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Automobiles - Entering or Leaving Private Premises or Alleys - Failure to Heed Stop Signs on Private Roads

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RECENT CASES

AUTOMOBILES — ENTERING OR LEAVING PRIVATE PREMISES OR ALLEYS — FAILURE TO HEED "STOP" SIGNS ON PRIVATE ROADS. — Plaintiff brought action for damages resulting from a collision between his vehicle and a truck owned by the defendant township. The collision occurred near the intersection of a public highway and defendant's private road. After evidence established that the defendant was negligent in failing to heed a "stop" sign erected on the private road, the jury returned a verdict for the plaintiff. Thereupon the trial judge, claiming there was error in one of the court's instructions, set aside the verdict and ordered a new trial. On appeal it was *held* that the trial judge ruled correctly in that the Pennsylvania Vehicle Code, which authorizes the erection of "stop" signs at intersections, did not apply to a sign erected on a private road, and that the trial court's instruction which stated that the defendant was guilty of negligence per se, irrespective of who erected the sign, was error. *Kowalsky's Express Service v. Haverford Tp.*, 85 A.2d 844 (Pa. 1952).

Numerous state legislatures have enacted statutes patterned after provisions of the Uniform Vehicle Code,[1] which stipulates, among other things, that ". . . local authorities . . . with reference to highways under their jurisdictions, are hereby authorized to designate through highways, by creating at the entrance thereto from intersecting highways signs bearing the words 'thru traffic stop'. . . ." [2] The aforementioned Code has defined "highway" as "Every way or place, of whatever nature, *open to the use of the public as a matter of right,* for purposes of vehicular traffic . . ." [3] (Emphasis added). An "intersection" is defined as the juncture of two or more highways.[4] A cursory examination of the above-stated sections would not reveal that a latent problem exists. Yet, when considering "highway" as a public way, the import of the definition upon the grant of powers to locate authorities poses the question: Are local authorities barred by statute from erecting "stop" signs at the intersections of private roads with highways? The instant case answers in the affirmative, according to a strict exclusionary interpretation to the provisions.

A search has failed to uncover another case dealing exactly with the question exposed in the instant case; however, a collateral case, *City of Fargo v. Glaser*,[5] indicates that North Dakota has interpreted the grant of powers to local authorities in the same light as the Pennsylvania courts. The Court held that the expression of a law in the Uniform Vehicle Code excluded the right of a municipality to enact a comparable law. The out-

1. *E.g. Ala.* Code Tit. 36, §21, (1940); Ark. Stat. C.81 §6684, (1937); Del. Rev. Code §5638 (a), (1935); Idaho Code §49-523, (1947); Neb. Rev. Stat. §39-754, (1943); N.C. Gen. Stat. §20-158, (1943); N. D. Rev. Code §39-0703, (1943); N.M. Stat. §68-533, (1941); 47 Okla. Stat. §121.7 (b) (1915); Va. Code §46-200 (1950).
2. Purdon's Pa. Stat. Ann., Tit. 75 §712 (a), (1939).
3. Purdon's Pa. Stat. Ann., Tit. 75 §2, (1939).
4. *Ibid.*
5. 62 N.D. 673, 244 N.W. 905 (1932). The court quoting from Dillon on Municipal Corporations (5th ed.) §632, states, "Where the act is, in its nature, one which constitutes two offenses, one against the State and one against the municipal government, the latter may be constitutionally authorized to punish it, though it be also an offense under the State law; but the legislative intention that this may be done ought to be manifest and unmistakable, or the power in the corporation should be held not to exist."

come of *City of Fargo v. Glaser* was that North Dakota's Legislature summarily corrected the undesirable result reached in that case by the enactment of a statute granting municipalities the authority they had been held not to possess.[6]

In a more recent case the Supreme Court of North Dakota has questioned the sagacity of rigidly limiting the action which a local authority may take in matters of traffic regulation rather than allowing it some leeway in meeting situations with which it is most acquainted.[7] The Supreme Court of Utah has taken an opposing and, it is submitted, more wholesome stand on the matter of strict construction than the court in *City of Fargo v. Glaser*. It recognized that a general grant of power to cities would support an ordinance prohibiting the driving of an automobile while under the influence of liquor.[8]

On this same question of who, if anyone, is empowered to erect "stop" signs in private driveways, Iowa's legislation is anomalous in that it provides for the erection of such signs and the express duty to stop at the entrance to arterial highways from roads and streets and later implies that vehicles entering such arterial highways from private driveways need not stop where their view is unobstructed.[9] Michigan, although it does not authorize the erection of "stop" signs in private driveways,[10] does require that every vehicle stop before entering a highway from a private driveway.[11]

