

JANUARY 21, 1958

HONORABLE FREDERICK J. GSSERT, JR.
Director, Division of Motor Vehicles
State House
Trenton, New Jersey

FORMAL OPINION 1958—No. 1

DEAR MR. GSSERT:

You have requested our opinion as to the interpretation to be given to recently enacted Chapter 69 of the Laws of 1957 which we will hereinafter refer to as N.J.S.A. 39:4-197.2, and which in its entirety provides as follows:

N.J.S.A. 39:4-197.2:

"Any municipality, which maintains a paid police force, may, with the consent of the board of chosen freeholders of the county, by ordinance, regulate traffic and parking along and upon any county road or part thereof, lying within its corporate limits, in the same manner and to the same extent that it is authorized by law to regulate the same upon municipal roads and streets.

"This act shall take effect immediately."

More specifically, your letter indicates a request for our opinion on the following queries:

(1) Does N.J.S.A. 39:4-197.2 permit a Board of Chosen Freeholders to grant consent to any or all of its municipalities having a paid police force to enact ordinances regulating traffic and parking on county roads, or does the statute limit the Board's authority to grant consents to specific ordinances regulating traffic or parking enacted by any municipality within the county having a paid police force?

(2) Whether the Director of Motor Vehicles may properly advise all Boards of Chosen Freeholders that their resolution indicating their consent to proposals of a municipality concerning traffic regulations or parking on county roads should be adopted by the Board only upon presentation to the Board of a formal request by the municipality accompanied by a copy of the proposed municipal ordinance?

As to query number one:

While the State has sovereign and absolute jurisdiction and control of the roads, streets and highways within its borders, the State's legislative body may, in the public interest, delegate this power to a local governing body. *Sexton v. Public Service Coordinated Transport*, 5 N.J. Super. 555; *Hackensack Water Company v. Ruta*, 3 N.J. 139.

The Legislature has seen fit, as expressed in N.J.S.A. 39:4-201, to delegate, within certain limitations to the County Boards of Chosen Freeholders the power to regulate and supervise traffic on any county road.

N.J.S.A. 27:16-1 et seq. confers upon the various Boards of Chosen Freeholders the power and duty to provide and maintain county roads. More specifically, N.J.S.A. 27:16-6 provides:

"The duty of maintaining and keeping in repair every road so laid out and opened, taken over, or acquired shall devolve exclusively upon the board of chosen freeholders, and *all other duties* and all powers *respecting such road* shall be *imposed upon* and *invested* in it. . . ." (Emphasis ours)

Upon a closer reading of the italicized portions of the above statute, it becomes apparent that concomitant with the duty of maintaining and keeping in repair, there also devolves upon the county the duty to regulate parking and traffic on county roads.

Thus we have the several counties not only with the delegation of power to regulate traffic on county roads, but with the duty of exercising that delegated power.

The question now arises whether a county has the right to abandon this duty and leave the regulation of traffic on county roads to the municipalities within the county. We think not. N.J.S.A. 39:4-197.2 is not authority for this abandonment. The statute is clear. It is directed to and permits municipalities to regulate traffic and parking upon county roads, only upon securing the consent of the county board of freeholders. The new enactment cannot be read to authorize the county boards of freeholders to issue approvals in advance to any ordinance or ordinances regulating traffic or parking on county roads enacted by any municipality having a paid police force. The county boards of freeholders have a continuing duty to review each specific municipal ordinance regulating traffic or parking on county roads prior to consent.

As to query number two:

The Director may lawfully advise and direct all Boards of Chosen Freeholders that any resolution granting consent to municipalities to regulate parking or traffic on county roads should be adopted by the Board only upon presentation to it of a copy of the proposed municipal ordinance, with a request for the Board's approval.

It is also our opinion that a resolution passed by a Board of Chosen Freeholders giving consent to a municipality to regulate traffic on county roads is a resolution concerning traffic conditions adopted by a body having jurisdiction over highways within the purview of N.J.S.A. 39:4-8, and as such, of no force and effect unless approved by the Director of Motor Vehicles. N.J.S.A. 39:4-8 also provides that:

“. . . The commissioner shall not be required to approve any such ordinance or resolution, unless, after investigation by him, the same shall appear to be in the interest of safety and the expedition of traffic on the public highways.”

It would thus appear that if the Director concludes that, in the interest of safety and the expedition of traffic on highways, any proposed county resolution granting consent to municipalities to regulate traffic on county roads should be adopted only if there is a request by a municipality for such consent accompanied by a copy of the proposed resolution, the Director could then lawfully advise Boards of Chosen Freeholders that approval of such resolutions by the Director would be withheld unless these conditions are met.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

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