IN THE SUPREME COURT OF OHIO

DONALD D. HOWARD, ETC., et al.,	:	**Supreme Court No. 07-873**
Appellee,	:	
	:	**On Appeal from the Montgomery County Court of Appeals, Second District**
v.	:	
MIAMI TOWNSHIP, DIVISION OF FIRE, et al.,	:	
	:	**Court of Appeals Case No. 21478**
Appellants.	:	

REPLY BRIEF OF APPELLANTS MIAMI TOWNSHIP, DIVISION OF FIRE AND MIAMI TOWNSHIP

Robert J. Surdyk (0006205)
Dawn M. Frick (0069068)
SURDYK, DOWD &TURNER CO., L.P.A
1610 Kettering Tower
40 North Main Street
Dayton, Ohio 45423
(937) 222-2333 (Tel.)
(937) 222-1970 (Fax)
rsurdyk@sdtlawyers.com
dfrick@sdtlawyers.com
Attorneys for Appellants, Miami Township, Division of Fire and Miami Township

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John A. Smalley (0029540)
DYER, GAROFALO, MANN & SCHULTZ
131 North Ludlow Street, Suite 1400
Dayton, Ohio 45402
(937) 222-8888 (Tel.)
(937) 223-0127 (Fax)
jsmalley@dgmslaw.com
Attorney for Appellee, Donald Howard

Paul W. Flowers (0046625)
[Counsel of Record]
PAUL W. FLOWERS CO., L.P.A.
50 Public Square, Suite 3500
Cleveland, Ohio 44113
(216) 344-9393 (Tel.)
(216) 344-9395 (Fax)
Amicus Curiae Chairman, Ohio Association for Justice

Stephen P. O'Keefe (0065066)
GIBSON & O'KEEFE CO., L.P.A.
210 Kettering Tower
Dayton, Ohio 45423
(937) 643-0600 (Tel.)
(937) 586-9495 (Fax)
Attorney for Ohio Association for Justice

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I. STATEMENT OF FACTS

Appellants Miami Township Division of Fire and Miami Township (the "Township") have nothing to add to the facts stated in its Merit Brief filed with this Honorable Court.

II. ARGUMENT

A. **Proposition of Law I:** An "obstruction" in the context of R.C. § 2744.02(B)(3) should be given its plain and ordinary meaning of an "obstacle" or "something that blocks" or "closes up [a roadway] by obstacle." This definition comports with the plain and ordinary use of the word "obstruction," such as would put a political subdivision on notice as to the types of conditions it is obligated to remove from its roadways.

1) The usual and ordinary meaning commonly attributed to "obstruction" is that which blocks or closes up by obstacle.

At issue in this case is the definition of the term "obstruction" as used in R.C. § 2744.02(B)(3). The legislature did not assign a specific meaning to the word "obstruction" when it amended R.C. § 2744.03 in 2003. Thus, courts should construe words commonly used in their ordinary significance and with the meaning *commonly attributed to them. Eastman v. State* (1936), 131 Ohio St. 1, 1 N.E.2d 140, paragraph five of the syllabus. (emphasis added). Appellee asks this Court for a much more expansive definition than the meaning that is commonly attributed to "obstruction." Specifically, Appellees maintain that the word obstruction should not only be construed as a physical obstruction, i.e., something that blocks or closes up a passage, but also that it should be construed to include anything that potentially "hinders or creates an impediment to safe travel." Such an expansive definition would leave open continued uncertainty and ambiguity as to what constitutes an "obstruction."

In order to determine what meaning is commonly attributed to the word "obstruction," both parties have presented various versions of the definitions of "obstruction" and "obstruct." However, consistent in each and every dictionary definition provided to this Court is that the

definition begins generally with the primary definition of "*to block*" or "*close up or fill with obstacles*." Even the Court of Appeals below identified the plain and ordinary meaning of "obstruction" as "(1) One that obstructs: OBSTACLE; (2) An act or instance of obstructing; (3) The act of impeding or an attempt to impede the conduct of esp. legislative business." Webster's II New College Dictionary (1995) 755. "Obstruct" is defined as "(1) ***To clog or block (a passage) with obstacles***; (2) To impede, retard, or interfere with <*obstruct* legislation>; (3) To cut off from sight." *Howard v. Miami Township Fire Division*, 171 Ohio App.3d 184, 2007-Ohio-1508 at¶20 (emphasis added). Nonetheless, the Second District did not even adopt the definition it cited to and instead took its definition directly from an Ohio Attorney General Opinion interpreting another statute.

Appellee even cites to *Parker v. City of Upper Arlington*, Tenth Dist. App. No. 05AP-695, 2006-Ohio-1649 in support of his proposition that the definition should be more expansive. However, the Tenth District Court of Appeals in *Parker* construed the meaning of "obstruction" consistently with Appellants and the Trial Court in this case. The *Parker* Court held that "[t]o "obstruct" is to "block up[,] stop up[,] or close up [, or to] place an obstacle in or fill with obstacles or impediments to passing," as in "traffic [obstruct]ing the street." Id. at ¶14 citing Webster's Third International Dictionary (1961) 1559. Thus, applying the usual and ordinary usage of the word "obstruction," the exception to immunity would only encompass a political subdivision's negligent failure to remove something that blocks, fills, clogs or closes up a public road.

Finally, the Ohio Association for Justice and Appellee incorrectly state that Appellants are asking the Court to conclude that an "obstruction means only those items which physically impede a driver's ability to <u>see</u> the road." (Appellee Merit Brief, pp. 16-17; Amicus Merit Brief,

p. 3) (emphasis contained within.) However, Appellants have not requested that this court limit obstructions to only those objects which block a driver's ability to see the road. Rather, an obstruction should be construed as something that blocks, fills, clogs or closes up a public road.

2) The legislative intent demonstrates the General Assembly's objective that "obstruction" be construed as an "obstacle" or "something that blocks" or "closes up [a roadway] by obstacle."

While dictionary definitions are instructive, they "are not statutes that determine as a matter of law what meaning words must have. Rather, dictionaries record common usage." *Dayton v. Schenck* (1980), 63 Ohio Misc. 14, 16, 409 N.E.2d 284. In statutory interpretation, dictionaries are appropriately referred to in order to determine what the legislature probably meant. But the touchstone of statutory interpretation is the legislature's purpose, not any supposed 'plain meaning' of the words it used." Id. (Citation omitted.) The legislature is presumed to be "fully aware of any prior judicial interpretation of an existing statute when enacting an amendment." *Doe v. White* (1994), 97 Ohio App.3d 585, 591, 647 N.E.2d 198 (citation omitted). As a result, it must be presumed that the legislature was aware of the numerous decisions interpreting the terms "free from nuisance" when the amendments to R.C. § 2744.02 (B)(3) were enacted. With this knowledge, the legislature specifically removed "free from nuisance" and inserted "negligent failure to remove obstructions."[1]

In fact, in *Harp v. Cleveland* (2000), 87 Ohio St.3d 506, 721 N.E.2d 1020, this Court examined whether a tree limb that threatened to fall onto the road constituted a "nuisance" under

[1] It is important to note that consistent with the changes to R.C. § 2744.02, SB 106 also amended R.C. § 723.01, which covers a municipal corporation's power to regulate its streets. With regard to the duties of a municipality, the legislature specifically removed the language "the municipal corporation shall cause them to be kept open, in repair and free from nuisance," and inserted "[t]he liability or immunity from liability of a municipal corporation for injury, death, or loss to person or property allegedly caused by failure to perform the responsibilities imposed by this section shall be determined pursuant to divisions (A) and (B)(3) of section 2744.02 of the Revised Code."

the former version of the statute. In examining that issue, this Court stated the following:

> Clearly, an unsound tree limb that threatens to fall onto a public road from adjacent property can be a nuisance that makes the usual and ordinary course of travel on the roadway unsafe. Although not physically obstructing or impeding the flow or visibility of traffic, a tree limb threatening to fall upon a public road can be just as dangerous to the highway's safety as one that obstructs a driver's vision, obscures a stop sign, or hangs over the roadway low enough to strike traffic. ***Contrary to the holdings below, R.C. § 2744.02(B)(3) contains no language that limits a political subdivision's duty to the removal of obstructions from public roads.*** **See fn. 1.**

Id. at 512 (emphasis added). In *Harp*, "fn.1" actually references the exact language used in the current version of the statute but at the time was repealed as a result of this Court's finding Am.Sub.H.B. No. 350 to be unconstitutional in its entirety. *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 715 N.E.2d 1062. Thus, this Court essentially invited the legislature to change the language in the statute to limit it to include only the "removal of obstructions from public roads" if in fact it intended R.C. § 2744.02(B)(3) to be limited to physical objects blocking or obstructing the road. As such, the legislature made those very changes suggested by this Court.

