

November 6, 2017

The Honorable Sean M. Warner
Holmes County Prosecuting Attorney
164 East Jackson Street
Millersburg, Ohio 44654

SYLLABUS:

2017-038

1. Whether the actual use of a vehicle is relied upon to determine that the vehicle constitutes a “motor vehicle” under R.C. 4501.01(B) or “farm machinery” under R.C. 4501.01(U) depends upon the language of the enumerated exceptions in R.C. 4501.01(B) and the definitions set forth in the other divisions of R.C. 4501.01.
2. An “agricultural tractor,” as defined in R.C. 4501.01(C), constitutes “farm machinery,” as defined in R.C. 4501.01(U), provided that it is used principally for agricultural purposes.
3. A “trailer,” as defined in R.C. 4501.01(M), that is towed by a tractor, constitutes “farm machinery” under R.C. 4501.01(U), provided that, when it is towed on a public road or highway, it is used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm. If, when it is towed on a public road or highway, the trailer is used for a purpose other than to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm, the trailer does not constitute “farm machinery,” as defined in R.C. 4501.01(U).
4. Whether the operation of a tractor or a trailer upon a public road or highway violates a statute or ordinance that requires licensing, registration, or the use of certain standards or mechanisms for the safe transport of passengers is dependent upon the interplay of R.C. 4501.01 with those other statutes or ordinances.



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OPINION NO. 2017-038

The Honorable Sean M. Warner
Holmes County Prosecuting Attorney
164 East Jackson Street
Millersburg, Ohio 44654

Dear Prosecutor Warner:

You have requested an opinion whether the use of farm machinery for the purpose of R.C. 4501.01(U) is to be determined on the basis of actual use or intended use of the farm machinery. You have explained that in Holmes County many owners of farm machinery use the machinery to transport passengers for purposes unrelated to agriculture (*i.e.*, to transport passengers to retail, recreational, or dining destinations). You have asked specifically about tractors and trailers that are towed by tractors. You wish to know whether a tractor or a trailer that is towed by a tractor constitutes “farm machinery” for the purpose of R.C. 4501.01(U) when it is regularly used to transport passengers on public roads for purposes unrelated to agriculture.

R.C. 4501.01(B) defines “motor vehicle” as “any vehicle,¹ including mobile homes and recreational vehicles, that is propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires.” (Footnote added.) Under R.C. 4501.01(B), “farm machinery” is a type of vehicle that is excluded from the definition of “motor vehicle.”² R.C. 4501.01(U) defines “farm machinery” as:

¹ R.C. 4501.01(A) defines “vehicles” as:

everything on wheels or runners, including motorized bicycles, but does not mean electric personal assistive mobility devices, vehicles that are operated exclusively on rails or tracks or from overhead electric trolley wires, and vehicles that belong to any police department, municipal fire department, or volunteer fire department, or that are used by such a department in the discharge of its functions.

² Several types of vehicles that are not pertinent to your question are excluded from the definition of “motor vehicle” set forth in R.C. 4501.01(B). In full, the exclusion set forth in R.C. 4501.01(B) is as follows:

all machines and tools that *are used in* the production, harvesting, and care of farm products, and *includes trailers that are used* to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm, *agricultural tractors*, threshing machinery, hay-baling machinery, corn shellers, hammermills, and machinery used in the production of horticultural, agricultural, and vegetable products. (Emphasis added.)

As used in R.C. 4501.01(U), “trailer” means:

any vehicle without motive power that *is designed or used for* carrying property or persons wholly on its own structure *and for* being drawn by a motor vehicle, and *includes* any such vehicle that is formed by or operated as a combination of a semitrailer and a vehicle of the dolly type such as that commonly known as a trailer dolly, *a vehicle used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed greater than twenty-five miles per hour*, and a vehicle that is designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a public road or highway for a distance of more than ten miles or at a speed of more than twenty-five miles per hour. “Trailer” does not include a manufactured home or travel trailer.

R.C. 4501.01(M) (emphasis added). R.C. 4501.01(C) defines an “agricultural tractor” as “any self-propelling vehicle that *is designed or used for* drawing other vehicles or wheeled machinery, but has no provisions for carrying loads independently of such other vehicles, *and that is used principally* for agricultural purposes.” (Emphasis added.)

