CONTROL AND MANAGEMENT OF THE PUBLIC PARKS. * * *
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> Rule 45. Boats running in any canal connecting with a reservoir park, shall limit their speed while in the canal to four miles per hour."

Section 2 of such act, which was codified as Section 479-1, General Code, reads as follows:

> "Any person convicted of violation of any of the foregoing rules shall be fined not less than ten dollars, nor more than one hundred dollars."

Section 3 of such act repealed the then existing Section 479, General Code, which was previously known as Section 218-321, Revised Statutes.

In 1925 Rule 45 of Section 479, General Code, was amended by the Eighty-sixth General Assembly (111 O. L., 175) to read as follows:

> "Rule 45. Boats running in any canal connecting with a reservoir park, shall limit their speed while in the canal to four miles per hour, and parties operating boats, and water craft of all kind, upon any state reservoir, dedicated and set apart as a public park and pleasure resort, shall limit the speed thereof to five miles an hour when passing within 150 feet of the shore line of any reservoir, and to a speed of eight miles an hour when operated between lines drawn 150 and 300 feet from the shore line, and the maximum speed on parts of any reservoir, beyond the 300-foot line, shall be limited to fifteen miles per hour. No person shall operate a motor boat, or other water craft, upon any state reservoir with a muffler cut-out, or other devices that are objectionable as noise makers, and no person shall be permitted to construct dock-landings upon or anchor boats of any kind within a narrow channel that connects two larger bodies of water."

Section 479, General Code, was again amended in 1929 by the Eighty-eighth General Assembly (113 O. L., 551, 555). The first paragraph thereof now reads as follows:

> "The following rules are hereby adopted for the guidance of the conservation commissioner and of the police patrolmen appointed by said conservation commissioner in the discharge of their official duties:"

but Rule 45 was left unchanged.

The question which you have presented is whether the speed limits found in Rule 45, in effect, prevent operators of aircraft from landing on and taking off from the waters of the public parks under the jurisdiction of the conservation commissioner and whether violators thereof upon conviction are liable to fines ranging from ten to one hundred dollars.

Sections 479 and 479-1, General Code, which must be considered as being in pari materia, clearly prescribe rules for the operation of boats and water craft of all kind upon the waters of public parks, and impose penalties for failure to observe such rules. Considered together, they are obviously penal statutes. Being penal statutes, they must be strictly construed. They must be construed according to their exact and technical meaning. Nothing may be included which is not clearly expressed. The application of such statutes is limited to cases directly described by the words used. In United States v. Wiltberger, 5 Wheaton (18 U. S.), 76, Mr. Chief Justice Marshall, who delivered the opinion of the court, said (p. 95):

> "The rule that penal laws are to be construed strictly, is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment."

In United States v. Resnick, 299 U. S., 207, 81 L. Ed., 127, Mr. Justice Butler said:

> "Statutes creating crimes are to be strictly construed in favor of the accused; they may not be held to extend to cases not covered by the words used."

In Hall v. The State of Ohio, 20 Ohio, 8, it was held that penal statutes must be strictly construed. "They can not be extended by implication to cases not strictly within their terms." See Schultz v. Cambridge,

38 O. S., 659; and Commercial Credit Company v. Schreyer, 120 O. S., 658.

In State, ex rel. Oil Company v. Dauben, 99 O. S., 406, it was held that:

> "1. Statutes or ordinances of a penal nature, or which restrain the exercise of any trade or occupation or the conduct of any lawful business, or which impose restrictions upon the use, management, control or alienation of private property, will be strictly construed and their scope cannot be extended to include limitations not therein clearly prescribed; exemptions from such restrictive provisions are for like reasons liberally construed."

These principles must be borne in mind and applied in determining the range of the application of Rule 45.

Rule 45 prohibits the operation of "boats, and water craft of all kind" at speeds in excess of fifteen miles per hour. Under the rule of strict construction it may readily be said that aircraft should not be classified as boats. The phrase "water craft of all kind," however, must be regarded as broadening the meaning of the statute. It must refer to appliances that can not, under strict construction, be classified as "boats." In Webster's New International Dictionary the term "water craft" is defined as "any vessel or boat; vessels and boats collectively;" in The Oxford English Dictionary, "a vessel that plies on the water; such vessels collectively."

In the case of The Saxon, 269 Fed, 639, it was said:

> "Ordinarily the term 'boat' and the term 'craft' are applied to water transporting conveyances of small character. * * * The word 'water craft' or the term 'craft,' as usually used, was applied to small vessels generally engaged in coastwise or domestic navigation. For larger vessels, as used in the present day, especially in the case of large iron steamships, the terms 'steamer,' 'steamship' or 'vessel' are generally used. Unless, therefore, the generality of the language of the statute be sufficient to embrace vessels used in water transportation, of any size, and of any kind, the words of the statute in this case would not cover a large iron steamship."

The use of the term "water craft" in Section 479, General Code, seems to have been intended to be in accord with the above definitions.

