

2056.

PERMIT—FOR OPERATION OF MOTOR VEHICLE EXCEEDING THIRTY FEET—MAY NOT BE CONTINUOUS.

**SYLLABUS:**

*The Director of Highways does not have authority to grant a permit to persons to operate a truck and semi-trailer whose total length is less than eighty-five (85) feet but the length of the semi-trailer is greater than thirty (30) feet, continuously upon the state highway system. Authority to grant a permit in special cases, as provided in Section 7248-2 of the General Code, is limited to some peculiar or unusual occasion.*

COLUMBUS, OHIO, July 7, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows :

“The X Company of Lansing, Michigan, in their business of transporting new automobiles and trucks operates over certain state highways in Ohio a combination vehicle made up of a four wheeled motor power truck twenty-one (21) feet and three (3) inches in length and a two wheeled semi-trailer fifty (50) feet in length. The semi-trailer consists of a loading platform the front ten (10) feet and seven (7) inches of which rests upon the rear end of the motor truck. The semi-trailer when attached to the truck makes a combination sixty (60) feet in length over all.

I am advised by the X Company that their drivers have been arrested in certain counties of this state because the length of the semi-trailer is greater than thirty (30) feet, the maximum length for a single vehicle as prescribed by Section 7248-2, General Code.

Section 7248-2 provides that vehicles whose dimensions exceed the maximum dimensions prescribed in this section may operate under a written permit granted as provided under Section 7247.

I am in receipt of an application from the X Company for a permit to operate such combination vehicles for a period of one year from the date of the application. A copy of said application is attached.

Your opinion is respectfully requested upon the following question:

Has the Director of Highways the right and authority to grant permits for the continuous operation for a given period of time of vehicles in excess of the maximum prescribed dimensions or weight, or must such permits be limited to specific vehicles for individual trips?”

In my Opinion No. 602, rendered July 8, 1929, addressed to the Prosecuting Attorney of Lucas County, I held that the operation of a truck and semi-trailer whose total length is less than eighty-five (85) feet but the length of the semi-trailer is greater than thirty (30) feet, on the inter-county highways or main market roads, is a violation of Section 7248-2 of the General Code.

The combination vehicle which you describe in your letter consists of a four wheel motor power truck twenty-one (21) feet three (3) inches in length and a two wheel semi-trailer fifty (50) feet in length. The semi-trailer being greater in length than thirty (30) feet, it is therefore a violation of Section 7248-2 of the General Code to operate such vehicle upon the inter-county and main market roads of the State of Ohio unless the officers mentioned in Section 7247 of the General Code have authority to grant a permit to persons operating such vehicles upon the highways of the state.

Section 7248-2 of the General Code provides in part as follows:

"No vehicle shall be operated upon the inter-county highways or main market roads, whose width is greater than ninety-six inches, except traction engines whose width shall not exceed one hundred and thirty-two inches, and no vehicle shall be operated on such highways, of a greater height than twelve feet six inches, or of a greater length than thirty feet, and no combination of vehicles coupled together shall be so operated whose total length including load, shall be greater than eighty-five feet, *provided, that in special cases vehicles whose dimensions exceed the foregoing may operate under a written permit granted as provided in this chapter.*"

(Italics the writer's.)

Section 7247 of the General Code provides as follows:

"The county surveyor of any county, upon application in writing by the owner or person having charge thereof may grant permission for the moving of vehicles, objects or structures in excess of a total weight of twelve tons, including weight of vehicle, object or contrivance, structure and load, over the improved inter-county highways, main market roads, bridges or culverts within such county and located outside of any municipal corporation or corporations therein situated. Such permission shall be in writing and the county surveyor may grant the same, subject to such conditions and restrictions as in his judgment are necessary for the preservation and protection of such highways, bridges, and culverts. The director of public service of a city or mayor of a village may in like manner grant such permission as to the improved public highways, streets, bridges or culverts within such city or village.

