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OHIO TURNPIKE—HIGHWAY WITHIN SCOPE OF POINT SYSTEM LAW—§§4507, 4511.01 TO 4511.78, 4513.01 TO 4513.36, 4511.99, R.C.

SYLLABUS:

The Ohio Turnpike is a highway within the scope of Section 4507.40, Revised Code, the point system law, and the provisions of that section apply to motor vehicle violations which occur on said turnpike.

Columbus, Ohio, August 23, 1960

Hon. Thomas A. Beil, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

Your request for my opinion reads in part:

“A question has been raised with reference to the application of points on violations occurring on the Ohio Turnpike. I have been unable to find in the statutes any reference or statement in Section 4507.40 which would permit violations which occur on the Turnpike to be certified to the Registrar of Motor Vehicles for an accumulation of points. This question is rather involved, however, it is very important.”

The first and second paragraphs of Section 4507.40, Revised Code, read:

“Every county court judge, mayor, and clerk of a court of record shall keep a full record of every case in which a person

“(Z) ‘Street or highway’ means * * * every way open to the use of the *public* as a thoroughfare for purposes of vehicular travel.

“* * *”

(Emphasis added)

These sections define highways as public thoroughfares. The common element of these definitions is that the thoroughfare must be public; and, therefore, if the Ohio Turnpike is a *public* thoroughfare, the point system for motor vehicle violations under Section 4507.40, Revised Code, should apply to violations on it.

In Opinion No. 3245, Opinions of the Attorney General for 1953, page 605, a predecessor ruled:

“* * *

“2. A turnpike project, operated as a toll road by the Ohio turnpike commission, as provided in chapter 5537., Revised Code, is a public highway in this state’ as that term is employed in Section 4921.02, Revised Code.”

In that opinion, at page 607, 54 American Jurisprudence, Section 2, page 494, was quoted as follows:

“* * * A turnpike or toll road is a public highway, established by public authority for public use, and is to be regarded as a public easement and not as private property, the acceptance by a corporation of a franchise to construct such a road and the operation thereof constituting a dedication of the same as a public highway. * * * Indeed, the only difference between a turnpike and a common highway is that while a turnpike is authorized and laid out by public authority, it is built at the expense of private individuals in the first instance, the cost and construction and maintenance being subsequently reimbursed by a toll levied by public authority for the purpose.’”

Other authority for calling the Ohio Turnpike a public thoroughfare is found in several Ohio Supreme Court decisions. In *State, ex rel. Kauer v. Defenbacher*, 153 Ohio St., 268 (1950), in regard to the Ohio Turnpike Act, the Supreme Court held:

“* * *

“2. Money expended for the study of a turnpike project represents a capital outlay for additions and betterments for highway improvement.

“* * *”

“6. Money so expended would be ‘expended for * * * costs for construction * * * of public highways and bridges and other statutory highway purposes,’ within the meaning of 5a of Article XII of the Constitution.

“* * *

“10. The Ohio turnpike commission is a public organization created for a public purpose. There have been several other cases holding the Ohio Turnpike to be public, including *State, ex rel. Allen v. Ferguson*, 155 Ohio St., 26 (1951), and *State, ex rel. Ohio Turnpike Commission v. Allen*, 158 Ohio St., 168 (1952).

In view of the above, I conclude that the Ohio Turnpike is a highway within the scope of Section 4507.40, Revised Code, and that the provisions of that section apply to motor vehicle violations which occur on said turnpike.

This conclusion is further strengthened by Section 5503.31, Revised Code, which reads:

“The state highway patrol shall have the same authority as is conferred upon it by section 5503.02 of the Revised Code with respect to the enforcement of state laws on other roads and highways and on other state properties, to enforce on all turnpike projects *the laws of the state* and the bylaws, rules, and regulations of the Ohio turnpike commission. The patrol, the superintendent of the patrol, and all patrolmen shall have the same authority to make arrests on all turnpike projects for violations of state laws and of bylaws, rules, and regulations of the Ohio turnpike commission as is conferred upon them by sections 5503.02 of the Revised Code to make arrests on, and in connection with offenses committed on, other roads and highways and on other state properties.” (Emphasis added)

By making state motor vehicle laws applicable to the Ohio Turnpike, this section indicates that the legislature intended the Ohio Turnpike to be a public highway.

I might note in passing that the point system for motor vehicle violations applies only to violations of Sections 4511.01 to 4511.78, inclusive, 4511.99, and 4513.01 to 4511.36, inclusive, Revised Code, or of any other law or ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways. That some of these sections apply on the Ohio Turnpike follows from Section 5503.31, Revised Code, quoted above.

That some of these sections do *not* apply on the Ohio Turnpike follows from Section 5537.16, Revised Code, reading in part :

“The commission shall have power to adopt such bylaws, rules, and regulations as it may deem advisable for the control and regulation of traffic on any turnpike project, for the protection and preservation of property under its jurisdiction and control, and for the maintenance and preservation of good order within the property under its control. The rules and regulations of the turnpike commission with respect to the speed, axle loads, vehicle loads, and vehicle dimensions of vehicles on turnpike projects shall apply notwithstanding the provisions of sections 4511.21 to 4511.24, inclusive, 4513.34, and Chapter 5577. of the Revised Code. * * *

“* * *”

Under this section, rules and regulations of the Ohio Turnpike Commission that differ from the provisions of Sections 4511.21 to 4511.24, inclusive, 4513.34, and Chapter 5577. of the Revised Code, prevail over the latter ; and as these rules and regulations are not listed in Section 4507.40, Revised Code, and are not laws or ordinances, a person who violates them would not have points assessed against him under that section.

Answering your specific question, it is my opinion and you are advised that the Ohio Turnpike is a highway within the scope of Section 4507.40, Revised Code, the point system law, and the provisions of that section apply to motor vehicle violations which occur on said turnpike.

MARK McELROY

Respectfully,

Attorney General