Senate Bill No. 44, adopted by the Seventy-fifth General Assembly in 1902, which included Section 218-321, Revised Statutes, was the fore-

runner of the present Section 479, General Code. That bill was entitled "An Act for the control and management of lakes, reservoirs and state lands dedicated to the use of the public for park and pleasure resort purposes." Sections 7, 8 and 9 of the act were concerned with fees for the maintenance and operation of "all boats and water craft maintained and operated" on state lakes and reservoirs, the affixing of license plates thereon and the inspection of such "boats and water craft." Penalties were prescribed for violations. The term "water craft" has been used after the word "boats" in all amendments of said Senate Bill No. 44 and in subsequent statutes, including the present Section 479, General Code, which deal with the control and management of public parks of the state and the waters located therein. There is no reason to assume that the General Assembly has ever intended to enlarge or change the meaning of the term "water craft." Its use in 1902 antedated by many years the development and use of aircraft.

In construing the meaning of a doubtful term in a statute, the legislative intent may frequently be determined by reference to its association with other words and phrases. Where a specific word, in this case the word "boats," is followed by general words which ordinarily have a similar but not equally comprehensive meaning, such as "water craft," the general words are regarded as being limited and qualified by the preceding special words. Thus, the term "water craft" will be regarded as meaning craft of the same class or of the general nature of boats, which craft are used in navigating and operating upon water, as, for example, scows, barges and canoes. This principle of construction is especially applicable to penal statutes. Sutherland on Statutory Construction, 3rd Ed., Vol. 2, p. 393, Sec. 4908; Crawford on Statutory Construction, p. 325, Sec. 190; Harvey, Inc., v. Sissle, 53 O. App., 405; Fry v. State of Ohio, 55 O. App., 264; and State of Ohio v. Clark, 60 O. App., 367.

It has frequently been held that seaplanes and amphibious aircraft are not "vessels" within the meaning of the federal revenue acts and for the purpose of giving jurisdiction to the admiralty courts. The Crawford Bros., No. 2, 215 Fed., 269; Dollins v. Pan American Grace Airways, Inc., 27 Fed. Sup. 487; United States v. Peoples, 50 Fed. Sup., 462; Noakes v. Imperial Airways, Ltd., 29 Fed. Sup., 412; Wendorff v. Missouri State Life Insurance Company, 318 Mo., 363, 1 S. W. (2d), 97; United States v. One Waco Bi-Plane, 1933 U. S. Av. R., 159; and

General Counsel's Memo, No. 11,539, Bur. Int. Rev., March 27, 1933, 12 Int. Rev. Bull., 21, 1933 U. S. Av. R., 222.

In the case of McBoyle v. United States, 283 U. S., 25, 75 L. Ed., 816, the Supreme Court of the United States was asked whether the transportation of a stolen airplane in interstate commerce was a violation of the National Motor Vehicle Theft Act wherein the term "motor vehicle" is defined as including "an automobile * * * motorcycle, or any other self-propelled vehicle not designed for running on rails." The court reached the conclusion, by unanimous opinion, that although etymologically it is possible to use the phrase "any other self-propelled vehicle not designed for running on rails" to signify a conveyance working on land, water or air, yet the statute should not be given such a broad interpretation. Mr. Justice Holmes in the opinion said:

> "Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear. When a rule of conduct is laid down in words that evoke in the common mind only the picture of vehicles moving on land, the statute should not be extended to aircraft simply because it may seem to us that a similar policy applies, or upon the speculation that if the legislature had thought of it, very likely broader words would have been used."

In Hanson v. Lewis, 11 O. O., 42, it was held that the definitions of "vehicle" and "motor vehicle" as found in Section 6290, General Code, do not include airplanes and "that an airplane is not a motor vehicle within the meaning of Section 6308-6, General Code, commonly called the 'guest statute.'"

Similar conclusions are found in Monroe's Admr. v. Federal Union Life Insurance Company, 251 Ky., 570, 65 S. W. (2d), 680; Opinion of the Attorney General of Florida, May 30, 1932, not officially reported, 1932 U. S. Av. R., 252; and Northwest Airlines v. Hoover, 200 Wash. 277, 93 Pac. (2d), 346.

Applying the rule of strict construction to Section 479, General Code, it seems impossible to expand the meaning of the term "water craft" to include aircraft, particularly as aircraft are used after starting the take off run and in landing, at which time they are at least partially

air-borne. Although certain types of aircraft are able to float on water and even operate thereon to a limited degree, it does not follow that because of such ancillary operations on the water they lose their character as aircraft. Their primary function is always to navigate the air. Aircraft are designed to use land and water only incidentally in commencing and terminating their actual operations, which are in the air. If the General Assembly wishes to prevent the operation of aircraft from state waters, it may so provide; but that is clearly a matter for the legislature and not for the Attorney General under the guise of statutory construction.

In conclusion and in answer to your inquiry, it is my opinion that the maximum speed limit of fifteen miles per hour provided in Rule 45 of Section 479, General Code, for the operation of "boats, and water craft of all kind, upon any state reservoir, dedicated and set apart as a public park and pleasure resort," and the penalties for violations found in Section 479-1, General Code, do not apply to the operation of aircraft while in the process of landing upon and taking off from such waters.

Respectfully,

HUGH S. JENKINS,
Attorney General.