The director of the department of highways and public works may in like manner grant such permission as to the improved public highways, streets, bridges or culverts within this state in regard to all inter-county movements of such vehicles, objects or structures or in regard to any such movement wholly upon any portion of the inter-county highways, bridges or culverts."

Whatever authority the Director of Highways has to grant permits for the operation of vehicles whose dimensions are greater than those set forth in Section 7248-2 of the General Code, must be found in the language used in Section 7248-2 of the General Code, which is:

"Provided, that in special cases vehicles whose dimensions exceed the foregoing may operate under a written permit granted as provided in this chapter."

It will be noted from a reading of Section 7247 of the General Code in connection with Section 7248-2 of the General Code that the Director of Highways is authorized to grant permits to persons in special cases to operate vehicles of a greater length than thirty (30) feet as to the improved public highways, streets, bridges or culverts within this state in regard to all inter-county movements of such vehicles or in regard to any such movement wholly upon any portion of the inter-county highways, bridges or culverts. It will be further noted that Section 7247 of the General Code does not limit the time nor the length of vehicles for which permits may be granted but vests sole discretion in the officers mentioned therein to grant permission subject to such conditions or restrictions *as in their judgment* are necessary for the preservation and protection of the highways, bridges and culverts. The only limitation, if any, upon the officers' authority is that the permit may only be granted in "special cases."

Your inquiry resolves itself to a determination of what is meant by "special cases" as used in Section 7248-2 of the General Code. The legislature of the State of Ohio, by the enactment of Sections 7246 to 7251-1 of the General Code, has adopted a definite policy of limiting weight, width, height, length and speed and of prescribing size of different types of tires on vehicles on the public highways, with the object of preservation and protection of highways and streets and to prevent, as far as possible, the use of vehicles on the highways which tend to interfere with the convenience and safety of traffic.

With this in mind such a construction must be placed upon the words "special cases" as will consistently carry out the object of this legislation. It was not the intention of the legislature to grant to certain officers the power to substitute their judgment for that of the legislature in determining which vehicles should be operated generally upon the highways to promote safety and economy, so that when the legislature granted authority to these officers in "special cases" it intended to limit their authority to some peculiar or extraordinary event or occurrence which might arise that the legislature could not contemplate in advance. Such a construction is consistent with the general policy of the legislature to reduce to a minimum the operation of large types of vehicles upon the highways to promote safety and economy. Any other construction would not only be inconsistent with the general policy of the legislature but would have a tendency to give certain officers the power to nullify the express restrictions as to vehicles provided by the legislature.

It is to be presumed that the legislature acted with full knowledge of all facts and conditions essential to valid legislation when it adopted regulations in the exercise of its police power and therefore it must be presumed that it took into consideration all types of vehicles of a greater length than thirty (30) feet and it cannot be said that the legislature did not contemplate the restriction of the use of the vehicle described in your letter.

In view of the discussion herein, I am of the opinion that the case presented by you in your letter is not a special case within the meaning of the provisions of Section 7248-2 of the General Code and therefore the Director of Highways does not have the authority to grant a permit for the operation of the vehicles in question, upon the highways.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2057.

BOARD OF EDUCATION—VILLAGE SCHOOL DISTRICT—NOTIFICATION TO COUNTY BOARD OF INTENTION TO BECOME EXEMPTED DISTRICT ENDS AUTHORITY OF SAID COUNTY BOARD OVER TERRITORY—EXEMPTION OF VILLAGE DISTRICT BASED ON CENSUS TAKEN MORE THAN REASONABLE TIME BEFOREHAND UNAUTHORIZED.

**SYLLABUS:**

1. *After the board of education of a village school district having a population of 3,000 or more, as shown by a proper census, or containing a village which at the last Federal census had a population of 3,000 or more, takes the necessary steps in accordance with Sections 4688 and 4688-1 of the General Code, to become an exempted village school district, and notifies the county board of education to that effect, the said county board of education is precluded from exercising any authority over the territory com-*