In considering this amended language—specifically the change from "free from nuisance" to "negligent failure to remove obstructions"—Appellee and The Ohio Association for Justice conclude that the legislature essentially intended to adhere to the pre-SB 106 interpretation of what "nuisance" means. Appellee contends that because this Court previously has held that an obstruction in a roadway may amount to a nuisance under the prior version of R.C. § 2744.02(B)(3), it is reasonable to assume the terms have essentially the same meaning. Such reasoning espouses the view that the 2003 amendment to the statute was merely cosmetic, then, as it would have effected no substantive change. However, when a new statute uses different phraseology than the former law, it is presumed that a change of meaning was also

intended to the extent of the change in the language since it is axiomatic in statutory construction that words are not inserted into an act without some purpose. *Malone v. Indus. Comm. Of Ohio* (1942), 140 Ohio St. 292, 299, 43 N.E.2d 266; *Hancock Cty. Bd. of Edn. v. Boehm* (1921), 102 Ohio St. 292, 131 N.E. 812, syllabus. A reviewing court must not supply words to a statute which were specifically omitted by the legislature. *Lynch v. Gallia Cty. Bd. of Commrs.* (1997), 79 Ohio St.3d 251, 254, 680 N.E.2d 1222.

In this instance, the legislature replaced the words "free from nuisance" with "negligent failure to remove obstructions." As such, it was clearly not the legislature's intent that an "obstruction" means the equivalent of a "nuisance." The polestar of statutory interpretation is legislative intent, which a court best gleans from the words chosen by the General Assembly and the purpose it sought to accomplish. *State v. Davis* (1985), 16 Ohio St.3d 34, 35, 476 N.E.2d 655, 656. Moreover, although Appellee claims that the legislature did not provide any guidance as to its reasons for changing the phraseology, in fact the stated purpose was to limit the tort liability of political subdivisions.

The Second District's definition of "obstruction," as it is used in R.C. § 2744.02(B)(3), was "any object placed or erected in a public roadway that has the potential of interfering with the public's use of that roadway." Such a construction of the new statute, does nothing more than reiterate the same construction as the former version of the statute. Appellee claims that Second District's interpretation of the meaning of R.C. § 2744.02(B)(3) does limit the liability to those obstructions which are "placed or erected" on the roadway. However, in construing a statute, a court must give effect to the words used in the statute, not delete any words or insert words not used. *State v. Jordan* (2000), 89 Ohio St.3d 488, 492, 733 N.E.2d 601, 605. In this instance, a review of the statute reveals that it does not provide an exception to immunity for a political

subdivision's "negligent failure to remove obstructions *placed or erected*" on public roads. Rather, it merely states that there is an exception for the "negligent failure to remove obstructions from public roads." See R.C. § 2744.02(B)(3) The phrase "placed or erected" is not contained anywhere in the statute and should not be inserted. The Second District Court's definition also inserts the word "potential." Though, an examination of R.C. § 2744.02(B)(2) likewise reveals that it does not provide liability for the "failure to remove a *potential* obstruction." Rather, it provides only for the "failure to remove an obstruction."

As a consequence of the application of the definition of "obstruction" adopted by the Court of Appeals in this case, liability could be assessed against any political subdivisions for the failure to remove any object placed or erected *by anyone* in a public roadway that has even *the potential* of interfering with the public's use of that roadway. Such a definition is just as expansive as prior judicial interpretations of the word "nuisance." An exception to general statutory immunity law, R.C. § 2744.02(B)(3) must be strictly construed. *State ex rel. Keller v. Forney* (1923), 108 Ohio St. 463, 141 N.E. 16, paragraph one of the syllabus. The rationale behind a limited exception to immunity is that the political subdivision is not an insurer of the safety of persons using public roads. *Taylor v. Cincinnati* (1944) 143 Ohio St. 426, 55 N.E.2d 724, paragraph 5 of the syllabus and *Ruwe v. Board of Twp. Trustees of Springfield Twp.* (1987), 29 Ohio St.3d 59, 61, 505 N.E.2d 957. The legislature's intent to limit the exception is clear in its specific removal of the word "nuisance" and replacement with "obstruction."

Finally, the Second District concluded that the purpose of the General Assembly in making the above changes was simply to limit political subdivisions' duties to the "paved and traveled portion of the roadways themselves," but not to otherwise change the nuisance standard in any

material way. However this conclusion is flawed in light of additional changes made in Senate Bill 106 to Chapter 2744.

In addition to the changes to R.C. § 2744.02(B)(3), described above, Senate Bill 106 also removed "highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, or public grounds within the political subdivisions." The 2003 Amendment to R.C. § 2744.02(B)(3) now only lists "public roads." The General Assembly also amended R.C. § 2744.01 by defining "public roads." Pursuant to R.C. § 2744.01(H) a "public road" is defined as "public roads, highways, streets, avenues, alleys, and bridges within a political subdivision. 'Public roads' does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices." See R.C. § 2744.01(H). These changes addressed the purpose of limiting political subdivisions duties to the paved and traveled portion of the roadways themselves. Had that been the only intention of the legislature it would not have needed to make the additional change of deleting the word "nuisance" and instead inserting "obstruction." Thus, the intent of the General Assembly was clearly that an "obstruction" be construed as an "obstacle" or "something that blocks" or "closes up [a roadway] by obstacle."

3) Prior judicial precedent interpreting the term "obstruction" supports a conclusion that obstruction should be given its usual and ordinary meaning.

By ignoring pre-amendment judicial precedent, the Court of Appeals ignored relevant information regarding the meaning of "obstruction." For example, in *Manufacturer's Natl. Bank v. Erie Cty. Rd. Comm.* (1992), 63 Ohio St.3d 318, 587 N.E.2d 819, this Court characterized a cornfield as a permanent obstruction to visibility. Id. at paragraph one of the syllabus. The *Manufacturer's* decision recognized an obstruction as something that "blocked" a driver's line of

sight on the roadway. Similarly, in *Williamson v. Pavlovich* (1989), 45 Ohio St.3d 179, 182, 543 N.E.2d 1242, this Court listed the following examples of actionable "obstructions":

> In other jurisdictions, items such as boulders, building materials, dirt piles or ridges, lumber piles, paving materials, pipes, rubbish, stepping blocks, and tree limbs projecting into the street at a low angle were all determined to be actionable obstructions * * *.

The *Pavlovich* court also cited with approval the following description of actionable obstructions: "when the occupation [of a street or highway by an obstruction] is so protracted as to possess an element of permanency * * * its obstructive character makes it the duty of the municipal authorities to remove it." Id. at 182 quoting *Frank v. Warsaw* (1910), 198 N.Y. 463, 469, 92 N.E. 17.

In *Pavlovich*, this Court also listed occasions in other jurisdictions when items such as boulders, building materials, dirt piles or ridges, lumber piles, paving materials, pipes, rubbish, stepping blocks, and tree limbs projecting into the street at a low angle were all determined to be actionable obstructions for which a municipality would be liable. Id. at 182 citing *May v. Anaconda* (1901), 26 Mont. 140, 66 P. 759 (boulders); *Shafir v. Carroll* (1925), 309 Mo. 458, 274 S.W. 755 (building materials placed on the street by a contractor); *Streeter v. Marshalltown* (1904), 123 Iowa 449, 99 N.W. 114 (dirt ridge sixteen inches high and four to five feet wide and placed in the center of a well-traveled highway); *Ridge v. High Point* (1918), 176 N.C. 421, 97 S.E. 369 (lumber pile in street); *Louisville v. Tompkins* (Ky.1909), 122 S.W. 174 (paving materials left on a street that were to be used on another street); *Shalley v. New Orleans Public Service, Inc.* (1925), 159 La. 519, 105 So. 606 (drain pipe in street near streetcar track); *Hazzard v. Council Bluffs* (1893), 87 Iowa 51, 53 N.W. 1083 (rubbish and brickbats in street by culvert); *McCormack v. Robin* (1910), 126 La. 594, 52 So. 779 (stepping blocks); *Louisville v. Michels*

(1903), 114 Ky. 551, 71 S.W. 511 (low-lying tree limbs that project into the street); see, also, *Jones v. Great Barrington* (1929), 269 Mass. 202, 168 N.E. 779.

