

**OPINION NO. 79-058**

**Syllabus:**

1. R.C. 4511.07(A) confers upon a board of county commissioners the authority to regulate the parking of vehicles on the right-of-way along county roads. A board of county commissioners may prohibit such parking where reasonably necessary to promote the public safety.
2. A board of township trustees has the authority under R.C. 505.17 to regulate vehicle parking on the right-of-way along county roads within the township. A board of township trustees may prohibit such parking where reasonably necessary to promote the public safety.

3. Where both a board of county commissioners and a board of township trustees have the authority to regulate parking in the same area, the trustees' exercise of their authority under R.C. 505.17 prevails.

**To: Lowell S. Petersen, Ottawa County Pros. Atty., Port Clinton, Ohio**  
**By: William J. Brown, Attorney General, September 27, 1979**

I have before me your request for my opinion which reads, in part, as follows:

1. Does the Board of County Commissioners have authority to prohibit parking of vehicles on the right-of-way along county roads?
2. If not, does a Board of Township Trustees have authority to prohibit parking on the right-of-way along county roads within its township?

It is, of course, fundamental that counties and townships possess only those powers delegated to them by the General Assembly. See, e.g., Yorkowitz v. Board of Township Trustees, 166 Ohio St. 349 (1957); State ex rel. Clark v. Cook, 103 Ohio St. 465 (1921); State ex rel. Locher v. Menning, 95 Ohio St. 97 (1916). As to your first question, then, it is necessary to ascertain whether the authority to prohibit parking has been delegated to counties by the General Assembly.

The statutes regulating the operation of motor vehicles and the use of state and local highways and roads are generally set forth in R.C. Chapter 4511 and R.C. 4513.01 et seq. Of particular significance to your inquiry is R.C. 4511.07, which provides, in pertinent part, as follows:

Sections 4511.01 to 4511.78, 4511.99 and 4513.01 to 4513.37 of the Revised Code do not prevent local authorities from carrying out the following activities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power:

- (A) Regulating the stopping, standing, or parking of vehicles, trackless trolleys, and streetcars;
- (B) Regulating traffic by means of police officers or traffic control devices;
- (C) Regulating or prohibiting processions or assemblages on the highways; . . . .

"Local authorities" is defined in R.C. 4511.01(AA) as follows:

"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.

This definition of "local authorities" includes a board of county commissioners. 1970 Op. Att'y Gen. No. 70-094; 1948 Op. Att'y Gen. No. 3139, p. 230 (construing G.C. 6307-2, predecessor to R.C. 4511.01). The question remains, however, whether the General Assembly intended by the terms of R.C. 4511.07(A) to delegate to county commissioners the authority to regulate and/or prohibit parking.

The language used in R.C. 4511.07 does not, at first glance, appear to be an affirmative delegation of authority. The words "[these statutes] do not prevent local authorities from carrying out the following activities" might be construed merely as a statement that the general statutes were not intended to be exclusive. A reading of the entire section, however, indicates that it was the intent of the General Assembly to grant local authorities the power to carry out the activities listed therein. The last paragraph of R.C. 4511.07 reads as follows:

No ordinance or regulation enacted under divisions (D), (E), (F), (G), or (I) of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrance to the highway or part thereof affected, as may be most appropriate.

This requirement implies that the General Assembly itself considered R.C. 4511.07 to be an enabling statute and contemplated the enactment of ordinances and regulations pursuant to that section. This interpretation is also reflected in the applicable case law.

In Slicker v. Board of Education, 90 Ohio Law Abs. 108 (Mahoning County 1961), the question was whether a board of township trustees had the authority to designate one-way traffic on a township road. The court there held that a board of township trustees is a local authority for the purpose of R.C. 4711.07 and that the board is empowered under R.C. 4711.07(D) to designate one-way traffic on township roads.

R.C. 4511.07 was also under consideration in two more recent decisions. Although neither case involved the precise question presented here, both cases support the conclusion that the authority to enact traffic regulations is derived from R.C. 4511.07. In Becker v. Nold, 35 Ohio App. 2d 1 (Franklin County 1973) (construing provisions subsequently deleted by H.B. No. 995 (1974)), the court held that, because of the notice requirements of R.C. 4511.07, an ordinance enacted under R.C. 4511.07(J) was effective only where there was a sign present. In City of East Cleveland v. Palmer, 40 Ohio App. 2d 10 (Cuyahoga County 1974), the court concluded that the posting of signs is not a necessary prerequisite to the adoption and enforcement of local parking regulations under R.C. 4511.07(A).

From the foregoing, it is my conclusion that R.C. 4511.07(A) empowers local authorities to regulate parking on roads within their jurisdictions. Since the term "local authorities" by definition includes boards of county commissioners, a board of county commissioners is authorized to regulate parking on the right-of-way along county roads within their jurisdiction.