In *Muenchenbach v. Preble Cnty.*, 91 Ohio St. 3d 141, 142, 2001-Ohio-244, 742 N.E.2d 1128, the Ohio Supreme Court considered whether the actual use of construction equipment is relevant to

“Motor vehicle” does not include utility vehicles as defined in division (VV) of this section, under-speed vehicles as defined in division (XX) of this section, mini-trucks as defined in division (BBB) of this section, motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, well-drilling machinery, ditch-digging machinery, farm machinery, and trailers that are designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a public road or highway for a distance of no more than ten miles and at a speed of twenty-five miles per hour or less.

determining whether the equipment constitutes a “motor vehicle” under R.C. 4511.01(B).³ The court stated:

The application or rejection of a use standard should not be an all-or-nothing proposition. R.C. 4501.01(B) and 4511.01(B) are syntactically constructed to provide a working definition of “motor vehicle,” followed by a series of exceptions. Some of these exceptions are specific in nature and some are general in nature; some are characterized as a type of vehicle and some are distinguished by function. Some of

³ At the time of the court’s opinion, R.C. 4511.01(B) provided:

“Motor vehicle” means every vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, *except* motorized bicycles, road rollers, traction engines, power shovels, power cranes, and *other equipment used in construction work and not designed for or employed in general highway transportation*, hole-digging machinery, well-drilling machinery, ditch-digging machinery, farm machinery, trailers used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a street or highway at a speed of twenty-five miles per hour or less, threshing machinery, hay-baling machinery, agricultural tractors and machinery used in the production of horticultural, floricultural, agricultural, and vegetable products, and trailers designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of twenty-five miles per hour or less.

Muenchenbach v. Preble Cnty., 91 Ohio St. 3d 141, 143, 2001-Ohio-244, 742 N.E.2d 1128 (quoting R.C. 4511.01(B)). The current version of R.C. 4511.01(B) defines “motor vehicle” as:

every vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, *except* motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, hole-digging machinery, well-drilling machinery, ditch-digging machinery, farm machinery, and trailers designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of twenty-five miles per hour or less.

Thus, R.C. 4511.01(B)’s definition of “motor vehicle” is substantially similar to the definition of “motor vehicle” set forth in R.C. 4501.01(B).

the exceptions are followed by limiting or modifying clauses, or subject to definitional qualifications, while others stand unqualified.

A use standard may be applied to determine whether a vehicle constitutes excepted construction equipment because that exception is subject to the qualification that such equipment not be “employed in general highway transportation.” There has been some debate over whether, and to what extent, a use standard properly applies beyond the confines of the exception for construction equipment....

However, we disagree with the statement ... that a use standard may generally be applied “in determining whether a vehicle is a motor vehicle within the meaning of the statute.” A vehicle is a motor vehicle under R.C. 4511.01(B) if it is “propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires” and does not fall within any of the enumerated exceptions. The use standard can do no more than vitiate the particular exception that justifies its application in the first place; it cannot apply to reformulate a definition of motor vehicle provided by the General Assembly.

Muenchenbach v. Preble Cnty., 91 Ohio St. 3d at 147-48 (internal citations omitted).

Prior to reaching this conclusion, the court explained its holding in *City of Wauseon v. Badenhop*, 9 Ohio St. 3d 152, 459 N.E.2d 867 (1984). *Muenchenbach v. Preble Cnty.*, 91 Ohio St. 3d at 145-46. In *Badenhop*, the Ohio Supreme Court considered whether a farm tractor that was towing wagons to provide hayrides to passengers constituted a “motor vehicle” under R.C. 4501.01(B) and Section 301.20 of the ordinances of Wauseon for the purpose of suspending the license of the driver after an accident in which he was cited for driving a motor vehicle while intoxicated. *City of Wauseon v. Badenhop*, 9 Ohio St. 3d at 153-54. The court reasoned that tractors are specifically excluded from the definition of “motor vehicle” in R.C. 4501.01(B) and the local ordinance. *City of Wauseon v. Badenhop*, 9 Ohio St. 3d at 154. Accordingly, by definition, the driver was not driving a motor vehicle and his license could not be suspended. *Id.*

In *Muenchenbach*, the Ohio Supreme Court recognized that in *Badenhop*, the tractor was classified without regard to its actual use at the time the citation was issued. *Muenchenbach v. Preble Cnty.*, 91 Ohio St. 3d at 146. The court explained that:

R.C. 4501.01(B) and 4511.01(B) except agricultural tractors from the definitions of “motor vehicle” on the basis of their principal use, rather than on the basis of their use at any particular time. Under the definitions of “agricultural tractor” in R.C. 4501.01(C) and 4511.01(J), a vehicle is classified as an agricultural tractor when “used principally for agricultural purposes.”