4) The General Assembly's use of the word "obstruction" in other contextually similar provisions of the Revised Code is consistent with "obstruction" being construed as an "obstacle" or "something that blocks" or "closes up [a roadway] by obstacle."

Appellee and the Second District Court rely on only one other statute using the word "obstruction." However, Appellee and The Ohio Association for Justice fail to address numerous other statutes which support Appellants' position that the word "obstruction" should be construed as an "obstacle" or "something that blocks" or "closes up by obstacle." Specifically, R.C. §§ 5589.01, 5589.21 and 6115.25 are examples of the General Assembly's use of the word "obstruction" in other contextually similar provisions of the Revised Code to be construed as "to block" or close up." See also, R.C. 5589.211. Additionally, R.C. § 715.47 specifically empowers a municipality to:

> * * * remove all **obstructions** from culverts, covered drains, or private property, laid in any natural watercourse, creek, brook, or branch, which obstruct the water naturally flowing therein, causing it to flow back or become stagnant, in a way prejudicial to the health, comfort, or convenience of any citizens of the neighborhood. (emphasis added.) See also, R.C. § 4511.25 (* * * (2) When an **obstruction** exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;* * *) (emphasis added); R.C. § 4907.48 (* * * Such gates shall be so constructed that when closed they **obstruct or prevent passage across** such railroad from the side on which a gate is located.* * *) (emphasis added.)

Each of the foregoing statutes, as well as those set forth in Appellant's Merit Brief demonstrate the General Assembly's use of the word "obstruction" in contextually similar situations. It is clear in each of these statutes "obstruction" is used in its ordinary common usage to meaning to block or close up from passage.

Thus, in light of all of the foregoing, "obstruction," as it is used in R.C. § 2744.02(B)(3), should be interpreted to mean "something that blocks" or "closes up [a roadway] by obstacle." As such, even if there were ice on Bear Creek Road, it would have not been a permanent, physical impediment that blocked the roadway. As such, the exception to immunity set forth in R.C. § 2744.02(B)(3) would not be applicable and the Township would be immune from liability.

B. **Proposition of Law II**: The duty of a political subdivision to remove an obstruction from a public road extends only to objects which block or close off the roadway for usual and ordinary travel.

In amending R.C. § 2744.02(B)(3), the General Assembly not only removed the word nuisance and replaced it with obstruction, it also changed the statute to impose liability only for a political subdivision's "*negligent* failure to keep public roads in repair and other *negligent* failure to remove obstructions from public roads." In order to establish actionable negligence, one must show the existence of a duty, a breach of the duty, and an injury resulting proximately therefrom. *Feldman v. Howard* (1967), 10 Ohio St.2d 189 226 N.E.2d 564; *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77, 472 N.E.2d 707, 710.

The existence of a duty is fundamental to establishing actionable negligence. If there is no duty, then no legal liability can arise on account of negligence. Where there is no obligation of care or caution, there can be no actionable negligence. 70 Ohio Jurisprudence 3d (1986) 53-54, Negligence, Section 13. However, the Court of Appeals discarded the requirement that a duty to remove an obstruction exists only when that condition creates a danger for travelers using the road in an ordinary and usual manner. Thus, the Court abandoned a long held notion that a political subdivision is not an insurer of a traveler's safety and is only subject to suit for injuries which arise from a traveler's *ordinary and usual use of the roadway. City of Dayton v. Taylor's*

Adm'r (1900), 62 Ohio St. 11, 56 N.E. 480, 481(emphasis added); see also, *Haynes v. Franklin*, 95 Ohio St.3d 344, 767 N.E.2d 1146, 2002-Ohio-2334; see also, *Drake v. City of E. Cleveland* (1920), 101 Ohio St. 111, 127 N.E. 469 (the duty of a political subdivision to keep its street in a reasonably safe condition only "exists with respect to such persons as travel the ways in the usual and ordinary modes.")

In his brief, Appellee incorrectly states that Appellants have not addressed the new requirement that R.C. § 2744.02(B)(3)'s exception to immunity only applies where the political subdivision negligently fails to remove the obstruction. In point of fact, the issue of whether R.C. § 2744.02(B)(3) requires that the roadway was being used for usual and ordinary travel goes directly to the first element of a finding of negligence. Appellee also incorrectly states that the Court of Appeals "found that Defendants/Appellants were negligent for failing to remove the icy slushy, watery mixture created on the roadway." (Appellee Brief, p. 18.) The Court of Appeals held specifically:

> Under the amended version of R.C. 2744.02(B)(3), the township will be liable for the death of Christopher Howard if found to have negligently failed to remove the obstruction from Bear Creek Road. Therefore, the correct question to ask is whether the township acted negligently in failing to remove the ice and water from the road. See *Huffman v. Bd. of Cty. Commrs.*, Columbiana App. No. 05 CO 71, 2006-Ohio-3479, 2006 WL 1851715, at ¶ 60. As to this question, *we find that there is a genuine issue of material fact.*

Howard at ¶28 (emphasis added).

In this instance, the evidence indicates that Christopher Howard was not traveling in a usual and ordinary manner. Five seconds prior to the crash, Mr. Howard was traveling 60 miles per hour around a curve in which the recommended speed is 30 miles per hour. (Thompson, p. 7.) Exceeding the recommended speed by over 30 miles per hour at night, on a curve, in the winter, clearly does not demonstrate due regard to the roadway surface or any other condition of

the road. See generally, R.C. § 4511.21. Appellee argues that Mr. Howard was only traveling 5 miles per hour over the posted speed limit; however, he still clearly exceeded the speed limit in spite of all the present conditions.

Miami Township Police Department's accident reconstructionist, Sergeant R.A. Thompson, stated in his report that he attributed Mr. Howard's loss of control to speed, wanton disregard for the speed limit and safety by the driver, and driver inexperience. In fact, he could not determine with any certainty that the condition of the roadway surface caused Mr. Howard to lose control of his vehicle. (Supp. I, p. 216.)

Clearly the evidence demonstrated that there was no obstruction for individuals traveling in an ordinary and usual manner. In fact, the firefighters traveled to the site several times that evening with no incident. (Supp. I, pp. 62, 86.) Additionally, Officer Scott Aronoff was patrolling the area when a car passed him going around the curve in front of the fire training site, the same curve which the decedent later failed to negotiate. The vehicle passing Officer Aronoff was traveling northbound in excess of the posted 55 miles per hour speed limit and Officer Aronoff, who was traveling southbound, turned around to pursue the speeding motorist. (Supp. II, pp. 31-33.) Furthermore, both Officer Aronoff and the speeding motorist were able to negotiate the curve safely. (Supp. II, pp. 37-38.)

Appellee maintains that he has presented the testimony of an expert to the effect that it is possible for a vehicle to travel on the curve at issue at speeds in excess of 70 miles per hour. However, merely because an individual could travel the road in excess of the recommended speed limit, does not lead to a conclusion that such travel should be deemed "ordinary." Rather "ordinary and usual modes" of travel are better evidenced by the recommended course of travel. There is no reason for the courts to discontinue the application of this "ordinary and usual

modes" requirement because it relates to a political subdivision's duty and what constitutes adequate care. Accordingly, the requirement that the exception apply only if an individual is traveling in an ordinary and usual manner must not be discarded but rather maintained to determine what duty may be owed in a negligence claim, such as the one here, against a political division.

