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THE STATE HIGHWAY PATROL MAY POST SIGNS WITHOUT THE AUTHORIZATION OF THE DIRECTOR OF HIGHWAYS OR LOCAL AUTHORITIES—§§4511.091, 4511.11, 4511.01, R.C., AMEND. SUB. H. B. 426, 100TH G.A.

SYLLABUS:

Under Section 4511.091, Revised Code, state highway patrolmen and other law enforcement officers may post the signs described therein without the authorization of the director of highways or local authorities as provided in Sections 4511.10 and 4511.11, Revised Code; and the signs so posted need not be affixed in a permanent fashion but need only be placed in a position in relation to the radar or other speed timing device referred to in Section 4511.091, Revised Code, so as to comply with said section when such a timing device is in use.

Columbus, Ohio, June 29, 1962

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

Dear Sir:

I have your letter in which you request my opinion on questions raised in a letter enclosed therein. Said enclosure reads, in part, as follows:

“The Canfield Village police in the operation of radar placed temporary signs not less than 750 feet, nor more than 1500 feet, in advance of the radar transmitter. These signs are erected when they go to work on State Rte. 46, and State Rte. 224 within the village. The signs are in the wording prescribed by the Director of Highway, but they are placed in either one of two ways: (1) by putting the sign upon the top of a speed limit sign, or hanging it thereon; (2) by laying the pole to which such a sign is attached against the pole and speed limit sign. After working a couple of hours at that point, they then pick up their signs and move to a more fertile spot. The Canfield Chief of Police says that he is doing exactly what the State Highway Patrol does, and, hence, must be within his rights.

“This raises several questions which I think would require the Attorney General’s opinion based on R.C. 4511.091(A), 4511.10, and 4511.11. The basic question is whether a state patrolman, a village patrolman, or a township patrolman has authority to place the radar speed warning sign temporarily at any place he desires within the limits of his jurisdiction.

"R.C. 4511.019 provides that a rectangular sign apprising drivers of motor vehicles of the presence of such radar 'shall be posted on or as near as practical to the highway .....'  
 R.C. 4511.10 provides 'The Department of Highways may place and maintain traffic control devices ..... to regulate, *warn*, or guide traffic.' (italics mine) The second paragraph continues, 'No local authority shall place or maintain any traffic control device upon any highway under the jurisdiction of the Department except by permission of the Director of Highways.'  
 R.C. 4511.11 provides, 'Local authorities in their respective jurisdictions may place and maintain traffic control devices upon highways under their jurisdiction ..... or to *regulate, warn*, or guide traffic.' (italics mine) Continuing on, it reads, 'No village shall place or maintain any traffic control signal upon any extension of the state highway system within such village without first obtaining the permission of the Director of Highways.'

"The pertinent questions are these:

"1. Do local patrolmen, within their respective villages and townships, fall within the meaning of 'local authorities?'

"2. If they do not, does the Council of the village, or the Township Trustees in the case of a township, have authority to delegate the power to place radar warning signs to their respective patrolmen and constables at any spot they see fit?

"3. As to members of the State Highway Patrol, can the Director of Highways delegate the power to place such warning signs to the patrolmen of the State Highway Patrol at any point they may see fit, and change the same from time to time?

"4. As to the second paragraph of R.C. 4511.10, can the Director of Highways give a general *carte blanche* authority to local authorities to place or maintain any traffic control device upon any state highway within the jurisdiction of the village or township in the case of the township?

"5. Generally, then, are such temporary signs as so erected and used legal within these statutes?

"There may be many other questions which you may see that I have not caught in the construction of the language of the statute.'

Section 4511.091, Revised Code, reads as follows:

"(A) Whenever the state highway patrol or any law enforcement officer uses radar for the determination of the speed of a motor vehicle, or uses any mechanical or electrical timing device for the determination of the speed of a motor vehicle over a measured distance of the highway, a rectangular sign ap-

rising drivers of motor vehicles of the presence of such radar or mechanical or electrical timing device shall be posted on or as near as is practicable to the highway and not less than 750 feet nor more than 1500 feet in advance of such radar transmitter or any component part of such mechanical or electrical timing device.