A conclusion that a board of county commissioners has the authority to regulate parking on county roads is not, however, entirely responsive to your question. Your question is whether the board may prohibit such parking. Under the Ohio view, as in a majority of other jurisdictions, the words "regulate" and "prohibit" have different meanings, and a statutory grant of power to regulate an activity does not ordinarily include the power to prohibit that activity. East Fairfield Coal Co. v. Booth, 166 Ohio St. 379 (1957); Frecker v. Dayton, 88 Ohio App. 52 (Montgomery County 1949), aff'd, 153 Ohio St. 14 (1950). Compare R.C. 4511.07(A) with R.C. 4511.07(C). The line of demarcation between a prohibition and a regulation is not, however, always clear. Courts have held, for example, that the partial prohibition of an activity or the prohibition of an activity within a certain area is a valid exercise of the power to regulate. Compare Smith v. Juillerat, 161 Ohio St. 424 (1954) (township ordinance prohibiting the strip-mining of coal in residential areas is valid exercise of trustees' power to regulate land use) with East Fairfield Coal Co. v. Booth, supra, (ordinance which prohibits strip mining coal anywhere in the township is not a valid exercise of trustees' power to regulate). I believe the situation about which you inquire falls within this exception to the general rule. It is, therefore, my opinion that a board of county commissioners may, pursuant to its power to regulate parking on county roads, prohibit parking on the right-of-way along such roads, where such prohibition is reasonably necessary to promote the public safety.

With respect to your second question, it is clear that R.C. 4511.07 applies to a board of township trustees as well as to a board of county commissioners. See Slicker v. Board of Education, supra. In addition, however, R.C. 505.17(A) provides as follows:

Except in a township or portion thereof that is within the limits of a municipal corporation, the board of township trustees may make

such regulations and orders as are necessary to control all vehicle parking in the township, . . . . (Emphasis added.)

It is, therefore, beyond doubt that a board of township trustees has authority to regulate parking on the right-of-way of a county road located in the township. Such regulation may, as discussed above, include the prohibition of parking in those areas, where such prohibition is reasonably necessary to promote the public safety.

Since the foregoing discussion concludes that both a board of county commissioners and a board of township trustees have authority to regulate parking within their respective jurisdictions, a conflict may arise as to whose authority is to prevail where both boards have jurisdiction and seek to regulate parking in a particular area.

R.C. 1.51, set forth below, is the rule of statutory construction applicable to conflicts between two statutes.

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

Applying this rule of construction to the conflict produced by R.C. 4511.07 and R.C. 505.17, I find that the latter statute must prevail.

R.C. 505.17 is a general statute in that it confers upon a board of township trustees broad authority to regulate all vehicle parking in the township. R.C. 4511.07 is a special statute because it confers upon local authorities certain enumerated powers to regulate streets and highways under their jurisdiction. Both statutes cannot be given effect for the purpose of regulating county roads located in townships, since to do so could potentially subject motorists to inconsistent requirements. Thus, under R.C. 1.51, R.C. 4511.07 prevails unless R.C. 505.17 is the later adoption and the manifest intent is that R.C. 505.17 prevail.

R.C. 505.17 is the later adoption. It is the successor of Gen. Code Sec. 3287, effective September 7, 1949. R.C. 4511.07 is the successor of Gen. Code Sec. 6307-7, effective September 6, 1941. With respect to ascertaining the manifest intent of the General Assembly in the enactment of R.C. 505.17, two limitations contained in the statute are most significant. The first limitation is that portion of R.C. 505.17(A) which precludes a board of township trustees from exercising the power to regulate parking in those portions of a township that are within the limits of a municipal corporation. The second limitation is that part of R.C. 505.17(C) which states that "[t]his section does not apply to any state highway unless such parking regulations are approved by the director of transportation." The express mention of these two limitations and the absence of a similar limitation on the trustees' power to regulate parking on county roads, in my opinion, compel the conclusion that no such limitation was intended. Thus, under R.C. 1.51, R.C. 505.17 prevails in the conflict between it and R.C. 4511.07.

It is, therefore, my opinion, and you are advised, that:

1. R.C. 4511.07(A) confers upon a board of county commissioners the authority to regulate the parking of vehicles on the right-of-way along county roads. A board of county commissioners may prohibit such parking where reasonably necessary to promote the public safety.
2. A board of township trustees has the authority under R.C. 505.17 to regulate vehicle parking on the right-of-way along county roads within the township. A board of township trustees may

prohibit such parking where reasonably necessary to promote the public safety.

3. Where both a board of county commissioners and a board of township trustees have the authority to regulate parking in the same area, the trustees' exercise of their authority under R.C. 505.17 prevails.