III. CONCLUSION

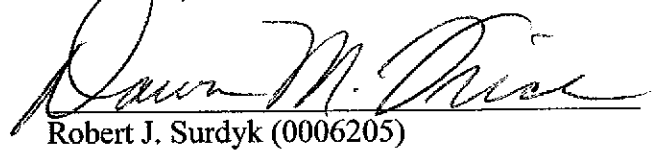
Based upon all of the foregoing, and those arguments set forth in Appellants' Merit Brief, Appellants respectfully request that this Honorable Court reverse the decision of the Second District Court of Appeals below, which overturned the Trial Court's Decision granting Appellants' Motion for Summary Judgment based upon the Township's claim that it is entitled to sovereign immunity pursuant to R.C. § 2744.02(A)(1). In the present matter, the Trial Court correctly granted summary judgment in favor of Miami Township and that decision must be upheld. As the trial court correctly found, if there was ice on the road at issue, that ice did not constitute an "obstruction" and thus no exception to immunity in R.C. § 2744.02(B) is applicable.

An "obstruction" in the context of R.C. § 2744.02(B)(3) should be given its plain and ordinary meaning of an "obstacle" or "something that blocks" or closes up [a roadway] by obstacle." This definition comports with the plain and ordinary use of the word "obstruction," such as would put a political subdivision on notice as to the types of conditions it is obligated to remove from its roadways. Moreover, the duty of a political subdivision to remove an obstruction from a public road must extend only to those objects which block or close off the roadway for those traveling in an ordinary and usual manner. The duty of a political subdivision to keep its streets in a reasonably safe condition must only exist with respect to such persons as

travel the ways in the "usual and ordinary modes" and not to a person injured in large part from his failure to control his vehicle as a result of his own actions.

Respectfully submitted,

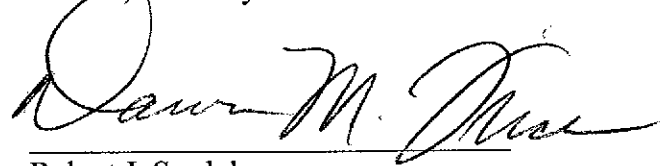
SURDYK, DOWD & TURNER CO., L.P.A.



Robert J. Surdyk (0006205)
Dawn M. Frick (0069068)
1610 Kettering Tower
40 N. Main Street
Dayton, Ohio 45423
(937) 222-2333 (Tel.)
(937) 222-1970 (Fax)
rsurdyk@sdtlawyers.com
dfrick@sdtlawyers.com
ATTORNEYS FOR APPELLANTS
Miami Township, Division of Fire and Miami Township

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed by ordinary U.S. Mail to John A. Smalley, Attorney for Plaintiff/Appellee, at Dyer, Garofalo, Mann & Schultz, 131 N. Ludlow Street, Suite 1400, Dayton, Ohio 45402; Paul W. Flowers, Esq., Paul W. Flowers Co., L.P.A., 50 Public Square, Suite 3500, Cleveland, Ohio 44113, Counsel of Record, Amicus Curiae Chairman, Ohio Association for Justice; and Stephen P. O'Keefe, Esq., Gibson & O'Keefe Co., L.P.A., 210 Kettering Tower, Dayton, Ohio 45423, Attorney for Ohio Association for Justice, this 20th day of December, 2007.



Robert J. Surdyk
Dawn M. Frick

APPENDIX

Appx. Page

1. R.C. § 715.47 1

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Baldwin's Ohio Revised Code Annotated Currentness
Title VII. Municipal Corporations
Chapter 715. General Powers (Refs & Annos)
Health and Sanitation; Inspection

715.47 Powers to fill or drain lots and remove obstructions

A municipal corporation may fill or drain any lot or land within its limits on which water at any time becomes stagnant, remove all putrid substances from any lot, and remove all obstructions from culverts, covered drains, or private property, laid in any natural watercourse, creek, brook, or branch, which obstruct the water naturally flowing therein, causing it to flow back or become stagnant, in a way prejudicial to the health, comfort, or convenience of any of the citizens of the neighborhood. If such culverts or drains are of insufficient capacity, the municipal corporation may make them of such capacity as reasonably to accommodate the flow of such water at all times. The legislative authority of such municipal corporation may, by resolution, direct the owner to fill or drain such lot, remove such putrid substance or such obstructions, and if necessary, enlarge such culverts or covered drains to meet the requirements thereof.

After service of a copy of such resolution, or after a publication thereof, in a newspaper of general circulation in such municipal corporation, for two consecutive weeks, such owner, or his agent or attorney, shall comply with the directions of the resolution within the time therein specified.

In case of the failure or refusal of such owner to comply with the resolution, the work required thereby may be done at the expense of the municipal corporation, and the amount of money so expended shall be recovered from the owner before any court of competent jurisdiction. Such expense from the time of the adoption of the resolution shall be a lien on such lot, which may be enforced by suit in the court of common pleas, and like proceedings may be had as directed in relation to the improvement of streets.

The officers connected with the health department of every such municipal corporation shall see that this section is strictly and promptly enforced.

(129 v 582, eff. 1-10-61; 1953 H 1; GC 3653 to 3656)

HISTORICAL AND STATUTORY NOTES

Pre-1953 H 1 Amendments: RS 2149, 2150, 2151, 2152

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Baldwin's Ohio Revised Code Annotated Currentness
Title VII. Municipal Corporations
Chapter 723. Streets; Public Grounds (Refs & Annos)
Control

723.01 Legislative authority to have care, supervision, and control of streets

Municipal corporations shall have special power to regulate the use of the streets. Except as provided in section 5501.49 of the Revised Code, the legislative authority of a municipal corporation shall have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation. The liability or immunity from liability of a municipal corporation for injury, death, or loss to person or property allegedly caused by a failure to perform the responsibilities imposed by this section shall be determined pursuant to divisions (A) and (B)(3) of section 2744.02 of the Revised Code.

(2002 S 106, eff. 4-9-03;2001 S 108, § 2.01, eff. 7-6-01;2001 S 108, § 2.02, eff. 7-6-01;1996 H 350, eff. 1-27-97[FN1]; 1989 H 381, eff. 7-1-89; 1985 H 176; 1953 H 1; GC 3714)

[FN1] See Notes of Decisions, *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (Ohio 1999), 86 Ohio St.3d 451, 715 N.E.2d 1062.

UNCODIFIED LAW

2002 S 106, § 3, eff. 4-9-03, reads:

Sections 723.01, 1533.18, 2744.01, 2744.02, 2744.03, 2744.04, 2744.05, 2744.06, 2744.07, 4582.27, 5511.01, 5591.36, and 5591.37 of the Revised Code, as amended by this act, apply only to causes of action that accrue on or after the effective date of this act. Any cause of action that accrues prior to the effective date of this act is governed by the law in effect when the cause of action accrued.

2001 S 108, § 1, eff. 7-6-01, reads:

It is the intent of this act (1) to repeal the Tort Reform Act, Am. Sub. H.B. 350 of the 121st General Assembly, 146 Ohio Laws 3867, in conformity with the Supreme Court of Ohio's decision in *State, ex rel. Ohio Academy of Trial Lawyers, v. Sheward* (1999), 86 Ohio St.3d 451; (2) to clarify the status of the law; and (3) to revive the law as it existed prior to the Tort Reform Act.

2001 S 108, § 3, eff. 7-6-01, reads, in part:

(A) In Section 2.01 of this act:

(4) Sections 163.17, 723.01, 1343.03, 1775.14, 2305.01, 2305.11, 2305.35, 2307.33, 2307.71, 2307.72, 2307.73, 2307.78, 2315.20, 2317.62, 2323.51, 2744.04, 4112.99, 4909.42, 5591.36, and 5591.37 of the Revised Code are revived and supersede the versions of the same sections that are repealed by Section 2.02 of this act.

1993 H 154, § 15.03, eff. 6-30-93, reads, in part:

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R.C. § 723.01

Maintenance Interstate Highways

The Director of Transportation may remove snow and ice, and maintain, repair, improve, or provide lighting upon interstate highways which are located within the boundaries of municipal corporations, adequate to meet the requirements of federal law. When agreed in writing by the director and the legislative authority of a municipal corporation, the Department of Transportation may reimburse the municipal corporation for all or any part of the costs, as provided by such agreement, incurred by the municipal corporation maintaining, repairing, lighting, and removing snow and ice from the interstate system.

HISTORICAL AND STATUTORY NOTES

Ed. Note: The amendment of this section by 1996 H 350, eff. 1-27-97, was repealed by 2001 S 108, § 2.02, eff. 7-6-01. See *Baldwin's Ohio Legislative Service Annotated*, 1996, page 10/L-3357, and 2001, page 6/L-1441, or the OH-LEGIS or OH-LEGIS-OLD database on Westlaw, for original versions of these Acts.

