

circumstances that a legal obligation of the subdivision or taxing unit is created for which a judgment might be procured, and that circumstance exists, or it is reasonably certain that it will exist at the end of the current fiscal year, at the time of the adoption and the submission to the county auditor of the subdivision or other taxing unit of a tax budget as provided for by Sections 5625-20 and 5625-22, General Code, the said so-called overdraft if noted in the budget may be taken into consideration in the fixing and adjustment of tax levies for the subdivision or taxing unit.

5. A contractual obligation owing to a subdivision or other taxing unit, the existence of which on the first day of a fiscal year is reasonably certain to result in bringing the funds into the treasury of the subdivision or taxing unit during the fiscal year, may be taken into consideration for the purpose of the making and certification of an amended certificate of estimated resources authorized by Section 5625-27, General Code, and if the said obligation exists prior to or at the time of the making and certification of an original certificate of estimated resources as authorized by Section 5625-26, General Code, it may be taken into consideration for that purpose.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4044.

ROAD—CLASSIFICATION OF COUNTY AND TOWNSHIP ROADS BY COUNTY COMMISSIONERS MUST BE REASONABLE—QUESTION OF FACT.

SYLLABUS:

1. *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.*

2. *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.*

3. *The authority to make a reasonable classification as provided in Section 7249, General Code, and to make a reasonable reduction, not to exceed fifty per cent, "as the condition of the road or highways would justify" when thaws or excessive moisture render the highways or any sections of them insufficient to bear the traffic or when the highways or any sections of them would be damaged or destroyed by heavy traffic*

during the period of thawing or excessive moisture, is not limited by the provisions of Sections 7246 and 7248-1, General Code.

COLUMBUS, OHIO, March 15, 1935.

HON. NELSON CAMPBELL, *Prosecuting Attorney, Mt. Gilead, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

“The Commissioners of Morrow County, Ohio, in Journal No. 14, at page 393, have the following entry:

‘Maximum load limits on all improved county and township roads ten (10) tons, with not over eight (8) tons on one axle; Rubber tires 550# per inch width on tire.

Maximum load limit on roads under construction and for two years thereafter to be eight (8) tons, with not over six and four tenths tons on one axle. Steel tires 480# per inch width on tires: Rubber tires 440# per inch width on tires.’

Each year during the thawing season, a resolution is passed by the County Commissioners ordering a 50% reduction of weight as established in the above mentioned maximum load limit. The roads are duly posted according to law the required length of time before any enforcements are attempted.

QUERY: To what limits can the Commissioners go in classifying county roads as provided in Section 7249-2, General Code? Can this body establish its own classification and then reduce that classification according to the 50% rule in Section 7250, General Code? 3. Is the authority to classify and subsequently to make the 50% reduction limited by the provisions of Sections 7246 and 7249, inclusive?

As the matter now stands, many school busses are violating the Commissioners’ order. Obviously it is necessary for school busses to transport children to consolidated schools, any other attitude would encourage violation of the attendance laws. If the Commissioners have unlimited authority under Section 7249-2, General Code, I am of the opinion that the situation will be ironed out either by an alteration of the present classification rule, or by improvement of certain sections of the county roads, or both.”

Section 7246, General Code, provides among other things that no motor vehicle equipped with solid rubber tires weighing in excess of ten (10) tons including weight of vehicle and load shall be operated over and upon improved highways and streets, bridges or culverts within the state and that no motor vehicle equipped with pneumatic tires shall be operated upon such streets, highways, bridges or culverts weighing more than twelve (12) tons including weight of vehicle and load.

Section 7248, General Code, regulates the weight of the vehicle and load that can be transported over the highways of this state in relation to the tire surface of the vehicle. The statute provides for an increase of weight as the surface of the tires is increased and specifically provides that the total width of the tires on all the wheels shall be computed in determining the gross weight which may be carried by a vehicle.

Section 7249, General Code, to which you refer in your inquiry has to do merely with the operation of commercial cars with respect to speed. Section 7248-1, General Code, another section in addition to Section 7246, referred to supra, having to do with the weight of motor vehicles, provides in part as follows:

"No vehicle shall be operated upon the improved public highways and streets, bridges or culverts within this state, having a gross weight, including load, greater than sixteen thousand pounds on both wheels of one axle, when such vehicle is equipped with solid rubber tires or greater than eighteen thousand pounds on both wheels of one axle when such vehicle is equipped with pneumatic tires, or greater than eighteen thousand pounds, plus the extra weight of such additional axle and equipment as certified by the manufacturer, for dual or tandem axles when equipped with pneumatic tires and so designed and used that such single axle thereof carries an equal load and moves freely up and down with the undulations of the road, surface, as in case of cantilever, rocker or similar tandem axles or no vehicle having more than eighty per cent of the permissible gross weight of vehicle and load concentrated on both wheels of one axle * * *."

The authority by which the county commissioners have acted in classifying maximum load limits on all improved county and township roads within your county is to be found in Section 7249-2, General Code, which provides:

"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." (Italics the writer's).