“(B) The department of highways shall adopt a uniform sign for the purposes of this section, which sign shall be so designed as to be legible to the operators of approaching vehicles. The department shall include the specifications of the sign so designed in the manual provided by section 4511.09 of the Revised Code.

“Any officer arresting or participating, or assisting in the arrest of, a person charged with violating any of the speed provisions of the motor vehicle or traffic laws of this state or the provisions of any ordinance of a municipality regulating speed of motor vehicles is incompetent to testify as a witness in any prosecution of such arrested person if such testimony is based upon or is derived from readings obtained from a radar device or a mechanical or electrical timing device which is obtained contrary to the provisions of this act.”

Section 4511.10, Revised Code, reads as follows:

“The department of highways may place and maintain traffic control devices, conforming to its manual and specifications, upon all state highways as are necessary to indicate and to carry out sections 4511.09 to 4511.78, inclusive, and 4511.99 of the Revised Code, or to regulate, warn, or guide traffic.

“No local authority shall place or maintain any traffic control device on any highway under the jurisdiction of the department except by permission of the director of highways.”

Section 4511.11, Revised Code, reads, in part, as follows:

“Local authorities in their respective jurisdictions may place and maintain traffic control devices upon highways under their jurisdiction as are necessary to indicate and to carry out sections 4511.01 to 4511.78, inclusive, and 4511.99 the Revised Code, local traffic ordinances, or to regulate, warn, or guide traffic. No village shall place or maintain any traffic control signal upon an extension of the state highway system within such village without first obtaining the permission of the director of highways.  
\* \* \*”

The main questions in this instance appear to be (1) whether the signs required to be posted by Section 4511.091, Revised Code, are

“traffic control devices” as such phrase is used in Chapter 4511., Revised Code, and (2) whether such devices can only be posted by authorization of the department of highways as provided in Section 4511.10, Revised Code, or by “local authorities” as provided in Section 4511.11, Revised Code.

As to the phrase “traffic control devices,” Section 4511.01, Revised Code, reads, in part, as follows:

“As used in sections 4511.01 to 4511.78, inclusive, and 4511.99 of the Revised Code:

“\* \* \*

\* \* \*

\* \* \*

“(00) ‘Traffic control devices’ means all signs, signals, markings, and devices placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic, including signs denoting names of streets and highways.

“\* \* \*

\* \* \*

\* \* \*”

The signs required by Section 4511.091, *supra*, are clearly covered by the above definition, however, such definition does not require a sign to be erected, but permits it to be placed, nor must it be placed by the authority of a public body having jurisdiction, but it may be placed by an official having jurisdiction. Thus, a “traffic control device” need not, to meet the definition aforementioned, be a device authorized under Section 4511.10 or 4511.11, *supra*.

This leaves the question of whether such signs may be placed only under authorization derived from Section 4511.10 or 4511.11, *supra*. It will be noted from a reading of said statutes that the power granted therein is to be used as necessary to indicate and carry out the provisions of Chapter 4511., Revised Code, etc. Said language obviously does not require action by the department of highways or local authorities when such action is not necessary to carry out such provisions.

Section 4511.091, Revised Code, was enacted by the 100th General Assembly (Amended Substitute House Bill No. 426), and became effective as law on October 16, 1953 (125, Ohio Laws, 396.)

The title of said Amended Substitute House Bill No. 426 reads as follows:

“Providing for the posting of signs in advance of radar and mechanical or electrical devices for the determination of speed over a measured distance and making an officer incompetent to testify except when such signs are posted.”

From the foregoing title, as well as the statute as a whole, the legislative intent and obvious purpose can readily be seen. 50, Ohio Jurisprudence, 2d, 243, Statutes, Section 258.