Pre-1953 H 1 Amendments: 96 v 31, § 28; 96 v 26, § 9

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Baldwin's Ohio Revised Code Annotated Currentness
Title XLV. Motor Vehicles--Aeronautics--Watercraft
Chapter 4511. Traffic Laws--Operation of Motor Vehicles (Refs & Annos)
Speed Limits

→4511.21 Speed limits; school zones; modifications

(A) No person shall operate a motor vehicle, trackless trolley, or streetcar 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 the person to bring it to a stop within the assured clear distance ahead.

(B) It is prima-facie lawful, in the absence of a lower limit declared pursuant to this section by the director of transportation or local authorities, for the operator of a motor vehicle, trackless trolley, or streetcar to operate the same at a speed not exceeding the following:

(1)(a) Twenty miles per hour in school zones during school recess and while children are going to or leaving school during the opening or closing hours, and when twenty miles per hour school speed limit signs are erected; except that, on controlled-access highways and expressways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by division (B)(4) of this section and on freeways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by divisions (B)(9) and (10) of this section. The end of every school zone may be marked by a sign indicating the end of the zone. Nothing in this section or in the manual and specifications for a uniform system of traffic control devices shall be construed to require school zones to be indicated by signs equipped with flashing or other lights, or giving other special notice of the hours in which the school zone speed limit is in effect.

(b) As used in this section and in section 4511.212 of the Revised Code, "school" means any school chartered under section 3301.16 of the Revised Code and any nonchartered school that during the preceding year filed with the department of education in compliance with rule 3301-35-08 of the Ohio Administrative Code, a copy of the school's report for the parents of the school's pupils certifying that the school meets Ohio minimum standards for nonchartered, nontax-supported schools and presents evidence of this filing to the jurisdiction from which it is requesting the establishment of a school zone. "School" also includes a special elementary school that in writing requests the county engineer of the county in which the special elementary school is located to create a school zone at the location of that school. Upon receipt of such a written request, the county engineer shall create a school zone at that location by erecting the appropriate signs.

(c) As used in this section, "school zone" means that portion of a street or highway passing a school fronting upon the street or highway that is encompassed by projecting the school property lines to the fronting street or highway, and also includes that portion of a state highway. Upon request from local authorities for streets and highways under their jurisdiction and that portion of a state highway under the jurisdiction of the director of transportation or a request from a county engineer in the case of a school zone for a special elementary school, the director may extend the traditional school zone boundaries. The distances in divisions (B)(1)(c)(i), (ii), and (iii) of this section shall not exceed three hundred feet per approach per direction and are bounded by whichever of the following distances or combinations thereof the director approves as most appropriate:

(i) The distance encompassed by projecting the school building lines normal to the fronting highway and extending a distance of three hundred feet on each approach direction;

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(ii) The distance encompassed by projecting the school property lines intersecting the fronting highway and extending a distance of three hundred feet on each approach direction;

(iii) The distance encompassed by the special marking of the pavement for a principal school pupil crosswalk plus a distance of three hundred feet on each approach direction of the highway.

Nothing in this section shall be construed to invalidate the director's initial action on August 9, 1976, establishing all school zones at the traditional school zone boundaries defined by projecting school property lines, except when those boundaries are extended as provided in divisions (B)(1)(a) and (c) of this section.

(d) As used in this division, "crosswalk" has the meaning given that term in division (LL)(2) of section 4511.01 of the Revised Code.

The director may, upon request by resolution of the legislative authority of a municipal corporation, the board of trustees of a township, or a county board of mental retardation and developmental disabilities created pursuant to Chapter 5126. of the Revised Code, and upon submission by the municipal corporation, township, or county board of such engineering, traffic, and other information as the director considers necessary, designate a school zone on any portion of a state route lying within the municipal corporation, lying within the unincorporated territory of the township, or lying adjacent to the property of a school that is operated by such county board, that includes a crosswalk customarily used by children going to or leaving a school during recess and opening and closing hours, whenever the distance, as measured in a straight line, from the school property line nearest the crosswalk to the nearest point of the crosswalk is no more than one thousand three hundred twenty feet. Such a school zone shall include the distance encompassed by the crosswalk and extending three hundred feet on each approach direction of the state route.

(e) As used in this section, "special elementary school" means a school that meets all of the following criteria:

(i) It is not chartered and does not receive tax revenue from any source.

(ii) It does not educate children beyond the eighth grade.

(iii) It is located outside the limits of a municipal corporation.

(iv) A majority of the total number of students enrolled at the school are not related by blood.

(v) The principal or other person in charge of the special elementary school annually sends a report to the superintendent of the school district in which the special elementary school is located indicating the total number of students enrolled at the school, but otherwise the principal or other person in charge does not report any other information or data to the superintendent.

(2) Twenty-five miles per hour in all other portions of a municipal corporation, except on state routes outside business districts, through highways outside business districts, and alleys;

(3) Thirty-five miles per hour on all state routes or through highways within municipal corporations outside business districts, except as provided in divisions (B)(4) and (6) of this section;

(4) Fifty miles per hour on controlled-access highways and expressways within municipal corporations;

(5) Fifty-five miles per hour on highways outside municipal corporations, other than highways within island

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jurisdictions as provided in division (B)(8) of this section and freeways as provided in division (B)(13) of this section;

(6) 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;

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

(8) Thirty-five miles per hour on highways outside municipal corporations that are within an island jurisdiction;

(9) Fifty-five miles per hour at all times on freeways with paved shoulders inside municipal corporations, other than freeways as provided in division (B)(13) of this section;

(10) Fifty-five miles per hour at all times on freeways outside municipal corporations, other than freeways as provided in division (B)(13) of this section;

(11) Fifty-five miles per hour at all times on all portions of freeways that are part of the interstate system and on all portions of freeways that are not part of the interstate system, but are built to the standards and specifications that are applicable to freeways that are part of the interstate system for operators of any motor vehicle weighing in excess of eight thousand pounds empty weight and any noncommercial bus;

(12) Fifty-five miles per hour for operators of any motor vehicle weighing eight thousand pounds or less empty weight and any commercial bus at all times on all portions of freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995, and freeways that are not part of the interstate system, but are built to the standards and specifications that are applicable to freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995, unless a higher speed limit is established under division (L) of this section;

(13) Sixty-five miles per hour for operators of any motor vehicle weighing eight thousand pounds or less empty weight and any commercial bus at all times on all portions of the following:

(a) Freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995, and freeways that are not part of the interstate system, but are built to the standards and specifications that are applicable to freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995;

(b) Freeways that are part of the interstate system and freeways that are not part of the interstate system but are built to the standards and specifications that are applicable to freeways that are part of the interstate system, and that had such a speed limit established under division (L) of this section;

(c) Rural, divided, multi-lane highways that are designated as part of the national highway system under the "National Highway System Designation Act of 1995," 109 Stat. 568, 23 U.S.C.A. 103, and that had such a speed limit established under division (M) of this section.

(C) It is prima-facie unlawful for any person to exceed any of the speed limitations in divisions (B)(1)(a), (2), (3), (4), (6), (7), and (8) of this section, or any declared pursuant to this section by the director or local authorities and it is unlawful for any person to exceed any of the speed limitations in division (D) of this section. No person shall be convicted of more than one violation of this section for the same conduct, although violations of more than one provision of this section may be charged in the alternative in a single affidavit.

(D) No person shall operate a motor vehicle, trackless trolley, or streetcar upon a street or highway as follows:

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(1) At a speed exceeding fifty-five miles per hour, except upon a freeway as provided in division (B)(13) of this section;

(2) At a speed exceeding sixty-five miles per hour upon a freeway as provided in division (B)(13) of this section except as otherwise provided in division (D)(3) of this section;

(3) If a motor vehicle weighing in excess of eight thousand pounds empty weight or a noncommercial bus as prescribed in division (B)(11) of this section, at a speed exceeding fifty-five miles per hour upon a freeway as provided in that division;

(4) At a speed exceeding the posted speed limit upon a freeway for which the director has determined and declared a speed limit of not more than sixty-five miles per hour pursuant to division (L)(2) or (M) of this section;

(5) At a speed exceeding sixty-five miles per hour upon a freeway for which such a speed limit has been established through the operation of division (L)(3) of this section;

(6) At a speed exceeding the posted speed limit upon a freeway for which the director has determined and declared a speed limit pursuant to division (I)(2) of this section.