Muenchenbach v. Preble Cnty., 91 Ohio St. 3d at 146. In determining whether to rely upon the actual use of the tractor in *Badenhop*, the court considered the language of the enumerated exceptions in R.C. 4501.01(B) and the definition of the term “agricultural tractor” in R.C. 4501.01(C). Insofar as the definition of “agricultural tractor” in R.C. 4501.01(C) directs that the tractor’s use be considered only with respect to its principal use, the tractor’s actual use at the time of the incident is not

determinative. Thus, under the analysis employed by the Ohio Supreme Court in *Muenchenbach* and *Badenhop*, whether the actual use of a vehicle is relied upon to determine that the vehicle constitutes a “motor vehicle” under R.C. 4501.01(B) or “farm machinery” under R.C. 4501.01(U) depends upon the language of the enumerated exceptions in R.C. 4501.01(B) and the definitions set forth in the other divisions of R.C. 4501.01.

A similar analysis was adopted in *State v. Besancon*, 188 Ohio App. 3d 141, 2010-Ohio-2147, 934 N.E.2d 962, at ¶¶ 4-9 (Wayne County). In *Besancon*, the court determined whether a livestock trailer that was being pulled by a pickup truck constituted a “motor vehicle” for the purposes of R.C. 4503.21(A) (displaying a license plate) and R.C. 4501.01(B). *State v. Besancon* at ¶¶ 1 and 4. The court looked to the definition of “farm machinery” under R.C. 4501.01(U), which provides in pertinent part, “[f]arm machinery’ means all machines and tools that are used in the production, harvesting, and care of farm products, and includes trailers that are used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm[.]” *State v. Besancon* at ¶ 6. The court concluded that the livestock were “agricultural produce” and the auction house, to which the truck was travelling, was a “place of ... supply” under R.C. 4501.01(U). *State v. Besancon* at ¶ 9. Insofar as the driver was using the trailer to transport agricultural produce between a local place of supply and his farm, the trailer constituted “farm machinery” under R.C. 4501.01(U) and was not a “motor vehicle” under R.C. 4501.01(B). *State v. Besancon* at ¶ 9. Thus, the court considered the actual use of the trailer at the time the driver was cited by a law enforcement officer because the definition of “farm machinery” in R.C. 4501.01(U) directs that a trailer’s actual use be considered.

Likewise, in *State v. Conner*, 13 Ohio App. 3d 179, 180, 468 N.E.2d 320 (Darke County 1983), the court considered the actual use of a “Ford truck modified for use as a flotation spreader” in determining whether the vehicle constituted a “motor vehicle” for the purposes of R.C. 4503.11 (registration) and R.C. 4501.01. At the time of the court’s decision, R.C. 4501.01(U) provided:

“‘Farm machinery’ means all machines and tools used in the production, harvesting, and care of farm products, including trailers used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of twenty-five miles per hour, or less.”

State v. Conner, 13 Ohio App. 3d at 180. In finding sufficient evidence to conclude that the truck was a “motor vehicle” and not “farm machinery” the court took note of evidence that “although the vehicle was designed for the spreading of fertilizer upon farm fields, it was also driven upon public highways and occasionally loaded with fertilizer at the plant and then driven to the fields for distribution.” *State v. Conner*, 13 Ohio App. 3d at 181. In addition, at the time that the truck was stopped by a law enforcement officer, it “was traveling at the rate of thirty-six miles per hour and was being used to transport itself from one business location to another business location of a merchant engaged in a retail business.” *Id.* The court held:

While we agree with defendant that the use of a vehicle determines whether such vehicle is properly classified as “farm machinery,” use is not the only relevant factor the trier of fact may consider. The ownership of a vehicle, along with any other relevant evidence, may be considered if helpful in determining the actual way the vehicle in question is put to use.

Id. at 181. Thus, *Conner* is another example of the consideration of a vehicle’s actual use to the extent that consideration of actual use is directed by the pertinent statutory definitions.

Finally, in *State v. Devilbliss*, 88 Ohio L. Abs. 592, 596, 177 N.E.2d 74 (C.P. Highland County 1961), the court found a trailer’s actual use at the time it was stopped determinative of whether it was a “motor vehicle” or “farm machinery” under R.C. 4501.01. At the time of the court’s decision, the definition of “farm machinery” was set forth in R.C. 4501.01(N), which defined “farm machinery” as “all machines and tools used in the production, harvesting, and care of farm products.” *Id.* at 594. The court held that:

based upon the facts of the two-wheeled trailer being used to transport a beef for butchering purposes and usually being used for farming purposes, ... such trailer is excepted from the definition of “motor vehicle” contained in Section 4501.01(B), Revised Code, which definition applies to the term “motor vehicle” as used in Section 4503.21, Revised Code.

