

1026

1. VEHICLES—LOAD AND SPEED—SECTION 7249-2 G. C. PROVIDES FOR CLASSIFICATION OF ROADS UNDER JURISDICTION OF COUNTY COMMISSIONERS—TO PROTECT AND CONSERVE ROADS DURING THAW AND MOIST SEASONS—SPECIFIED VEHICLES NOT LIMITED TO COMMERCIAL VEHICLES.
2. COUNTY COMMISSIONERS—MAY BY RESOLUTION REQUEST DIRECTOR OF HIGHWAYS TO DECLARE REASONABLE AND SAFE PRIMA FACIE SPEED LIMIT—GENERAL PRIMA FACIE SPEED LIMIT TOO GREAT—ENGINEERING AND TRAFFIC INVESTIGATION — SECTION 6307-21 (c) G. C.

SYLLABUS:

1. Section 7249-2, General Code, provides for the classification of roads under the jurisdiction of county commissioners for the purpose of protecting and conserving same during thawing and moist seasons through the regulation of load and speed of specified vehicles which are not limited to commercial vehicles.

2. County commissioners may, under the provisions of Section 6307-21(e), General Code, on the basis of an engineering and traffic investigation, by resolution, request the Director of Highways to declare a reasonable and safe prima facie speed limit on any part of a highway under their jurisdiction, where the general prima facie speed limit is too great.

Columbus, Ohio, September 27, 1949

Hon. Myron A. Rosentreter, Prosecuting Attorney
Ottawa County, Port Clinton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 7249-2 of the General Code specifically authorizes the commissioners to classify improved county and township roads and apparently authorizes them to limit the weight and speed of vehicles.

“Section 6307-21 of the General Code authorizes local authorities to request the Director of Highways to limit the speed of vehicles on highways, which he may do under this section if he thinks the same proper. This section is a later enactment than Section 7249-2.

“Does Section 7249-2 apply only to commercial vehicles? If not, can the County Commissioners regulate the speed of automobiles on county highways under Section 7249-2 or could such only be accomplished by the Commissioners following the procedure set out under the Uniform Traffic Act, namely, General Code Section 6307-21?”

Section 7249-2, General Code, reads as follows:

“The county commissioners of the various counties shall classify the improved county and township roads and all other improved roads within their respective counties except inter-county highways and main market roads which have been or may hereafter be constructed or maintained by the state, with reference to the maximum weight and minimum weight of five tons of vehicle and load or speed permitted thereon.

“In making the classification the county commissioners shall take into consideration the nature of the road-bed, construction and any other factors which are material in the proper classification of such highways.

“The county commissioners shall make rules and regulations governing the weight of vehicle and load and the speed of vehicles permitted on the several classes of highways. When thaws or excessive moisture render such highways or any sections of same insufficient to bear the traffic thereon, or when such highways or any sections of them would be damaged or destroyed by heavy traffic during the period of thawing or excessive moisture, the maximum weight of vehicle and load and the maximum speed or both, shall be reduced as provided in section 7250 of the General Code.”

This section requires no interpretation because the language is clear and unambiguous. A clear statement is not capable of interpretation because if such is attempted, we arrive at a different meaning than that stated. Section 7249-2, *supra*, clearly means that roads may be classified by the county commissioners for the purpose of protecting the roadbed and the highway construction in general when and where thaws or excessive moisture renders such insufficient to bear the traffic thereon. Their power and authority under such section to regulate the load and speed of vehicles is only incidental to the paramount object of protecting the roadbed and highway.

There can be no argument but that load, weight and speed of vehicles passing over highway surfaces are material factors to consider in connection with the conservation and protection of road surfaces and roadbeds.

I can not read into Section 7249-2, supra, any authority by which the county commissioners can regulate speed of motor vehicles thereunder except as when and where same must be done in a reasonable manner by making a road classification based on the nature of the roadbed, construction and other proper factors which are material. Such regulation of speed, however, is incidental to and for the purpose of conserving and protecting road surfaces and roadbeds. See Opinion No. 4044, Opinions of the Attorney General for 1935, wherein the second branch of the syllabus reads:

“Assuming a reasonable classification has been made by the county commissioners relative to the weight of the motor vehicle and load on improved county and township roads and all other improved roads in the county except inter-county highways and main market roads which have been constructed and maintained by the state, a reasonable reduction in such classification may be made as provided in Section 7250, General Code, not to exceed fifty per cent, ‘as the condition of the road or highway would justify’ when thaws or excessive moisture render the highways or any sections thereof insufficient to bear the traffic thereon or when such highways or any sections of them would be damaged or destroyed by heavy traffic during such period.”

Section 6307-21, General Code, is the section of law which provides for the speed regulations and limitations on traffic of vehicles on the streets and highways of the state and, after making general regulations, such section reads in part as follows:

“* * * (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.”

Thus, it is clear that for the purpose of regulating the speed of vehicles, for that purpose alone, there is no authority in the county commissioners. They may merely, under the provisions of Section 6307-21(c), supra, by resolution, when certain facts, conditions and circumstances exist as found by a survey, request the Director of Highways to declare a reasonable and safe prima facie speed limit.

There is no conflict between Sections 7249-2 and 6307-21, General Code, as the former provides for the protection and conservation of the road structure and the latter is purely a provision for speed regulations of vehicle traffic. Section 7249-2 grants authority to county commissioners to make classification of specified roads with reference to the maximum weight and minimum weight of five tons of vehicle and load or speed permitted thereon. I interpret the types of cars referred to here to be any type and not commercial vehicles only.

In specific answer to your questions, it is my opinion that :

Section 7249-2, General Code, provides for the classification of roads under the jurisdiction of county commissioners for the purpose of protecting and conserving same through the regulation of load and speed of specified vehicles which are not limited to commercial vehicles during thawing and moist seasons.

County commissioners may, under the provisions of Section 6307-21(c), General Code, on the basis of an engineering and traffic investi-

gation, by resolution, request the Director of Highways to declare a reasonable and safe prima facie speed limit on any part of a highway under their jurisdiction, where the general prima facie speed limit is too great.

Respectfully,

HERBERT S. DUFFY,
Attorney General.