(E) In every charge of violation of this section the affidavit and warrant shall specify the time, place, and speed at which the defendant is alleged to have driven, and in charges made in reliance upon division (C) of this section also the speed which division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of, or a limit declared pursuant to, 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 the person 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.

(F) When a speed in excess of both a prima-facie limitation and a limitation in division (D)(1), (2), (3), (4), (5), or (6) of this section is alleged, the defendant shall be charged in a single affidavit, alleging a single act, with a violation indicated of both division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of this section, or of a limit declared pursuant to this section by the director or local authorities, and of the limitation in division (D)(1), (2), (3), (4), (5), or (6) of this section. If the court finds a violation of division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of, or a limit declared pursuant to, this section has occurred, it shall enter a judgment of conviction under such division and dismiss the charge under division (D)(1), (2), (3), (4), (5), or (6) of this section. If it finds no violation of division (B)(1)(a), (2), (3), (4), (6), (7), or (8) of, or a limit declared pursuant to, this section, it shall then consider whether the evidence supports a conviction under division (D)(1), (2), (3), (4), (5), or (6) of this section.

(G) Points shall be assessed for violation of a limitation under division (D) of this section in accordance with section 4510.036 of the Revised Code.

(H) Whenever the director determines upon the basis of a geometric and traffic characteristic study that any speed limit set forth in divisions (B)(1)(a) to (D) of this section is greater or less than is reasonable or safe under the conditions found to exist at any portion of a street or highway under the jurisdiction of the director, the director shall determine and declare a reasonable and safe prima-facie speed limit, which shall be effective when appropriate signs giving notice of it are erected at the location.

(I)(1) Except as provided in divisions (I)(2) and (K) of this section, whenever local authorities determine upon the basis of an engineering and traffic investigation that the speed permitted by divisions (B)(1)(a) to (D) of this section, on any part of a highway under their jurisdiction, is greater than is reasonable and safe under the conditions found to exist at such location, the local authorities may by resolution request the director to determine and declare a

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reasonable and safe prima-facie speed limit. Upon receipt of such request the director may determine and declare a reasonable and safe prima-facie speed limit at such location, and if the director does so, then such declared speed limit shall become effective only when appropriate signs giving notice thereof are erected at such location by the local authorities. The director may withdraw the declaration of a prima-facie speed limit whenever in the director's opinion the altered prima-facie speed becomes unreasonable. Upon such withdrawal, the declared prima-facie speed shall become ineffective and the signs relating thereto shall be immediately removed by the local authorities.

(2) A local authority may determine on the basis of a geometric and traffic characteristic study that the speed limit of sixty-five miles per hour on a portion of a freeway under its jurisdiction that was established through the operation of division (L)(3) of this section is greater than is reasonable or safe under the conditions found to exist at that portion of the freeway. If the local authority makes such a determination, the local authority by resolution may request the director to determine and declare a reasonable and safe speed limit of not less than fifty-five miles per hour for that portion of the freeway. If the director takes such action, the declared speed limit becomes effective only when appropriate signs giving notice of it are erected at such location by the local authority.

(J) Local authorities in their respective jurisdictions may authorize by ordinance higher prima-facie speeds than those stated in this section upon through highways, or upon highways or portions thereof where there are no intersections, or between widely spaced intersections, provided signs are erected giving notice of the authorized speed, but local authorities shall not modify or alter the basic rule set forth in division (A) of this section or in any event authorize by ordinance a speed in excess of fifty miles per hour.

Alteration of prima-facie limits on state routes by local authorities shall not be effective until the alteration has been approved by the director. The director may withdraw approval of any altered prima-facie speed limits whenever in the director's opinion any altered prima-facie speed becomes unreasonable, and upon such withdrawal, the altered prima-facie speed shall become ineffective and the signs relating thereto shall be immediately removed by the local authorities.

(K)(1) As used in divisions (K)(1), (2), (3), and (4) of this section, "unimproved highway" means a highway consisting of any of the following:

(a) Unimproved earth;

(b) Unimproved graded and drained earth;

(c) Gravel.

(2) Except as otherwise provided in divisions (K)(4) and (5) of this section, whenever a board of township trustees determines upon the basis of an engineering and traffic investigation that the speed permitted by division (B)(5) of this section on any part of an unimproved highway under its jurisdiction and in the unincorporated territory of the township is greater than is reasonable or safe under the conditions found to exist at the location, the board may by resolution declare a reasonable and safe prima-facie speed limit of fifty-five but not less than twenty-five miles per hour. An altered speed limit adopted by a board of township trustees under this division becomes effective when appropriate traffic control devices, as prescribed in section 4511.11 of the Revised Code, giving notice thereof are erected at the location, which shall be no sooner than sixty days after adoption of the resolution.

(3)(a) Whenever, in the opinion of a board of township trustees, any altered prima-facie speed limit established by the board under this division becomes unreasonable, the board may adopt a resolution withdrawing the altered prima-facie speed limit. Upon the adoption of such a resolution, the altered prima-facie speed limit becomes ineffective and the traffic control devices relating thereto shall be immediately removed.

(b) Whenever a highway ceases to be an unimproved highway and the board has adopted an altered prima-facie

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speed limit pursuant to division (K)(2) of this section, the board shall, by resolution, withdraw the altered prima-facie speed limit as soon as the highway ceases to be unimproved. Upon the adoption of such a resolution, the altered prima-facie speed limit becomes ineffective and the traffic control devices relating thereto shall be immediately removed.

(4)(a) If the boundary of two townships rests on the centerline of an unimproved highway in unincorporated territory and both townships have jurisdiction over the highway, neither of the boards of township trustees of such townships may declare an altered prima-facie speed limit pursuant to division (K)(2) of this section on the part of the highway under their joint jurisdiction unless the boards of township trustees of both of the townships determine, upon the basis of an engineering and traffic investigation, that the speed permitted by division (B)(5) of this section is greater than is reasonable or safe under the conditions found to exist at the location and both boards agree upon a reasonable and safe prima-facie speed limit of less than fifty-five but not less than twenty-five miles per hour for that location. If both boards so agree, each shall follow the procedure specified in division (K)(2) of this section for altering the prima-facie speed limit on the highway. Except as otherwise provided in division (K)(4)(b) of this section, no speed limit altered pursuant to division (K)(4)(a) of this section may be withdrawn unless the boards of township trustees of both townships determine that the altered prima-facie speed limit previously adopted becomes unreasonable and each board adopts a resolution withdrawing the altered prima-facie speed limit pursuant to the procedure specified in division (K)(3)(a) of this section.

(b) Whenever a highway described in division (K)(4)(a) of this section ceases to be an unimproved highway and two boards of township trustees have adopted an altered prima-facie speed limit pursuant to division (K)(4)(a) of this section, both boards shall, by resolution, withdraw the altered prima-facie speed limit as soon as the highway ceases to be unimproved. Upon the adoption of the resolution, the altered prima-facie speed limit becomes ineffective and the traffic control devices relating thereto shall be immediately removed.

(5) As used in division (K)(5) of this section:

(a) "Commercial subdivision" means any platted territory outside the limits of a municipal corporation and fronting a highway where, for a distance of three hundred feet or more, the frontage is improved with buildings in use for commercial purposes, or where the entire length of the highway is less than three hundred feet long and the frontage is improved with buildings in use for commercial purposes.

(b) "Residential subdivision" means any platted territory outside the limits of a municipal corporation and fronting a highway, where, for a distance of three hundred feet or more, the frontage is improved with residences or residences and buildings in use for business, or where the entire length of the highway is less than three hundred feet long and the frontage is improved with residences or residences and buildings in use for business.

