

"The whole equitable ownership is in the petitioner and the value of that ownership may be ascertained on the basis of the full value of the land." 327 U.S. at 570; 8 N.J. at 198.

In *S.R.A., Inc. v. Minnesota* the Supreme Court of the United States had sustained imposition by Minnesota of a tax on land subject to an executory contract of sale from the United States to the taxpayer. *Cf. Milmar Estate, Inc. v. Fort Lee*, 36 N.J. Super. 241 (App. Div. 1955). *State v. Low*, 18 N.J., 179 (1955) though not a tax case is helpful. There the Supreme Court held that a vendee under an executory contract for the sale of realty is an "owner" within N.J.S. 2A:102-10 which provides:

"All moneys received by a contractor from the owner or mortgagee of real estate for the purpose of having a building erected \* \* \*" are a trust fund.

The court observed:

"The vendee under a contract for the purchase of real estate is the *owner* of an interest in such property." 18 N.J. at 184. (Emphasis added.)

As a foreign corporation owning realty in New Jersey, it is our opinion that Levitt became liable for taxes under the Corporation Business Tax Act at the time when either agent entered into a contract for the purchase of realty in New Jersey, having been authorized to make payment with funds derived from Levitt.

In view of the foregoing it is not necessary to determine whether Levitt was doing business or employed capital in the State prior to its registration here.

Very truly yours,

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By: MORTON I. GREENBERG  
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MAY 29, 1959

NED J. PARSEKIAN, *Acting Director*  
*Division of Motor Vehicles*  
State House  
Trenton, New Jersey

MEMORANDUM OPINION 1959—P-11

DEAR DIRECTOR PARSEKIAN:

You have requested our opinion as to whether the Director of Motor Vehicles may approve an ordinance regulating traffic permitting temporary and experimental regulations to be put in effect for a 90 day period, or in the alternative, whether he may approve an ordinance regulating traffic which would be effective for a pre-determined period of time. R.S. 39:4-8 provides for the approval of local ordinances

or resolutions regulating traffic by the Director of Motor Vehicles and reads as follows:

"No ordinance or resolution concerning, regulating or governing traffic or traffic conditions, adopted or enacted by any board or body having jurisdiction over highways, nor any such regulation promulgated by the State Highway Commissioner, shall be of any force or effect, unless the same is approved by the director or has been approved by the Commissioner of Motor Vehicles or the Traffic Commission according to law. The director shall not be required to approve any such ordinance, resolution or regulation, 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 should be noted that pursuant to R.S. 39:4-8, the only requirement for *approval* by the Director of Motor Vehicles of *any* ordinance or resolution regulating traffic enacted by a board or body having jurisdiction of a highway is that such ordinance or regulation shall "appear to be in the interest of safety and the expedition of traffic on public highways." The Director cannot make a judgment whether a proposed ordinance is in the interest of safety and the expedition of traffic unless its provisions are specific. Therefore, he may not approve any blanket ordinance. The question remains whether he may approve specific ordinances which are effective for a limited period of time.

The subject matter of and limitations placed upon ordinances regulating traffic which may be enacted by the various municipalities, are found in R.S. 39:4-197. The subject matter and the limitations therein set forth also govern the enactment of resolutions or ordinances regulating traffic on county roads by the various boards of chosen freeholders. (See R.S. 39:4-201)

Neither R.S. 39:4-197 nor R.S. 39:4-201 precludes the enactment of an ordinance or resolution, otherwise valid, which would be effective for a pre-determined period of time.

It is well settled law in this State that traffic ordinances should bear direct relationship to public safety, be reasonable and not arbitrary or discriminatory. *Garneau v. Eggers*, 113 N.J.L. 245 (Supreme Ct. 1934); *Pivnick v. Newark*, 14 N.J. Super. 134 (Law Div. 1951); *Terminal Storage Inc. v. Twp. of Raritan*, 15 N.J. Super. 547 (Law Div. 1951).

It is our opinion that the mere inclusion of a pre-determined time limitation in an ordinance regulating traffic would not vitiate its legal validity assuming it otherwise passes the common law tests of bearing a direct relationship to public safety and its being a reasonable one and not arbitrary or discriminatory. (See "McQuillan on Municipal Corporations" 3rd Ed., Volume 5, p. 153.)

Accordingly, you are advised that the Director of Motor Vehicles need not withhold approval of an ordinance merely because there is contained therein a pre-determined period of time during which such ordinance is to be in effect.

Very truly yours,

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By: REMO M. CROCE  
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