

January 23, 1974

COMMITTEE ON JUDICIARY

Proposed Fuel Conservation Maximum Speed Limit

Section 1. (Basic speed rule.) (1) A person commits the offense of violating the basic speed rule if he drives a vehicle upon a highway at a speed greater than is reasonable and prudent, having due regard to the traffic, surface and width of the highway, the hazard at intersections and any other conditions then existing.

(2) Violating the basic speed rule is a \_\_\_\_\_.

Section 2. (Maximum speeds.) (1) Except where a special hazard exists that requires a lower speed for compliance with section 1 of this Article, the speed limits designated under this section or section 3 of this Article or ORS 483.106 or 483.108 shall be maximum lawful speeds. The speeds designated in this section are:

(a) Twenty miles per hour:

(A) When passing school grounds when children are present, or a crosswalk when children are present, if notice of the grounds or crosswalk is indicated plainly by signs or signals conforming to ORS 483.044.

(B) When approaching a grade crossing or a railway, interurban railway or street railway where the driver's view of the crossing or of any traffic on the railway is obstructed.

(C) In any business district.

(b) Twenty-five miles per hour:

(A) In any residence district.

(B) In public parks, unless a different speed is designated by state or local authorities, as authorized by law, and duly posted.

(c) Fifty-five miles per hour in other locations unless a greater or lesser speed is designated in accordance with ORS 483.106 or 483.108 which shall be effective when appropriate signs giving notice thereof are erected upon the highway.

(2) A person who drives a vehicle at a speed greater than any of the speed limits specified under subsection (1) of this section commits the offense of speeding.

(3) Speeding is a \_\_\_\_\_.

Section 3. (Maximum speed limit for fuel conservation.) (1)

Whenever the Department of Transportation determines there is a need to conserve fuel because of current or imminent fuel shortages, it is authorized to designate a maximum speed of not more than 55 miles per hour upon all highways within the state. A maximum speed limit so set shall not be subject to the provisions of ORS 483.106 or ORS 483.108. It shall be effective when appropriate signs giving notice thereof are erected upon all such highways.

(2) Violating a fuel conservation maximum speed limit is a \_\_\_\_\_.

Section 4. (Availability of affirmative defense to speed offenses.)

(1) It is an affirmative defense to a charge of speeding that, having due regard to the traffic, weather, highway and other conditions then existing, the speed at which the person was driving was reasonable and prudent.

(2) The defense described in subsection (1) of this section shall not be available to a person charged with violating a fuel conservation maximum speed limit designated under section 3 of this Article.

MEMO

Re: Proposed Fuel Conservation Maximum Speed Limit

Background Explanation: As of March 3, 1974, the sixtieth day after enactment of "Emergency Highway Energy Conservation Act," no highway projects under Title 23, U.S. Code, Section 106, will be approved by the Division Engineer, U. S. Department of Transportation, in Oregon unless there is not a maximum speed limit greater than 55 mph. This requirement will be considered complied with on submission by the state of:

- (1) Description of action taken by Governor or state agency to achieve the "no maximum speed limit above 55 mph";
- (2) Opinion of Attorney General that the state action taken is lawful; and
- (3) Statement that speed limit signs have been changed to show 55 mph limit.

Issue: Does the action already taken by the Transportation Commission and State Speed Control Board in setting 55 mph comply with section 2?

The letter to the House Judiciary Committee Chairman of January 9, 1974, from the Attorney General demonstrates that action already taken is not considered sufficient to establish a maximum speed limit not in excess of 55 mph.

Proposed Fuel Conservation Maximum Speed Limit

A. Summary

When the Department of Transportation determines there is a fuel shortage present or imminent, it may declare a maximum speed on all

highways in the state. A maximum speed so set to conserve fuel shall not be subject to the provisions of ORS 483.106 and 483.108 which allow alterations of the maximum speed limits of section 2 by the Department of Transportation and the State Speed Control Board based on engineering and traffic studies.

A violation of this maximum speed shall not be subject to the defense that the speed was reasonable and prudent under the conditions.

B. Section by Section Analysis

Section 2. (Maximum speeds.) The section would be amended to incorporate a reference to the proposed section 3, in line 3 of that section, so that the maximum speeds of section 2 may be those designated in that section, or under ORS 483.106 or 483.108 or section 3, except when a lower speed is required by the basic rule.

Section 3. (Maximum speed limit for fuel conservation.) The authority to set a fuel conservation speed limit is set out in section 3 which would be added to the Article on Speed Restrictions presently before the Subcommittee on Revision. The sections following would, of course, be renumbered.

A fuel conservation maximum speed limit could not be increased (or decreased) by the department or Speed Control Board. The limit would only be effective upon posting of signs.

Section 4. (Availability of affirmative defense to speed offenses.) This section would be amended by the addition of subsection (2) specifically making the defense not available to a charge of violating a fuel conservation maximum speed.

Issues:

- I. Proper location within state government of authority to determine fuel shortage.
- II. Should fuel shortage or conservation speed limit be distinguished from section 2 speed limits, e.g., citation of violation specify type of speeding charge?
- III. Maximum speed of 55 mph vs. maximum speed of 55 mph or less.
- IV. By removing the reasonable prudent driver defense of subsection (2), section 4, the 55 mph limit is absolute. What is Attorney General's opinion of need of this provision?