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1. "LOCAL AUTHORITIES"—TERM AS USED IN SECTION 4513.34 RC—INCLUDES BOARD OF COUNTY COMMISSIONERS—OPINION 3139, OAG 1948, PAGE 230, APPROVED AND FOLLOWED.
2. LOCAL AUTHORITIES AUTHORIZED TO REQUIRE PERMIT UNDER SECTION 4513.34 RC WHERE WEIGHT OF VEHICLE AND LOAD EXCEEDS MAXIMUM WEIGHTS SPECIFIED IN CHAPTER 5577 RC—MAXIMUM WEIGHTS ESTABLISHED BY COUNTY COMMISSIONERS—SECTIONS 5577.07, 5577.08 RC.

SYLLABUS:

1. The term "local authorities" as used in Section 4513.34, Revised Code, includes a board of county commissioners. (Opinion No. 3139, Opinions of the Attorney General for 1948, page 230, approved and followed.)

2. Local authorities are authorized to require a permit under the provisions of Section 4513.34, Revised Code, in cases where the weight of a vehicle and load exceeds the maximum weights specified in Chapter 5577., Revised Code, or the maximum weights established by the county commissioners pursuant to the provisions of Sections 5577.07 and 5577.08, Revised Code.

Columbus, Ohio, December 15, 1954

Hon. Morris O. Gibby, Prosecuting Attorney
Harrison County, Cadiz, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I would like your opinion on the following matter. Section 4513.34 of the Revised Code of Ohio in paragraph 3 states: '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.'

"If the county commissioners would make a motion whereby it would be necessary to obtain their consent before equipment in excess of twenty tons could be moved over county and township highways, would this authority delegated to themselves be legal?"

“Would you please define what ‘local authority’ means in this paragraph as to whether or not it means county engineer or county commissioners or both and if the commissioners act in requiring their signature upon permits is valid.”

In Section 4511.01, Revised Code, the term “local authorities” is defined 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. * * *”

By the provisions of Section 4513.01, Revised Code, this definition is applicable also to such term as used in Chapter 4513., Revised Code.

This definition patently presents some difficulty, for the board of county commissioners is not a body “having authority to adopt police regulations.” In Opinion No. 3139, Opinions of the Attorney General for 1948, p. 230, this difficulty was discussed but the conclusion was reached that this limiting expression was not intended to modify the word “county” as used in the definition. On this point the writer of such opinion said, pages 231, 232:

“* * * It is therefore necessary to construe the term ‘local authorities’ in order to ascertain whether county commissioners come within this definition. At first glance it would appear that they are excluded for they do not have power to adopt police regulations; however, helpful in interpretation of the legislative intent herein is the doctrine of ‘last antecedent clause.’ It is a well-accepted rule of grammar, as well as a rule of statutory construction, that a relative clause relates only to the nearest antecedent that will make sense. It is a canon of statutory construction that relative or qualifying words or phrases are to be applied to the words or phrases immediately preceding, and not extend to or modify more remote words, phrases or clauses unless such extension or inclusion is clearly required by the intent and meaning of the context. See *Stevens v. Illinois Central Railway Co.*, 306 Ill. 370; *Wisconsin Power and Light Co. v. Public Service Commission of Wisconsin*, 224 Wis. 286.

“The application of this doctrine to the definition of ‘local authorities’ in Section 6307-2, supra, thereby brings county commissioners within this definition. In other words, the above section should be read: A local authority is every county board, municipal board and other local board, or body having authority to adopt local police regulations, under the constitution and laws of this state. The term ‘board’ relates to the term ‘county,’

'municipal' and 'local.' In like manner the phrase 'authority to adopt local police regulations' modifies the word immediately preceding it which is 'body.' It therefore follows that county Commissioners are amenable to Section 6307-11, *supra*, and therefore can erect traffic devices on county roads. * * *"

The conclusion on this point is stated in the syllabus as follows:

"1. Boards of county commissioners come within the term 'local authorities' as defined in Section 6307-2, General Code, and consequently are authorized under the provisions of Section 6307-11, General Code, to erect traffic-control devices on roads under their jurisdiction."

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.

As to the power of the commissioners to impose maximum highway weight limits it is quite clear that they may not "delegate to themselves" any authority whatever in the matter. It is quite well settled that administrative boards such as this possess only such powers as are conferred by statute and enjoy no inherent powers. See *State ex rel Bentley Co. v. Pierce*, 96 Ohio St., 44.

The "special permit" provision in Section 4513.34, Revised Code, to which you have invited attention, quite plainly refers to special permission to carry weights and loads in excess of the usual statutory limits. This provision reads in part:

"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 authority thus conferred clearly relates to cases of *exceeding* the maximum weight limits set out in Chapter 5577., Revised Code, and

nothing in this language is in any way suggestive of any authority to *reduce* such statutory limits.

