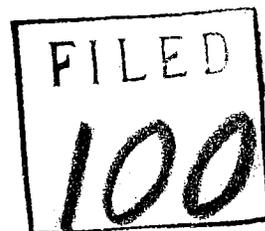


STATE HIGHWAY COMMISSION: A municipality has the exclusive right
TRAFFIC REGULATIONS: to determine the time when and the place
SCHOOLS: where a traffic signal shall operate
CONSTITUTIONAL LAW: within the limits of such municipality
(except as may be otherwise provided by
law and except to the extent such right
has been limited by contract with the
highway commission); the State Highway
Commission has no power or authority to
make any changes or alterations in the operation of such signal;
and the State Highway Commission has no power to contract with
school officials with respect to the operation of traffic signals.

August 18, 1961

Honorable Robert A. Young
Representative, First District
St. Louis County
3500 Adie Road
St. Ann, Missouri



Dear Mr. Young:

You have requested an opinion of this office with respect to the following:

"In view of your opinion dated June 14, 1956 rendered to the Honorable E. Gary Davidson, can the State Highway Department enter into a contract with the principal of a school, or other school officials, giving the school principal or school officials authority to designate the hours a traffic signal shall operate, the authority to place an adult at this signal to operate same, when this signal controls both pedestrian and vehicular traffic, and when this signal is located within the incorporated limits of a municipality, or would the municipality have the exclusive right to determine this under their police powers granted by State Statutes?

"Also we would like to know if the State Highway Department has the power or the authority over the objection of the municipality involved to alter or change the operation of the signal. The signals in question were originally placed by the State Highway Department."

The opinion referred to in your letter rules that the State Highway Commission may not regulate the speed of motor vehicle traffic over state highways through incorporated municipalities and that the Commission is not authorized to erect signs prohibiting turns or other movements on such highways. We continue to adhere to that view.

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Section 29, Article IV, of the Constitution of 1945, provides in part that the Highway Commission "shall have authority over and power to locate, relocate, design and maintain all state highways".

Section 31, Article IV, of the Constitution provides as follows:

"Any state highway authorized herein to be located in any municipality may be constructed without limitations concerning the distance between houses or other buildings abutting such highway or concerning the width or type of construction. The commission may enter into contracts with cities, counties or other political subdivisions for and concerning the maintenance of, and regulation of traffic on any state highway within such cities, counties or subdivision."

The foregoing provisions of the Constitution do not grant to the Commission the general power to regulate traffic. We do not believe that the granting of "authority over" all state highways may reasonably be construed as a delegation to the Commission of all of the state's police powers in respect to the regulation of traffic on state highways.

Prior to the adoption of the 1945 Constitution, our Supreme Court construed the statutory provision that state highways shall be under the control of the Commission and held that such language did not evidence an intent to affect the police power of cities over state highways within their limits or vest the Commission with jurisdiction over such highways superior to the jurisdiction of the municipal authorities. See *State on inf. McKittrick ex rel. City of California v. Missouri Utilities Co.*, 96 S.W. 2d 607, 1.c. 614, in which the court ruled as follows:

"Respondent next contends that since two of the streets on which its lines and poles are located are designated as a part of the state highway system, the highway department alone has jurisdiction over them and the poles can be removed only upon order of the commission.

"Section 8134, R.S.Mo. 1929 (Mo. St. Ann. §8134, p. 6929) provides in part: 'The state highways as herein designated shall be under the * * * control of the commission.'

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"Section 8109, R.S.Mo. 1929 (Mo. St. Ann. §8109, p. 6895) provides in part: 'The location and removal of all telephone, telegraph and electric light and power transmission lines, poles, wires, and conduits and all pipe lines and tramways, erected or constructed * * * by any corporation, association or persons, within the right of way of any state highway, in so far as the public travel and traffic is concerned, and in so far as the same may interfere with the construction or maintenance of any such highway, shall be under the control and supervision of the state highway commission. * * * Provided, however, that the effect of any change ordered by the commission shall not be to remove all or any part of such lines, poles, wires, conduits, pipe lines or tramways from the right of way of the highway.'
(Court's italics.)

"Section 8133, R.S.Mo. 1929 (Mo. St. Ann. §8133, p. 6929) permits the location of a state highway, under certain circumstances, through city streets. Cf. State ex rel. Hannibal v. Smith (1934) 335 Mo. 825, 74 S.W.2d 367.