State v. Devilbliss, 88 Ohio L. Abs. at 596. Thus, the court considered the vehicle’s actual use because the definition of “farm machinery” required consideration of the vehicle’s use.

When we apply the analyses and holdings of the above-reviewed cases to your situation, we conclude that whether the actual use of a vehicle is relied upon to determine that the vehicle constitutes a “motor vehicle” under R.C. 4501.01(B) or “farm machinery” under R.C. 4501.01(U) depends upon the language of the enumerated exceptions in R.C. 4501.01(B) and the definitions set forth in the other divisions of R.C. 4501.01. Thus, if a tractor meets the definition of an “agricultural tractor” under R.C. 4501.01(C), and it is used principally for agricultural purposes, it constitutes “farm machinery” under R.C. 4501.01(U), even if it is sometimes used for purposes unrelated to agriculture.⁴ In addition, if a trailer that is towed by a tractor meets the definition of “trailer” in R.C.

⁴ One may question whether R.C. 4501.01(C)’s use of the phrase “used principally for agricultural purposes” brings a tractor’s actual use at the time that it is driven on a public road or highway within the definition of “agricultural tractor.” For example, it is possible to construe that phrase as considering whether the tractor’s primary use most of the time is for an agricultural purpose. Alternatively, it is possible to construe that phrase as considering whether the tractor’s primary purpose for which it is on the road or highway is an agricultural purpose. Under the first construction, a tractor that is driven to a restaurant at a particular time, but that is used primarily for agricultural purposes at other times will constitute an “agricultural tractor” under R.C. 4501.01(C). In contrast, under the second construction of the phrase, a tractor that is used for agricultural purposes most of the

4501.01(M), it constitutes “farm machinery” under R.C. 4501.01(U), provided that, when it is towed on a public road or highway, it is used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm. Alternatively, if the trailer, at the time that it is towed on a public road or highway, is being used for a purpose other than to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm, the trailer does not constitute “farm machinery” as defined in R.C. 4501.01(U).

There is an important caveat with respect to our conclusions. This opinion advises whether a tractor or a trailer constitutes a “motor vehicle” under R.C. 4501.01(B) or “farm machinery” under R.C. 4501.01(U) in the circumstances described in your letter. The definitions of “motor vehicle” and “farm machinery” in R.C. 4501.01 apply to several different sections of the Revised Code that govern various motor vehicle offenses and traffic laws. R.C. 4501.01’s definitions may also be incorporated into a local ordinance that governs a motor vehicle offense or traffic law violation. Our advice in this opinion was formulated without construing any other statute or ordinance that may apply with respect to a particular motor vehicle offense or traffic law violation and that may impose additional or different qualifications upon the use of a vehicle. Whether the operation of a tractor or a trailer upon a public road or highway violates a statute or ordinance that requires licensing, registration, or the use of certain standards or mechanisms for the safe transport of passengers is dependent upon the interplay of R.C. 4501.01 with those other statutes or ordinances. The status of a tractor or a trailer as a “motor vehicle” may change if a particular type of motor vehicle offense or traffic law violation implicates other pertinent statutes or ordinances that impose additional or different qualifications upon the use of the vehicle.

For example, in *Canton v. Spittler*, No. CA-7193, 1987 Ohio App. LEXIS 9367, at *2-3 (Stark County Oct. 26, 1987), the court considered whether, at the time of an accident, a farm tractor was being used in accordance with the purposes set forth in Canton Codified Ordinances 301.20 (defining “motor vehicle”) and 335.01 (operator’s license requirement) and R.C. 4507.03 (statutory exemptions from requirement to hold an operator’s license). At the time of the court’s decision, Canton Codified Ordinance 335.01 prohibited a person from operating any motor vehicle without an operator’s or

time, but is on a road or highway at a particular time in order to drive to a restaurant will not constitute an “agricultural tractor.”