Minnesota apparently has obviated any difficulty of the nature described here by simply providing that "The Commissioner, with reference to state trunk highways, and local authorities, with reference to other highways under their jurisdiction, may designate through highways by erecting stop signs at entrances thereto or may designate any intersection as a stop intersection by erecting like signs at one or more entrances to such intersection. . . ."[12] Minnesota has not specifically defined "intersection" as the juncture of two or more highways which are "open to the use of the public as a matter of right" as have states which adopted the Uniform Motor Vehicle Code as the model for vehicular traffic regulation.[13] Furthermore, under provisions similar to this Minnesota statute,[14] Fort Snelling authorities were found to be able to erect "stop" signs on a military road intersecting "through" highways.[15]

A "stop" sign may, of course, in some instances be unnecessary; however, there also exist circumstances, such as in the instant case, where a local authority should be empowered at its discretion to place a "stop" sign at the entrance to a highway from a private driveway. It is no consolation that

6. N.D. Sess. Laws C. 175 (1933), N.D. Rev. Code §40-0502 (15) (1943).
7. Espeland v. Police Magistrate's Court, 49 N.W.2d 394 (N.D. 1951).
8. Salt Lake City v. Kussee, 97 Utah 97, 85 P.2d 802 (1938) (Court states, "The statute, as well as the ordinance, in the case at bar, is prohibitory, and the difference between them is only that the ordinance goes farther in its prohibition. . . . There is no question in the instant case that the rule of conduct established by the ordinance does not contravene the states law . . . It is our view that the city's power is deprived, not from the Motor Vehicle Act, but from the general statutes and that the Motor Vehicle Act makes void all ordinances otherwise lawful, which conflict with and constitute a barrier to the enforcement of the uniform state law.")
9. Tinley v. Chambers Implement Co., 216 Iowa 458, 249 N.W. 390 (1933).
10. Mich. Comp. Laws, §256.323 (1948).
11. Mich. Comp. Laws. §256.321 (a) (1948).
12. Minn. Stat. Ann. §169.30 (1945).
13. See note 1, *supra*.
14. Minn. Sess. Laws, C.412 §21 (1927).
15. Op. Atty Gen., 310-J, (Minn.), Aug. 14, 1936.

a vehicle proximately causing an accident has entered a thoroughfore from a private driveway rather than from another highway so far as concerns ensuing injuries. From the construction that courts have given statutes which purport to grant regulatory powers to local governing bodies it is apparent that no power for the erection of "stop" signs in private driveways exists in the local authorities of states with provisions patterned after the Uniform Vehicle Code. The heavy toll taken by automotive accidents is an illustration of the need for the more effective traffic regulation which may be secured by allowing a broader margin of discretion to those agencies in closest contact with the hazards of motor vehicle operation.

HENRY D. FLASCH

CONSTITUTIONAL LAW — SEPARATION OF CHURCH AND STATE — RELEASED TIME PROGRAM FOR RELIGIOUS INSTRUCTION OF SCHOOL CHILDREN. — Plaintiffs brought an action to compel discontinuance of the "released time" program in the New York City schools, under which parents could withdraw their children from the public schools one hour a week to receive religious instruction in the faith of their choice. All religious instruction was carried on outside the school buildings and grounds. There was no supervision or approval of religious teachers, no solicitation of students by school authorities, no distribution of registration cards by school authorities, and no announcements of any kind made in the public schools relative to the program. Students who did not participate in the religious classes remained in school while the religious classes were being held. The contention of the plaintiffs was that this plan violated the constitutional prohibition against laws respecting an establishment of religion contained in the First Amendment [1] to the United States Constitution, and was a breach of the "wall of separation" between church and state enjoined by that amendment. The court *held* that the program as set up was not unconstitutional since it did not involve the use of public property, treated all faiths equally, and was conducted on an entirely voluntary basis. A dissent argued that the plan, in its actual operation, involved the use of "pressure" on the students to attend such classes and was therefore unconstitutional. *Zorach v. Clauson,* 72 Sup. Ct. 679 (1952).

The argument here was similar to that made in the controversial case of *McCollum v. Board of Education,*[2] which involved a suit by the mother of a student in a Champaign, Illinois school to have the program of religious instruction, adopted by the board of education, enjoined as being unconstitutional. The United States Supreme Court there held that the Champaign plan was unconstitutional because it involved the use of tax supported institutions to aid in the propagation of religion.[3] Discussion of the *McCollum* case has brought out the point that the decision was made because of the

1. U.S. Const. Amend. I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

2. 333 U.S. 203 (1948).

3. U.S. Const. Amend. XIV, §1 "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law." See Manion, *The Church, the State and Mrs. McCollum,* 23 Notre Dame Law. 456 (1948).