Clearly, the legislative purpose in enacting Section 4511.091, *supra*, was to prevent the use by the state highway patrol and local law enforcement officers of radar and similar speed timing devices in such a fashion as would "trap" the motorist. This purpose was accomplished by requiring the posting of signs, thereby requiring that "fair warning" must be given that law enforcement officers are enforcing the law in said manner. The provisions of such statute are directed to the law enforcement officer, and failure to comply therewith make *him* incompetent as a witness. Thus, the specific mischief to be remedied by Section 4511.091, *supra*, was that caused by overzealous law enforcement officers. 50, Ohio Jurisprudence 2d, 236, Statutes, Section 252, reads in part, as follows:

"Courts which find it necessary to construe a statute may look to the cause, occasion, or necessity for the law, the imperfections to be removed, or in other words, the mischief sought to be avoided and the remedy intended to be afforded. Indeed, the mischief to be remedied has been declared to be the most important subject for the court's consideration when it comes to passing upon the interpretation of doubtful provisions. \* \* \*

The doubtful provisions which we are here considering is whether the law enforcement officers set forth in Section 4511.091, *supra*, are by said section authorized to post the signs therein required or whether the posting of such signs must first be authorized by the director of highways, under Section 4511.10 or 4511.11, *supra*.

Considering the fact that the provisions of Section 4511.091, *supra*, are directed to said law enforcement officers, are designed to remedy their mischief, and the "penalty" for failure to comply therewith causes such officers to be incompetent as witnesses, I am of the opinion that the legislature intended to authorize such officers to post the signs required by said statute.

This conclusion does not in any way infringe upon or limit the power granted in Section 4511.10 or 4511.11, *supra*. Since there is no necessity for the department of highways or local authorities to place signs required by Section 4511.091, *supra*, said power does not necessarily come into play. But even if such were the case, Section 4511.091, *supra*, as a

special statute enacted after the general statutes, Section 4511.10 and 4511.11, *supra*, would, under the usual rule of statutory construction, control. 50, Ohio Jurisprudence 2d, 88, Statutes, Section 106.

As has been pointed out earlier herein, a sign need not be permanently fixed to be a "traffic control device" under the definition set forth in Section 4511.01 (00), *supra*. While such definition is helpful in that it shows a legislative intent that such devices need not be permanently affixed, it is not dispositive of whether the signs required to be "posted" by Section 4511.091, *supra*, need be so affixed

I find no statutory definition of the word "posted." The word "post" is defined in Webster's Third New International Dictionary as meaning:

"\* \* \* to affix \* \* \* to a post, wall, or other usual place for public notice \* \* \*"

The word "post," as defined above, does not carry with it a requirement that the affixing be permanent. Nor would it seem that the legislature intended such in Section 4511.091, *supra*. It could hardly be argued that said statute was intended to prevent or in any way impede the use of radar or similar devices. Such devices are accurate means of determining the speed of a motor vehicle and are highly mobile in nature as they are usually placed in or upon a police car. *City of East Cleveland v. Ferrell*, 168, Ohio St., 298. Such devices certainly are useful in apprehending traffic violators, however, their usefulness obviously depends to a great extent upon their mobility.

The legislature, in enacting Section 4511,091, *supra*, clearly intended to give the motorist reasonable notice of the use of such devices, and the signs are only required by the statute when such devices are in use. To interpret said statute to require that the signs to be posted must be permanently affixed, would be to require that said signs be posted when the speed timing devices are not in use, and obviously would greatly reduce the mobility of these devices, thereby reducing their effectiveness as a useful tool of law enforcement. Such was not the purpose of this legislation, and I am of the opinion that the signs required to be posted by Section 4511.091, Revised Code, need not be permanently affixed.

In view of my above conclusions, I do not deem it necessary to separately consider the specific questions raised in the request for opinion.

In accordance with the above, I am of the opinion and you are advised that under Section 4511.091, Revised Code, state highway patrolmen and other law enforcement officers may post the signs described therein without the authorization of the director of highways or local authorities as provided in Sections 4511.10 and 4511.11, Revised Code; and the signs so posted need not be affixed in a permanent fashion but need only be placed in a position in relation to the radar or other speed timing device referred to in Section 4511.091, Revised Code, so as to comply with said section when such a timing device is in use.

Respectfully,  
MARK McELROY  
Attorney General