"It was, however, clearly, not the intention of the Legislature to vest the commission with jurisdiction over these portions of city streets, so designated as parts of state highways, superior to the jurisdiction of the municipal authorities. Certainly the city's police power as to such streets remains unaffected. Orders under section 8109 are limited to those necessary to prevent interference with traffic on the highways and with highway construction. In matters immediately concerned with the construction of paving of the highways and their maintenance, the commission has jurisdiction. But in other matters the city's power continues. * * *"

The authority granted to the commission by Section 31 of Article IV to enter into contracts for and concerning "regulation of traffic" on state highways within a municipality is not a grant of authority to the commission to regulate traffic.

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An examination of the proceedings of the constitutional convention reveals nothing whatever which would indicate that any delegate contemplated that the highway commission was to exercise the legislative function of regulating all traffic on state highways. What is now Section 31, Article IV, was approved with no discussion other than such as briefly related to the maintenance of those streets in cities which the commission decided to make a part of the highway system.

Subsequent legislative history of traffic regulations as well as the contemporaneous policy of the highway commission, while not decisive, serves to fortify the conclusion that there was no intent by either of the foregoing constitutional provisions to grant to the commission the general power to regulate or control traffic on state highways. Of course, to the extent that the commission has been granted authority to limit access to, from and across state highways by section 29 of the Constitution, there is a delegation of the power to regulate traffic but that particular power is not involved in the question here under consideration.

We do not question the power of the Legislature to limit and curtail the police power of municipalities or to delegate to the Commission authority to regulate traffic on state highways. In general, however, the Legislature has vested in municipalities the police powers with respect to traffic regulations within the limits of such municipalities. In several specific instances, not here involved, it may be noted that the Legislature has delegated to the Commission certain limited powers to regulate traffic, and to such extent the Commission has been vested with a portion of the police power. For example, Section 304.024, RSMo 1959, provides with respect to highways under the jurisdiction of the state highway commission that such commission may erect or place signs establishing crossovers or crosswalks or prohibiting or restricting the stopping, standing or parking of vehicles on any highway where in its opinion such stopping, standing, or parking is dangerous to those using the highway or would unduly interfere with the free movement of traffic thereon. Such instances of delegation to the commission of the police power to regulate traffic are the exception and not the rule. In our view, therefore, the general police power to regulate traffic within municipalities is still vested in such municipalities except to the extent it may be otherwise provided by law.

School boards and school officials have no power to make any traffic regulations or to supersede the regulations made by the municipality within which such schools are operated. We are of the opinion, therefore, that the highway commission may not contract with any school official or body for the purpose of delegating to such school or official thereof, the right to make or enforce traffic regulations or to operate a signal for such purpose within a municipality. Even if the commission

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itself did have the power to regulate traffic, and it does not, it is our view that the Commission could not in any event delegate such power to a school official.

The Davidson opinion referred to in your letter ruled that the contracts referred to by Section 31 of Article IV of the Constitution "are primarily for the purpose of dealing with the costs of maintaining and regulating traffic in any such municipality." While this conclusion may be true insofar as concerns the maintenance of highways in municipalities, we believe that the construction in the Davidson opinion of this constitutional provision is too narrow insofar as pertains to regulation of traffic, and to that extent is no longer the view of this office. To avoid any confusion, the Davidson opinion is hereby withdrawn.

We continue to adhere, however, to the conclusion reached in the foregoing Davidson opinion that the constitution does not take from municipalities the police power which is vested in them by statute, insofar as general regulation of traffic is concerned. Cities may, however, under the foregoing constitutional provision, enter into contracts with the Commission to make and enforce regulations of traffic which are reasonable in view of the nature and purpose of the particular highway and which serve to facilitate the use thereof as contemplated by the Commission. To that extent, the municipality may validly agree to limit its exercise of the police power concerning the regulation of traffic. All such regulations which are made, enforced, or changed pursuant to such contract, are nevertheless those of the municipality, and not the regulations of the Commission.

CONCLUSION

It is the opinion of this office that (except as may be otherwise provided by law and except to the extent such right has been limited by contract with the highway commission) a municipality has the exclusive right to determine the time when and the place where a traffic signal shall operate within the limits of such municipality, that the State Highway Commission has no power or authority to make any changes or alterations in the operation of such signal, and that the State Highway Commission has no power to contract with school officials with respect to the operation of traffic signals.

The foregoing opinion which I hereby approve, was prepared by my assistant, Joseph Nessenfeld.

Yours very truly,

THOMAS F. EAGLETON
Attorney General