

5421

VEHICLES—CERTAIN MAXIMUM WEIGHT LIMITS—NOISE AND VIBRATION WHICH DO NOT AFFECT HIGHWAY STRUCTURE OR POSSIBLE USE—NOT PROPER FACTORS TO CONSIDER IN CLASSIFICATION OF ROADS BY COUNTY COMMISSIONERS—SECTION 5577.08 RC.

SYLLABUS:

Noise and vibration which do not affect a highway structure or the public use thereof are not proper factors to be considered in the classification of roads by county commissioners under the provisions of Section 5577.08, Revised Code.

Columbus, Ohio, June 30, 1955

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Your attention is directed to the Revised Code, Section 5577.08 which authorizes classification of roads by County Commissioners. The question has arisen as to whether the Commis-

sioners may classify a road in such a way as to bar vehicles over certain maximum weight limits in order to reduce vibration and noise, which has become a serious annoyance to occupants of residences abutting on the highway. No question exists as to the character of the road bed which is considered of sufficient construction to accommodate all types of vehicles.

“May we kindly have your opinion as to whether the classification for the above purposes falls within the authority of the term ‘any other factors which are material in the proper classification of such roads’ as contained in the third paragraph of said Section.”

This question involves the interpretation of Section 5577.08, Revised Code, which reads as follows:

“The board of county commissioners shall classify the improved county and township roads and all other improved roads within their respective counties, except state highways, with reference to the maximum weights and speeds permitted on such roads.

“The classifications made by the board under this section shall not apply to vehicles of a weight of five tons or less for vehicle and load.

“In making the classification the board shall take into consideration the nature of the roadbed, construction, and any other factors which are material in the proper classification of such roads.

“The board shall make rules and regulations governing the weight of vehicle and load and the speed permitted on the several classes of roads.”

As stated in the first paragraph of the syllabus in Opinion No. 4044, Opinions of the Attorney General for 1935, page 293:

“The only limitation on the county commissioners in making a classification of improved county and township roads and all other improved roads within the county, except inter-county highways or main market roads which have been constructed and maintained by the state, under authority of Section 7249-2, General Code, is that such classification must be a reasonable one, which is a question of fact, and that such classification must be based on the nature of the road-bed, construction and other proper factors which are material, and that the lowest end of such scale of classification must not be less than five (5) tons for the weight of vehicle and load.”

It is stated in your inquiry that the existing roadbed is considered adequate to accommodate all types of vehicles and it is assumed that this is also true as to other safety factors as far as the use of the road is concerned.

The section in question is found in the chapter of the Revised Code which deals with load limits on the highways of this state and this chapter is concerned with the protection of the highway itself or safety in the use of the highway.

In view of the fact that the meaning of the words "and any other factors which are material in the proper classification of such roads" is not clear, I feel free to apply general rules of statutory construction. First, when the statute is not clear, reference may be had to chapter headings to determine the intention of the legislature. As said in *Harris v. State*, 57 Ohio St., 92, 94, "These titles are part of the statutes, and are to be considered in arriving at the intent of the legislature." Applying this rule, "other factors which are material" would of necessity be factors which would affect the highway itself or safety in the use of the highway.

Also the words "other factors which are material" are general words preceded by specific enumeration and are commonly limited to items of the same nature as those previously enumerated. This would limit such "other factors" to those affecting the use and the structural condition of the roads.

Noise alone would not appear to be a factor which would in any way affect the use of a road, as it would not be a factor in the protection of the road or the use of the road. Vibration might well be injurious to road structures and would, therefore, be a factor to be considered in the classification of roads. However, noise and vibration which have no effect upon either the highway or safety in the use of the highway would not be proper factors to be considered in the classification of roads.

In your inquiry it is indicated that the noise and vibration affect only the abutting property owners. In the case of *Sears v. Hopley*, 103 Ohio St., 46, the court held :

"* * * When the highway was originally dedicated, compensation was then presumed to have been paid *for all purposes consistent with the right to travel* and the improvement of the road.
* * *"
(Emphasis added.)

In the case of Railroad Co. v. Williams, 35 Ohio St., 168, the court said at page 171 :

“As between the public and the owner of land upon which a common highway is established, it is settled that the public has a right to improve and *use the public highway in the manner and for the purposes contemplated at the time it was established. * * **”

(Emphasis added.)

Therefore it is my opinion that unless the factors under consideration affect either the highway or highway safety, they are not “factors which are material in the proper classification of such roads” and any classification based on factors not bearing on the protection of the highway or safety in the use of the highway would not be a reasonable classification.

Respectfully,

C. WILLIAM O'NEILL
Attorney General