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SYLLABUS:

Readings obtained by the use of radar equipment are properly admitted into evidence on the trial of persons charged with the violation of the speed laws notwithstanding a violation of regulations issued by the Federal Communications Commission.

Columbus, Ohio, July 23, 1963

Hon. James H. DeWeese
Prosecuting Attorney
Miami County
Troy, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“At times the Sheriff’s Department borrows a radar unit to check the speed of motor vehicles being operated on county roads. It now appears that the use of such equipment in an area other than where licensed is in violation of regulations issued by the Federal Communications Commission. Even though the use of the radar equipment is in violation of regulations of the Federal Communications Commission, may the readings obtained by the use of such equipment be properly admitted into evidence on the trial of persons charged with violation of the speed laws, provided the unit was tested for accuracy by one who was competent to make the test and to testify on the subject.”

Section 4511.091, Revised Code, which authorizes law enforcement officers to use radar, 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 apprising 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 seven hundred and fifty feet nor more than fifteen hundred 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.”

It is my interpretation of Section 4511.091, Revised Code, that readings obtained by the use of radar equipment are properly admitted into evidence on the trial of persons charged with the violation of the speed laws if: (a) there is a rectangular sign apprising drivers of motor vehicles of the presence of such radar posted as near as practicable to the highway, which sign is not less than seven hundred fifty feet nor more than fifteen hundred feet in advance of such radar transmitter or any component part of such mechanical or electrical timing device; and (b) the sign apprising drivers of motor vehicles of the presence of radar is designed so as to be legible to the operators of approaching vehicles.

Assuming there were violations of regulations issued by the Federal Communications Commission, such violations would be immaterial to a case wherein one is being prosecuted for an alleged violation of speed laws. The purpose of the Federal Communications Act is to protect the public from interference with national communication systems, *Regents of New Mexico College of Agriculture & Mechanic Arts v. Albuquerque Broadcasting Co.*, 158 F. 2d 904, aff'g 70 F. Supp. 198; *Nelson v. Leighton*, 82 F. Supp. 661, 664, not to protect alleged violators of traffic laws. There appears to be no issue concerning the probativeness of the evidence sought to be admitted in this case. Indeed, the purpose of the federal regulation appears to be totally irrelevant to the due process requirements of an accused traffic violator.

It is therefore my opinion and you are accordingly advised

that readings obtained by the use of radar equipment are properly admitted into evidence on the trial of persons charged with the violation of the speed laws notwithstanding a violation of regulations issued by the Federal Communications Commission.

Respectfully,
WILLIAM B. SAXBE
Attorney General