Whenever a board of township trustees finds upon the basis of an engineering and traffic investigation that the prima-facie speed permitted by division (B)(5) of this section on any part of a highway under its jurisdiction that is located in a commercial or residential subdivision, except on highways or portions thereof at the entrances to which vehicular traffic from the majority of intersecting highways is required to yield the right-of-way to vehicles on such highways in obedience to stop or yield signs or traffic control signals, is greater than is reasonable and safe under the conditions found to exist at the location, the board may by resolution declare a reasonable and safe prima-facie speed limit of less than fifty-five but not less than twenty-five miles per hour at the location. An altered speed limit adopted by a board of township trustees under this division shall become effective when appropriate signs giving notice thereof are erected at the location by the township. Whenever, in the opinion of a board of township trustees, any altered prima-facie speed limit established by it under this division becomes unreasonable, it may adopt a resolution withdrawing the altered prima-facie speed, and upon such withdrawal, the altered prima-facie speed shall become ineffective, and the signs relating thereto shall be immediately removed by the township.

(L)(1) Within one hundred twenty days of February 29, 1996, the director of transportation, based upon a geometric and traffic characteristic study of a freeway that is part of the interstate system or that is not part of the interstate

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system, but is built to the standards and specifications that are applicable to freeways that are part of the interstate system, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over a portion of such freeway, may determine and declare that the speed limit of less than sixty-five miles per hour established on such freeway or portion of freeway either is reasonable and safe or is less than that which is reasonable and safe.

(2) If the established speed limit for such a freeway or portion of freeway is determined to be less than that which is reasonable and safe, the director of transportation, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over the portion of freeway, shall determine and declare a reasonable and safe speed limit of not more than sixty-five miles per hour for that freeway or portion of freeway.

The director of transportation or local authority having jurisdiction over the freeway or portion of freeway shall erect appropriate signs giving notice of the speed limit at such location within one hundred fifty days of February 29, 1996. Such speed limit becomes effective only when such signs are erected at the location.

(3) If, within one hundred twenty days of February 29, 1996, the director of transportation does not make a determination and declaration of a reasonable and safe speed limit for a freeway or portion of freeway that is part of the interstate system or that is not part of the interstate system, but is built to the standards and specifications that are applicable to freeways that are part of the interstate system and that has a speed limit of less than sixty-five miles per hour, the speed limit on that freeway or portion of a freeway shall be sixty-five miles per hour. The director of transportation or local authority having jurisdiction over the freeway or portion of the freeway shall erect appropriate signs giving notice of the speed limit of sixty-five miles per hour at such location within one hundred fifty days of February 29, 1996. Such speed limit becomes effective only when such signs are erected at the location. A speed limit established through the operation of division (L)(3) of this section is subject to reduction under division (I)(2) of this section.

(M) Within three hundred sixty days after February 29, 1996, the director of transportation, based upon a geometric and traffic characteristic study of a rural, divided, multi-lane highway that has been designated as part of the national highway system under the "National Highway System Designation Act of 1995," 109 Stat. 568, 23 U.S.C.A. 103, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over a portion of the highway, may determine and declare that the speed limit of less than sixty-five miles per hour established on the highway or portion of highway either is reasonable and safe or is less than that which is reasonable and safe.

If the established speed limit for the highway or portion of highway is determined to be less than that which is reasonable and safe, the director of transportation, in consultation with the director of public safety and, if applicable, the local authority having jurisdiction over the portion of highway, shall determine and declare a reasonable and safe speed limit of not more than sixty-five miles per hour for that highway or portion of highway. The director of transportation or local authority having jurisdiction over the highway or portion of highway shall erect appropriate signs giving notice of the speed limit at such location within three hundred ninety days after February 29, 1996. The speed limit becomes effective only when such signs are erected at the location.

(N)(1)(a) If the boundary of two local authorities rests on the centerline of a highway and both authorities have jurisdiction over the highway, the speed limit for the part of the highway within their joint jurisdiction shall be either one of the following as agreed to by both authorities:

(i) Either prima-facie speed limit permitted by division (B) of this section;

(ii) An altered speed limit determined and posted in accordance with this section.

(b) If the local authorities are unable to reach an agreement, the speed limit shall remain as established and posted under this section.

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(2) Neither local authority may declare an altered prima-facie speed limit pursuant to this section on the part of the highway under their joint jurisdiction unless both of the local authorities determine, upon the basis of an engineering and traffic investigation, that the speed permitted by this section is greater than is reasonable or safe under the conditions found to exist at the location and both authorities agree upon a uniform reasonable and safe prima-facie speed limit of less than fifty-five but not less than twenty-five miles per hour for that location. If both authorities so agree, each shall follow the procedure specified in this section for altering the prima-facie speed limit on the highway, and the speed limit for the part of the highway within their joint jurisdiction shall be uniformly altered. No altered speed limit may be withdrawn unless both local authorities determine that the altered prima-facie speed limit previously adopted becomes unreasonable and each adopts a resolution withdrawing the altered prima-facie speed limit pursuant to the procedure specified in this section.

(O) As used in this section:

(1) "Interstate system" has the same meaning as in 23 U.S.C.A. 101.

(2) "Commercial bus" means a motor vehicle designed for carrying more than nine passengers and used for the transportation of persons for compensation.

(3) "Noncommercial bus" includes but is not limited to a school bus or a motor vehicle operated solely for the transportation of persons associated with a charitable or nonprofit organization.

(P)(1) A violation of any provision of this section is one of the following:

(a) Except as otherwise provided in divisions (P)(1)(b), (1)(c), (2), and (3) of this section, a minor misdemeanor;

(b) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two violations of any provision of this section or of any provision of a municipal ordinance that is substantially similar to any provision of this section, a misdemeanor of the fourth degree;

(c) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to three or more violations of any provision of this section or of any provision of a municipal ordinance that is substantially similar to any provision of this section, a misdemeanor of the third degree.

(2) If the offender has not previously been convicted of or pleaded guilty to a violation of any provision of this section or of any provision of a municipal ordinance that is substantially similar to this section and operated a motor vehicle faster than thirty-five miles an hour in a business district of a municipal corporation, faster than fifty miles an hour in other portions of a municipal corporation, or faster than thirty-five miles an hour in a school zone during recess or while children are going to or leaving school during the school's opening or closing hours, a misdemeanor of the fourth degree.

(3) Notwithstanding division (P)(1) of this section, if the offender operated a motor vehicle in a construction zone where a sign was then posted in accordance with section 4511.98 of the Revised Code, the court, in addition to all other penalties provided by law, shall impose upon the offender a fine of two times the usual amount imposed for the violation. No court shall impose a fine of two times the usual amount imposed for the violation upon an offender if the offender alleges, in an affidavit filed with the court prior to the offender's sentencing, that the offender is indigent and is unable to pay the fine imposed pursuant to this division and if the court determines that the offender is an indigent person and unable to pay the fine.

(2007 H 67, eff. 7-3-07;2006 S 184, eff. 6-15-06;2005 H 68, eff. 6-29-05;2002 S 123, eff. 1-1-04;1996 H 565, eff. 2-29-96;1992 S 301, eff. 3-15-93;1992 S 201;1991 H 96;1989 H 381; 1987 H 493, H 43; 1986 H 666, H 428, S 356, H

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795; 1983 S 37; 1979 S 14, H 20, H 32; 1977 H 587; 1976 H 1166; 1975 H 632; 1973 H 200; 132 v H 1; 131 v H 315; 130 v Pt 2, H 5; 130 v H 509; 128 v 1270; 127 v 931; 126 v 115; 1953 H 1; GC 6307-21)

UNCODIFIED LAW

2007 H 67, § 603.10, eff. 7-3-07, reads:

The sections and items of law contained in this act, and their applications, are severable. If any section or item of law contained in this act, or if any application of any section or item of law contained in this act, is held invalid, the invalidity does not affect other sections or items of law contained in this act and their applications that can be given effect without the invalid section or item of law or application.

1996 H 565, § 3, eff. 2-29-96, reads: It is the intent of the General Assembly in amending section 4511.21 of the Revised Code to retain the speed limits established by that section at the limits and locations established prior to the repeal of the National Maximum Speed Limit Compliance Program in Pub. L. No. 104-59.

HISTORICAL AND STATUTORY NOTES

Pre-1953 H 1 Amendments: 124 v S 227; 119 v 766, § 21

Amendment Note: 2007 H 67 added the last two sentences to division (B)(1)(b); inserted "or a request from a county engineer in the case of a school zone for a special elementary school" in the second sentence of division (B)(1)(c); and added new divisions (B)(1)(e), (B)(1)(e)(i), (B)(1)(e)(ii), (B)(1)(e)(iii), (B)(1)(e)(iv), and (B)(1)(e)(v).

