

OPINION NO. 73-120

Syllabus:

1. The Governor may by executive order reduce the prima facie speed limits found in R.C. 4511.21 for specific intersections and places along highways where the proposed speed limits would be reasonable for safety purposes.

2. There is no authority for either the Governor or any other state officer to reduce prima facie speed limits under R.C. 4511.21 for purposes of energy conservation.

3. R.C. 4511.21 is a safety measure, and enforcement of prima facie speed limits therein is based on what is a reasonable and safe speed under prevailing conditions.

To: John J. Gilligan, Governor, State of Ohio, Columbus, Ohio
By: William J. Brown, Attorney General, November 29, 1973

You have requested my opinion on the following questions:

1. Can the speed limits found in Section 4511.21 of the Revised Code be modified by any constitutional or statutory powers of the Governor?

2. Can the speed limits found in Section 4511.21 of the Revised Code be modified by the executive authority of the director of any other state agency if such modification is based on energy-conserving considerations?

3. If the speed limits can be reduced by executive order of the Governor or of another officer for energy-conserving purposes, would the prima-facie nature of Ohio's speed limits prevent strict enforcement of the new limits?

Article III, Section 5, Constitution of Ohio, states that the "supreme executive power of this state shall be vested in the governor."

The Supreme Court in State, ex rel. Monroe and Son Co. v. Baker, 112 Ohio St. 356 (1925), adopted a restrictive view of this language, stating, at page 366, that it does not mean that all executive authority is lodged in the governor, or that "supreme authority" is absolute or arbitrary. The court went on to point out that the "powers and duties of the Governor prescribed by the Constitution constitute his irreducible minimum of power. Additional powers can be either conferred or withheld by legislative enactment." Thus authority for an executive order by the Governor must be found in either the Constitution or the statutes.

Your specific questions concern the speed limits set out in R.C. 4511.21. That Section reads in pertinent part as follows:

No person shall operate a motor vehicle, trackless trolley, or streetcar in and upon the streets and highways at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions, and no person shall drive any motor vehicle, trackless trolley, or streetcar in and upon any street or highway at a greater speed than will permit him to bring it to a stop within the assured clear distance ahead.

It is prima-facie lawful for the operator of a motor vehicle, trackless trolley, or streetcar to operate the same at a speed not exceeding the following:

* * * * *

(E) Sixty miles per hour during the daytime and fifty miles per hour during the nighttime on highways outside of municipal corporations except fifty miles per hour at all times for operators of trucks and commercial tractors weighing in excess of four thousand pounds empty weight, school busses, streetcars and trackless trolleys;

As used in this section "nighttime" means any time when lighted lights are required by section 4513.03 of the Revised Code. "Daytime" means any other time.

(F) Fifty miles per hour on state routes within municipal corporations outside urban districts unless a lower prima-facie speed is established as further provided in this section;

(G) Fifteen miles per hour on all alleys within the municipal corporation;

(H) Sixty miles per hour at all times on freeways with paved shoulders inside municipal corporations except fifty miles per hour at

all times for operators of trucks and commercial tractors weighing in excess of four thousand pounds empty weight and school busses;

(I) Seventy miles per hour at all times on freeways outside municipal corporations except fifty-five miles per hour for operators of trucks and commercial tractors weighing in excess of four thousand pounds empty and school busses.

It is prima-facie unlawful for any person to exceed any of the speed limitations in sections 4511.01 to 4511.78, inclusive, and 4511.99 of the Revised Code. In every charge of violation of this section the affidavit and warrant shall specify the time, place, and the speed at which the defendant is alleged to have driven, and also the speed which this section declares is prima-facie lawful at the time and place of such alleged violation, except that in affidavits where a person is alleged to have driven at a greater speed than will permit him to bring the vehicle to a stop within the assured clear distance ahead the affidavit and warrant need not specify the speed at which the defendant is alleged to have driven.

Whenever the director of highways determines upon the basis of an engineering and traffic investigation that any prima-facie speed set forth in divisions (A) to (I), inclusive, of this section is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place upon any part of a state route, the director shall determine and declare a reasonable and safe prima-facie speed limit, which shall be effective when appropriate signs giving notice are erected at the intersection or other part of the state route.