Section 7249-3, General Code, provides that the rules and regulations referred to in Section 7249-2, supra, shall be made by a majority vote of the commissioners and shall be kept on file in the office of the county commissioners and open for public inspection. It further provides that before the rules and regulations become effective the county commissioners should post at least two days before the regulations become effective, and keep posted on the roads affected, such regulations relative to speed and weight.

Section 7250, General Code, referred to in Section 7249-2, General Code, quoted supra, provides that when thaws or excessive moisture render the improved highways of this state or any sections of the same insufficient to bear the traffic thereon, or when such improved 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 the vehicle and load, or the maximum speed, or both, for motor vehicles as prescribed by law shall be reduced in the following manner:

“* * * On improved highways and all other roads in the county, other than main market roads or inter-county highways taken over by the state, the county commissioners shall prescribe such reduction as the condition of the road or highway would justify, but in no case shall such reduction be more than fifty per cent. * * *”

Section 7249-2, General Code, quoted supra, specifically gives the power to the county commissioners to make a reasonable weight classification for motor vehicles with respect to improved county and township roads and all other improved roads within the county except inter-county highways and main market roads which have been or may hereafter be constructed or maintained by the State. The statute provides that in making such classification the nature of the road-bed, construction and other relevant factors are to be considered, but in so classifying the lower limit of the scale of classification, that is, the minimum weight of vehicle and load, is five-(5) tons.

Your third question asks whether or not the authority of the county commissioners to classify is limited by the provisions relative to weight, to-wit, Sections 7246 and 7248-1, General Code. It is my opinion that it is apparent that Section 7246, setting a maximum weight of ten tons for solid rubber-tired vehicle and twelve tons for pneumatic-tired vehicles, and Section 7248-1 relative to the weight that can be carried on both wheels of one axle, do not limit the county commissioners from making a lower weight classification than these maximum weights for the improved county and township roads inasmuch as Section 7249-2, General Code, specifically provides for a minimum weight of five (5) tons, a lesser weight than provided as the maximum in Sections 7246 and 7248-1, referred to supra, as the lowest possible end of the scale of classification by the county commissioners.

With reference to your first question it would appear from a reading of Section 7249-2, General Code, that the only limitation on the county commissioners in making a classification of improved county and township roads and all other improved roads in the county except inter-county highways and main market roads constructed and maintained by the state 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 possible end of such scale of classification must not be less than five (5) tons for the weight of vehicle and load.

With reference to your second question the reference in Section 7249-2 to Section 7250, General Code, gives the county commissioners authority when either thaws or excessive moisture render the highways or any sections of the 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, to prescribe reductions in such original classifications “as the condition of the road or highway would justify, but in no case shall such reduction be more than fifty per cent.” It would appear because of the words “as the condition of the road would justify” that such reduction must be a “reasonable” one, which is a question of fact and not of law, but that in no case shall such reduction exceed fifty percent.

It is thought that a more categorical answer to your questions cannot be given inasmuch as it is, of course, impossible for this office to definitely state whether or not the classification established by your county commissioners is a “reasonable” one because we have no knowledge of the condition of the roads in question and moreover this is a question of fact rather than one of law. However, assuming the “reasonableness” of the original classification, it is my opinion that a “reasonable” reduction in such classification may be made as provided in Section 7250, General Code, not to ex-

ceed fifty per cent, as the condition of the roads or highways would justify when thaws or excessive moisture render the highways or any sections of the same insufficient to bear the traffic thereon or when such roads might be damaged or destroyed by heavy traffic during the period of thawing or excessive moisture.

Specifically answering your inquiries it is my opinion that:

1. 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, 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.

2. 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 roads or highways 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.

3. The authority to make a reasonable classification as provided in Section 7249-2, General Code, and to make a reasonable reduction, not to exceed fifty per cent, "as the condition of the roads or highways would justify" when thaws or excessive moisture render the highways or any sections of them insufficient to bear the traffic or when the highways or any sections of them would be damaged or destroyed by heavy traffic during the period of thawing or excessive moisture, is not limited by the provisions of Sections 7246 and 7248-1, General Code.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4045.

LIQUOR CONTROL DEPARTMENT—ONLY H PERMIT HOLDER MAY
TRANSPORT OR IMPORT LIQUOR INTO OHIO WHEN PURCHASED IN
ANOTHER STATE—WHO MAY ENFORCE LIQUOR CONTROL ACT.

SYLLABUS:

1. *Spirituous liquor purchased in another state cannot be transported or imported into Ohio for use or delivery herein, except by the holder of an H permit.*

2. *The amount of intoxicating liquor that may be imported into Ohio for use and delivery herein by the holder of an H permit can be governed by the Department of Liquor Control when it issues its consent to a person to import intoxicating liquor into Ohio.*

3. *The enforcement of the provisions of the Liquor Control Act and the laws of this state relating to the manufacture and sale of intoxicating liquor, is not limited to the persons deputized by the Department of Liquor Control for such purpose. Any*