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SYLLABUS:

A board of county commissioners may not delegate its duties as a "local authority" under Section 4513.34, Revised Code, to the county engineer, but the county engineer may advise the board as to road conditions and other factors affecting the advisability of the issuance of permits under that section.

Columbus, Ohio, August 28, 1962

Hon. Earl W. Allison, Prosecuting Attorney
Franklin County, Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"As you know Section 4513.34 of the Revised Code authorizes local authorities with respect to highways under its jurisdiction to examine applications and issue special permits authorizing an applicant to operate or move a vehicle or combination of vehicles and load exceeding the maximums provided by law upon any highway under the jurisdiction of the authority granting such permit.

“The term ‘local authorities’ as used in this section has been interpreted to include a board of county commissioners in No. 4644, Attorney General’s Opinions for 1954.

“The Board of County Commissioners of Franklin County are proposing by virtue of Section 4513.34, Revised Code, the establishment of an entirely new system of regulation of vehicular traffic exceeding the legal limitations set forth in the Ohio Revised Code, which is patterned very closely after the State of Ohio’s new system of regulation.

“The Franklin County Engineering Department because of its professional expertise in this field, has been instrumental in suggesting methods and conditions to be included in the new proposed system of regulation. Because of its special know-how and expert knowledge with respect to the operation and movement of vehicular traffic exceeding legal limitations and other necessary ramifications therefrom, it has been suggested that the Franklin County Engineer be delegated the *administrative* and ministerial duties on behalf of the Board of County Commissioners of this proposed system of regulation of vehicular traffic.

“The question has been raised by the Franklin County Engineer as to whether such a proposed delegation of administrative and ministerial duties of the proposed system mentioned above is authorized by the Ohio Revised Code.

“Because this question is one which may well affect other counties throughout the State, and is, therefore, of statewide interest, I respectfully request your opinion as to whether a board of county commissioners may properly delegate their administrative and ministerial duties under Section 4513.34 of the Revised Code to the Franklin County Engineer.”

Section 4513.34, Revised Code, reads as follows :

“The director of highways with respect to highways under his jurisdiction and local authorities with respect to highways under their jurisdiction may, upon application in writing and for good cause shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in sections 5577.01 to 5577.09, inclusive, of the Revised Code, or otherwise not in conformity with sections 4513.01 to 4513.37, inclusive, of the Revised Code, upon any highway under the jurisdiction of the authority granting such permit. Any such permit may be issued for a single or a round trip or, in special instances, for a certain period of time.

“The application for any such permit shall be in such form as the director or local authority prescribes.

“The director or local authority may issue or withhold such permit; or, if such permit is issued, may limit or prescribe conditions of operation for such vehicle, and require bond or other security necessary to compensate for any damage to a roadway or road structure.

“Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of any authority granting such permit. No person shall violate any of the terms of such permit.”

As to the meaning of the term “local authorities,” division (Y) of Section 4511.01, Revised Code, reads as follows:

“(Y) ‘Local authorities’ means every county, municipal, and other local board or body having authority to adopt police regulations under the constitution and laws of this state.”

The above definition is, by Section 4513.01, Revised Code made applicable to such term as used in Chapter 4513., Revised Code.

In Opinion No. 3139, Opinions of the Attorney General for 1948, page 230, and in Opinion No. 4644, Opinions of the Attorney General for 1954, page 661, it was held that the term “local authorities” as used in the provision of law here concerned includes a board of county commissioners. On reviewing the reasoning of those opinions, I find that I am in agreement with the conclusion of my predecessors in that regard.

In the 1954 opinion, the writer also said, at page 663:

“I find nothing in the statute to indicate that the county engineer is included in the definition of the term ‘local authorities’ and so conclude that he is without authority to act as such under the provisions of Section 4513.34, Revised Code, although the county commissioners will undoubtedly seek his professional advice in their proceedings thereunder.”

I concur with my predecessor that the county engineer is not a local authority under Section 4513.34, *supra*, and am of the opinion that the section does not give said officer any authority as to the permits concerned. Your letter raises the question whether the board of county commissioners may delegate to the county engineer powers given it under that section.

In 44 Ohio Jurisprudence 2d, 65, Public Officers, page 552, it is said:

“The restriction on the delegation of discretionary powers by an agent has been held applicable to public officers. In those cases in which the proper execution of the office requires the exercise of judgment or discretion on the part of the officer, the presumption is that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and, unless power to substitute another in his place has been given to him, he cannot delegate his powers or duties to another. So too, with regard to municipalities, it is deemed to be fundamental that public powers conferred upon a municipal corporation and its officers or agents cannot be surrendered or delegated to others.”

Under Section 4513.34, *supra*, a board of county commissioners may, with respect to roads under its jurisdiction, issue special permits for the operation of vehicles of a size or weight in excess of the maximum allowed by law. Further, if a permit is issued, the board may impose conditions on its use and may require bond or other security necessary to compensate for any damage to a roadway or road structure. The board must also provide a form of application for permit. All of such powers are lodged with the board and in my opinion may not be delegated by the board to the county engineer.

While the specific powers granted to the board may not be delegated, I would think that the county engineer should have a definite role in the procedure for issuing permits. On this point, I note that in Opinion No. 4644, *supra*, in referring to the county engineer, my predecessor said:

“* * * although the county commissioners will undoubtedly seek his professional advice in their proceedings thereunder.”

Without detailing the duties of the county engineer, I feel it safe to say that the performance of same requires extensive knowledge of the condition of roads, the amount of weight which roads will carry, and traffic conditions of roads. Such knowledge should be invaluable to the board of county commissioners in its administration of Section 4513.34, *supra*, and I deem it proper for the board to request the advice of the county engineer as to the issuance of permits, and for the engineer to give such advice.

In conclusion, it is my opinion and you are advised that a board of county commissioners may not delegate its duties as a “local authority” under Section 4513.34, Revised Code, to the county engineer, but the

county engineer may advise the board as to road conditions and other factors affecting the advisability of the issuance of permits under that section.

Respectfully,
MARK McELROY
Attorney General