By the terms of the statute the Director of Transportation is authorized to make changes in prima facie speed limits under specified circumstances. In Opinion No. 2531, Opinions of the Attorney General for 1950, my predecessor held that where directors of departments serve at his pleasure, the Governor, by virtue of his "supreme executive power" possesses and may exercise in his discretion any and all of the statutory powers of those directors. While the position of state director of highways was once provided for in the Constitution (Article VII, Section 12), that Section has since been repealed and that officer is now included in R.C. 121.03 as an appointee who serves at the pleasure of the Governor. It, therefore, appears that the Governor may by executive order exercise those powers conferred on the Director of Transportation under R.C. 4511.21.

R.C. 119.03 provides, as follows, the procedure for issuing such an order:

(F) If the governor, upon request of an agency, determines that an emergency requires the immediate adoption, amendment, or rescission of a rule, he shall issue a written order, a copy of which shall

be filed with the secretary of state, that the procedure prescribed by this section with respect to the adoption, amendment, or rescission of a specified rule is suspended and the agency may then adopt immediately said emergency rule, amendment, or rescission and it becomes effective on the date it is certified to and filed with the secretary of state. Any such emergency rule, amendment, or rescission shall become invalid at the end of the sixtieth day after the filing thereof with the secretary of state unless prior to that date the agency has complied with the procedure prescribed by this section for the adoption, amendment, and rescission of rules. If said agency fails to adopt the rule, amendment, or rescission in conformity with the procedure prescribed in this section within the sixty-day period the emergency rule shall become inoperative forthwith.

It is well settled that R.C. 4511.21 is a safety measure, Smiley v. Spring Bed Co., 138 Ohio St. 81 (1941); Schroff v. Foley Construction Co., 87 Ohio App. 277 (1950). The statute provides that no person shall drive at a greater speed than will permit him to bring his vehicle to a stop within an assured clear distance ahead, and certain speeds are declared to be prima facie lawful. R.C. 4511.21 gives the director of transportation the authority to make a determination that, because of conditions at any specific intersection or place along a highway, a greater or lower prima facie speed limit would be reasonable and safe. He may also approve similar determinations made by local authorities and declare changes in prima facie speed limits for such parts of the roads. It should be noted, however, that this authority applies only to situations where conditions would allow or necessitate changes in speed limits for a specific part of the highway system. I find nothing which would permit the Governor, the Director of Transportation, or any other cabinet officer for purposes of energy conservation to make blanket changes in the prima facie speed limits established by R.C. 4511.21.

Furthermore, in light of the nature of R.C. 4511.21, such a change would not be practicable. As I have indicated above, this Section is a safety measure which prohibits driving at a greater speed than will permit a person to stop within an assured clear distance ahead. To this end it does not set fixed speed limits for the state, but merely states that certain speeds are prima facie lawful or unlawful. The speeds are rebuttable presumptive evidence to be used in determining whether a speed is reasonable and proper, and would allow a person to stop within an assured clear distance ahead. State v. Wall, 115 Ohio App. 323 (1962).

In 1963 when prima facie speed limits were raised from sixty miles per hour to seventy miles per hour on freeways outside municipal corporations (Amd. H.B. No. 509, 130 Ohio Laws 1083), the Legislative Service Commission in an analysis of the bill stated that the purpose of the bill was to establish reasonable limits in keeping with the advanced design and greater safety of modern freeways.

To attempt to reduce speed limits set out in R.C. 4511.21 for purposes of energy conservation could only create problems

for officials who must enforce the laws, since it is suggested that the current prima facie speeds no longer constitute reasonable speeds, which would allow a driver to make a safe stop. Thus the enforcement of prima facie speed limits contained in R.C. 4511.21 must be based on what is a reasonable and safe speed under prevailing conditions and not on energy conservation considerations.

In specific answer to your questions it is my opinion and you are advised that:

1. The Governor may by executive order reduce the prima facie speed limits found in R.C. 4511.21 for specific intersections and places along highways where the proposed speed limits would be reasonable for safety purposes.

2. There is no authority for either the Governor or any other state officer to reduce prima facie speed limits under R.C. 4511.21 for purposes of energy conservation.

3. R.C. 4511.21 is a safety measure, and enforcement of prima facie speed limits therein is based on what is a reasonable and safe speed under prevailing conditions.