Based upon the court’s holding in *City of Wauseon v. Badenhop*, 9 Ohio St. 3d 152, 154, 459 N.E.2d 867 (1984) and the explanation of that case in *Muenchenbach v. Preble Cnty.*, 91 Ohio St. 3d 141, 146, 2001-Ohio-244, 742 N.E.2d 1128, we believe that the phrase “used principally for agricultural purposes” in R.C. 4501.01(C) requires that the primary purpose for which the tractor is used most of the time is an agricultural purpose. The tractor in *Badenhop* was being driven on a road to give hayrides, which is not primarily an agricultural purpose. *City of Wauseon v. Badenhop*, 9 Ohio St. 3d at 152. Nevertheless, the court concluded that the tractor was an agricultural tractor without regard to its use at the time of the accident. *Id.* at 154; *see also Muenchenbach v. Preble Cnty.*, 91 Ohio St. 3d at 146.

chauffeur's license, unless the person was expressly exempted under R.C. 4507.03. *Canton v. Spitler*, No. CA-7193, 1987 Ohio App. LEXIS 9367, at *2 (Stark County Oct. 26, 1987). R.C. 4507.03 provided, "[n]o person shall be required to obtain an operator's or chauffeur's license for the purpose of driving or operating a road roller, road machinery, or *any farm tractor* or implement of husbandry, *temporarily drawn, moved, or propelled upon the highway.*" *Canton v. Spitler*, No. CA-7193, 1987 Ohio App. LEXIS 9367, at *2 (Stark County Oct. 26, 1987) (emphasis added). Canton Codified Ordinance 301.20 defined "motor vehicle" as:

"every vehicle propelled or drawn by power other than muscular power, except ... *farm machinery*, trailers used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public street or highway at a speed of twenty-five miles per hour or less ... and *agricultural tractors* and machinery used in the production of horticultural, floral cultural, agricultural and vegetable products."

Canton v. Spitler, No. CA-7193, 1987 Ohio App. LEXIS 9367, at *2-3 (Stark County Oct. 26, 1987) (emphasis added).

The defendant in *Spitler* drove his tractor to a store to purchase farm seed. *Id.* at *3. Upon leaving the store, the defendant drove the tractor to a tavern and to a hospital to visit a friend. *Id.* at *3-4. The court concluded that the tractor was a "motor vehicle" and not "farm machinery" for the purpose of R.C. 4507.03 and Canton Codified Ordinances 301.20 and 335.01. *Canton v. Spitler*, No. CA-7193, 1987 Ohio App. LEXIS 9367, at *4-5 (Stark County Oct. 26, 1987). The court explained that R.C. 4507.03 and the ordinances place certain qualifications upon the use of a farm tractor in order to come within the operator's license exemption. *Canton v. Spitler*, No. CA-7193, 1987 Ohio App. LEXIS 9367, at *4 (Stark County Oct. 26, 1987). Accordingly, "a farm tractor will lose its status as an exempt vehicle if the use exceeds the statutory parameters." *Id.* The court further explained:

if one drives a farm tractor not used for farm purposes, the vehicle is then a "motor vehicle" and its operator must be licensed. In addition, an operator must be licensed if he operates a farm tractor other than temporarily upon the highway. The farm tractor loses its exempt status if used in a manner not provided for by law.

Id. Thus, the language of each of the pertinent statutes and ordinances dictate whether, and the extent to which, a vehicle's actual use at the time of a violation or offense is the basis for determining whether the vehicle constitutes a "motor vehicle" for a particular purpose.

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. Whether the actual use of a vehicle is relied upon to determine that the vehicle constitutes a "motor vehicle" under R.C. 4501.01(B) or "farm machinery" under R.C. 4501.01(U) depends upon the language of the enumerated exceptions in R.C. 4501.01(B) and the definitions set forth in the other divisions of R.C. 4501.01.

2. An “agricultural tractor,” as defined in R.C. 4501.01(C), constitutes “farm machinery,” as defined in R.C. 4501.01(U), provided that it is used principally for agricultural purposes.
3. A “trailer,” as defined in R.C. 4501.01(M), that is towed by a tractor, constitutes “farm machinery” under R.C. 4501.01(U), provided that, when it is towed on a public road or highway, it is used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm. If, when it is towed on a public road or highway, the trailer is used for a purpose other than to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm, the trailer does not constitute “farm machinery,” as defined in R.C. 4501.01(U).
4. Whether the operation of a tractor or a trailer upon a public road or highway violates a statute or ordinance that requires licensing, registration, or the use of certain standards or mechanisms for the safe transport of passengers is dependent upon the interplay of R.C. 4501.01 with those other statutes or ordinances.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General