In Chapter 5577., Revised Code, we find varying weight limits imposed by means of a somewhat involved formula based on wheel loadings for varying types of wheels, axles, and vehicle structures. The overall maximum weight, including the load, of any one vehicle employing pneumatic tires, for example, is "seventy-eight thousand pounds." By forbidding the operation of any type of vehicle involving a weight in excess of this figure it is evidently the legislative intent to *permit* such operation not in excess of such weight in the case of certain types of vehicles except as the board of county commissioners is given authority to make a general change in such limits by a specific statutory grant of power.

It appears that a substantial grant of power to the board of county commissioners, in the matter of road weight limits, is made by express statutory provision in Sections 5577.07, 5577.08, and 5577.09, Revised Code. A temporary reduction of permissible weight and speed limits may be effected by the commissioners as authorized in Section 5577.07, *supra*, which section reads as follows:

"When thaws or excessive moisture render the improved highways of this state or any sections of them insufficient to bear the traffic thereon, or when such highways would be damaged or destroyed by heavy traffic during the period of thawing or excessive moisture, the maximum weight of vehicle and load, or the maximum speed, or both, for motor vehicles, as prescribed by law shall be reduced in the following manner:

"(A) On state highways, the director of highways shall prescribe such reduction which shall not be more than twenty-five per cent;

"(B) On improved highways and all other roads in the county, other than state highways, the board of county commissioners shall prescribe such reduction as the condition of the road or highway justifies, but in no case shall the reduction be more than fifty per cent.

"The schedule of the reduction of maximum weights and speeds shall be filed, for the information of the public, in the office of the board of each county in which the schedule is operative and in the office of the director. The director or board, at least one day before such reduction becomes effective, shall cause to be placed and retained on such highways, at both ends and at the points of intersections by principal roads, during the period of such reduced limitation of weight, speed, or both, signs,

of substantial construction, which will conspicuously indicate the limitations of weight and speed, which are allowed on the highway and the date on which such limitations shall go into effect. No person shall operate upon any such highway, a motor vehicle whose maximum weight or speed is in excess of the limitations prescribed. The expense of the purchase and erection of signs, provided for in this section, shall be paid from funds for the maintenance and repair of roads."

Moreover, authority to make general restrictive limitations on weights and speeds is found in Section 5577.08, supra, 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."

The procedure to be followed in the adoption of road classification regulations, and provision for the enforcement thereof are found in Section 5577.09, et seq., Revised Code, the former section reading as follows :

"All rules and regulations as provided by section 5577.08 of the Revised Code shall be made by the board of county commissioners, at regular meetings, by a majority vote. Such rules and regulations shall be kept on file in the office of the board and open for inspection by the public.

"At least two days before such rules and regulations become effective the board shall cause to be placed and retained on such improved county and township highways or sections thereof, at both ends and at the points of intersection, signs, of substantial construction, which will conspicuously indicate the limitations of weight of vehicle and load or speed which will be allowed on such highways.

"It shall be unlawful to operate upon such highway a vehicle whose maximum weight or speed is in excess of the limitations

prescribed. The expense of the purchase and erection of signs provided for in this section shall be paid from the county funds for the maintenance and repair of such highways.”

These regulations, it will be observed in succeeding sections 5577.12, 5577.13, 5577.14, Revised Code, are enforced by criminal proceedings, violators being subject to the penalties set out in Section 5577.09, Revised Code.

Referring again to the “special permit” provision already noted in Section 4513.34, *supra*, it will be seen that such permits may be issued in the case of a vehicle 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.” By reference to these sections it will be seen that certain maximum weights are *expressly* “specified” therein but there is the additional provision for a “specification” of lower weight limits by the promulgation of regulations by the commissioners. Section 5577.08, Revised Code.

It is quite clear that the commissioners, as local authorities, may issue permits under the authorization above noted in cases where the weight exceeds the statutory maximum; and that such weight would obviously exceed the maximum under the regulation also. It cannot be supposed that the legislature intended the absurd consequences which would result from the view that such permits could be issued to exceed the higher statutory limits but not to exceed the lower limits fixed by regulation. Accordingly, to avoid such absurdity, I think it may be concluded that the term “weight * * * specified” as used in Section 4513.34, *supra*, must be deemed to include the weight limits established by action of the county commissioners as provided in Section 5577.08, Revised Code.

Accordingly, in specific answer to your question, it is my opinion that :

1. The term “local authorities” as used in Section 4513.34, Revised Code, includes a board of county commissioners. (Opinion No. 3139, Opinions of the Attorney General for 1948, page 230, approved and followed.)

2. Local authorities are authorized to require a permit under the provisions of Section 4513.34, Revised Code, in cases where the weight of a vehicle and load exceeds the maximum weights specified in Chapter 5577., Revised Code, or the maximum weights established by the county

commissioners pursuant to the provisions of Sections 5577.07 and 5577.08,
Revised Code.

Respectfully,
C. WILLIAM O'NEILL
Attorney General