Amendment Note: 2006 S 184 inserted "highways within island jurisdictions as provided in division (B)(8) of this section and" and substituted "(13)" for "(12)" in division (B)(5); added new division (B)(8); redesignated former divisions (B)(8) to (B)(12) as new divisions (B)(9) to (B)(13); substituted "(13)" for "(12)" in newly designated division (B)(9); inserted ", and (8)" in division (C); substituted "(13)" for "(12)" in divisions (D)(1) and (D)(2) and substituted "(11)" for "(10)" in division (D)(3); inserted ", or (8)" once in division (E) and three times in division (F); and made other nonsubstantive changes.

Amendment Note: 2005 H 68 added new divisions (N)(1) and (N)(2); redesignated former division (N) as division (O); redesignated former division (O) as division (P); and substituted "(P) for "(O)" in newly designated divisions (P)(1)(a) and (P)(3).

Amendment Note: 2002 S 123 substituted "in accordance with section 4510.036 of the Revised Code" for "only when the court finds the violation involved a speed of five miles per hour or more in excess of the posted speed limit" in division (G); substituted "February 29, 1996" for "the effective date of this amendment" throughout divisions (L) and (M); and added new division (O).

Amendment Note: 1996 H 565 substituted "12" for "10" in divisions (B)(5), (B)(8), and (B)(9); rewrote division (B)(10); added divisions (B)(11) and (B)(12); substituted "12" for "10" in divisions (D)(1) and (D)(2); added divisions (D)(4) through (D)(6); added references to divisions (D)(3) through (D)(6) throughout division (F); rewrote division (H); designated division (I)(1) and added the reference to division (I)(2) therein; added divisions (I)(2), (L), and (M); redesignated former division (L) as division (N); and made changes to reflect gender neutral language and other nonsubstantive changes. Prior to amendment, divisions (B)(10) and (H) read, respectively:

"(10) Sixty-five miles per hour at all times on all portions of freeways that are part of the interstate system and are eligible for such speed in accordance with criteria issued by the federal highway administration and on all portions of freeways greater than five miles in length that are eligible for such speed in accordance with criteria issued by the federal highway administration or established by the "Intermodal Surface Transportation Efficiency Act of 1991,"

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105 Stat. 1968, 23 U.S.C.A. 154(a), for any motor vehicle weighing eight thousand pounds or less empty weight and any commercial bus, except fifty-five miles per hour for operators of any motor vehicle weighing in excess of eight thousand pounds empty weight and any noncommercial bus."

"(H) Whenever the director of transportation determines upon the basis of an engineering and traffic investigation that any speed limit set forth in divisions (B)(1)(a) to (D) 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."

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Baldwin's Ohio Revised Code Annotated Currentness
Title XLV. Motor Vehicles--Aeronautics--Watercraft
Chapter 4511. Traffic Laws--Operation of Motor Vehicles (Refs & Annos)
Operation of Motor Vehicles

➡4511.25 Lanes of travel upon roadways

(A) Upon all roadways of sufficient width, a vehicle or trackless trolley shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction, or when making a left turn under the rules governing such movements;

(2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(3) When driving upon a roadway divided into three or more marked lanes for traffic under the rules applicable thereon;

(4) When driving upon a roadway designated and posted with signs for one-way traffic;

(5) When otherwise directed by a police officer or traffic control device.

(B)(1) Upon all roadways any vehicle or trackless trolley proceeding at less than the prevailing and lawful speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, and far enough to the right to allow passing by faster vehicles if such passing is safe and reasonable, except under any of the following circumstances:

(a) When overtaking and passing another vehicle or trackless trolley proceeding in the same direction;

(b) When preparing for a left turn;

(c) When the driver must necessarily drive in a lane other than the right-hand lane to continue on the driver's intended route.

(2) Nothing in division (B)(1) of this section requires a driver of a slower vehicle to compromise the driver's safety to allow overtaking by a faster vehicle.

(C) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle or trackless trolley shall be driven to the left of the center line of the roadway, except when authorized by official traffic control devices designating certain lanes to the left of the center of the roadway for use by traffic not otherwise permitted to use the lanes, or except as permitted under division (A)(2) of this section.

This division shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road, or driveway.

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(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

(2006 H 389, eff. 9-21-06;2002 S 123, eff. 1-1-04; 1974 H 995, eff. 1- 1-75; 130 v H 404; 129 v 1032; 1953 H 1; GC 6307-25)

HISTORICAL AND STATUTORY NOTES

Pre-1953 H 1 Amendments: 119 v 766, § 25

Amendment Note: 2006 H 389 rewrote division (B), which prior thereto read:

"(B) Upon all roadways any vehicle or trackless trolley proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle or trackless trolley proceeding in the same direction or when preparing for a left turn."

Amendment Note: 2002 S 123 substituted "This division" for "Division (C) of this section" in the second paragraph of division (C); and added new division (D).

LEGISLATIVE SERVICE COMMISSION

1975:

The prior version of this section required vehicles to be driven, with some exceptions, on the right half of a roadway; the prior version of section 4511.33 permitted the use of official signs directing slow-moving traffic to use a designated lane and required drivers to obey such signs, but applied only on roadways divided into three or more marked lanes and on municipal streets where traffic was lawfully moving in two or more substantially continuous lines in the same direction.

Although former law thus generally required vehicles to be driven on the right of a roadway and permitted the use of signs to require slow-moving traffic to use a certain lane, there was neither a specific requirement that slow-moving traffic keep to the right-hand lane or edge of the roadway, nor a specific prohibition against driving left of center on a roadway having four or more lanes for two-way traffic.

The new version of section 4511.25 retains the former requirement that vehicles generally be driven on the right half of a roadway, but includes an additional requirement that vehicles moving at less than normal traffic speeds be driven in the right-hand lane or as close as practicable to the right-hand curb or edge of the roadway except when passing or preparing for a left turn. Vehicles on roadways having four or more lanes for two-way traffic also are prohibited from being driven left of center of the roadway unless the roadway is obstructed, traffic signs or signals permit the use of lanes left of center, or a left turn is being made into or from an alley, private road, or driveway

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Baldwin's Ohio Revised Code Annotated Currentness
Title XLIX. Public Utilities
Chapter 4907. Public Utilities Commission--Railroad Powers (Refs & Annos)
Railroad Crossings

4907.48 Regulation of crossing signals

All gates, bells, or devices erected under the direction of the public utilities commission shall be built within the time, in the manner, and of materials approved by the commission. Such devices so authorized shall be located in the highway or street on one or both sides of the railroad tracks, as the commission deems the public safety requires. Such gates shall be so constructed that when closed they obstruct or prevent passage across such railroad from the side on which a gate is located. Such bell must be so constructed that it will ring before the approach of every train of cars or locomotive within three hundred feet or more of such crossing, and continue to ring until such train or locomotive has reached the crossing. A person shall be in charge of such gate who shall close it at the approach of each train or locomotive and keep it open at all other times. If an automatic bell or other mechanical device is required at such crossing, the railroad shall keep such bell or device in good working order. For every neglect of duty imposed by this section such railroad shall forfeit twenty-five dollars.

(1953 H 1, eff. 10-1-53; GC 590)

HISTORICAL AND STATUTORY NOTES

Pre-1953 H 1 Amendments: 113 v 84; RS 247b

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Baldwin's Ohio Revised Code Annotated Currentness
Title LV. Roads--Highways--Bridges (Refs & Annos)
Chapter 5589. Offenses Relating to Highways
Offenses by Railroads

→5589.211 Obstruction of public roads by railroad companies; abandonment of locomotive

No railroad company shall obstruct, or permit or cause to be obstructed, a public street, road, or highway, by permitting any part of a train whose crew has abandoned the locomotive to remain across it for longer than five minutes to the hindrance or inconvenience of travelers or a person passing along or upon the street, road, or highway, unless the safety of the train crew requires them to abandon the locomotive.

Upon the filing of an affidavit or complaint for violation of this section, summons shall be issued to the railroad company pursuant to division (B) of section 2935.10 of the Revised Code, which summons shall be served on the regular ticket or freight agent of the company in the county where the offense occurred.

(2000 S 207, eff. 10-27-00)

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