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COMMITTEE ON JUDICIARY

Subcommittee on Revision

October 30, 1973

Minutes

Members Present: Senator Elizabeth W. Browne, Chairman
Senator Wallace P. Carson, Jr.
Representative Robert P. Marx

Excused: Representative Stan Bunn

Staff Present: Mrs. Marion B. Embick, Research Counsel
Mr. Donald L. Paillette, Project Director

Also Present: Lt. Marvin L. Acheson, Traffic Division, State Department of Police
Mr. Dean Blakely, Traffic Safety Representative, Oregon Traffic Safety Commission
Mr. Jim Dutoit, Auto Club of Oregon (AAA)
Mr. L. E. George, Highway Division, Department of Transportation
Ms. Vinita Howard, Public Information and Publications, Motor Vehicles Division
Mr. Don Jones, League of Oregon Cities
Mr. James M. Mattis, League of Oregon Cities; Bureau of Governmental Research and Service
Mr. Phil Roberts, Oregon District Attorneys' Association
Mr. Ralph Sipprell, Highway Division, Department of Transportation
Judge Wayne Thompson, Municipal Judge, City of Salem
Capt. John Williams, Traffic Division, Oregon State Police

The meeting was called to order at 9:30 a.m. by Senator Elizabeth W. Browne, Chairman, in Room 14, State Capitol.

Approval of Minutes of Meeting of October 10, 1973

The minutes of the meeting of October 10, 1973, were unanimously approved as submitted.

Discussion of 1970 Recommendations of the Uniform Traffic Ordinance Advisory Committee

Mr. James M. Mattis, Legal Consultant to the Bureau of Governmental Research and Service and to the League of Oregon Cities, distributed a statement he had prepared for the subcommittee, a copy of which is attached hereto as Appendix A. He explained that in 1970 the Bureau of Governmental Research and Service prepared a Suggested Uniform Traffic Ordinance for Oregon Cities (UTO) in consultation with an Advisory Committee composed of representatives of city government -- municipal judges, city attorneys, traffic engineers, etc. The final draft was directed toward a practice which had been going on in Oregon since 1934 whereby the vast majority of cities adopted the State Traffic Code by reference. The Advisory Committee working on the UTO reached the conclusion that there were many provisions the cities had adopted as municipal ordinances which might better be included in the State Traffic Code in statutory form to insure uniformity throughout the state. Most of them were in essence rules of the road not codified at the present time. Mr. Mattis called attention to a letter he had written to Gil Bellamy in 1971, a copy of which is attached as Appendix B, outlining the provisions the Advisory Committee believed should be elevated to statutory form.

Mr. Mattis noted that one of the areas of concern appeared in the draft to be considered by the subcommittee today and was an example of the type of provision he believed should appear in the statutes rather than as a city ordinance. The UTO recommended that major traffic offenses be made applicable to roads that were not highways but were open to the public, one example being parking lots at shopping centers. This could be accomplished, he said, by deleting the element that major traffic offenses must occur on "highways." He pointed out that under case law cities could not conflict with state traffic laws but they could supplement them, and the majority of the UTO was devoted to proposed supplements to the State Traffic Code.

Mr. Mattis' next suggestion to the committee -- and one that was not included in his prepared statement -- was that there would be no need for cities to adopt the State Traffic Code by reference if ORS 8.660, the provision requiring the district attorney to prosecute all state offenses in his county, were modified to give city attorneys the ability to prosecute in municipal court.

Senator Carson was of the opinion that a great many problems were created when cities adopted theState Traffic Code by reference because all cities did not adopt in the same manner. For instance, Salem had chosen to adopt the State Traffic Code by excluding the 990 penalty section and making a crime of everything in ORS chapter 483 that preceded the 990 section. For this reason the penalties for violating one of those statutes while driving in the city could be much different

than those prescribed by the State Code. He felt there was little justification for maintaining duplicate laws, thus permitting law enforcement officers and citizens to "jurisdiction shop." The better way, he said, would be to insure uniformity by doing away with all overlap in the statutes and making one set of laws applicable to every court in the state, regardless of whether it was a state, county or municipal court. If the offense was not of state-wide concern, it could then be left to the city to make whatever ordinance it believed necessary. This would do away with what was, in his view, invalid adoptions by the cities of the State Traffic Code.

Mr. Mattis said he would agree that there should be one law applicable to every court on matters of state-wide concern and he believed that would best be accomplished by amending ORS 8.660.

Chairman Browne asked Mr. Mattis if he would be willing to submit drafts to the subcommittee in two specific areas: (1) To make the application of state laws uniform and (2) to extend the rules of the road to private property. Mr. Mattis replied that he would be glad to rephrase ORS 8.660 to include city attorneys, but the second area referred to by the Chairman was contained in section 2 of the draft the subcommittee would be considering today.

Senator Carson said that inasmuch as there were several methods of accomplishing the goal of making the State Traffic Code applicable to all courts, it might be preferable to ask Mr. Paillette to draft the amendment. For instance, ORS 8.660 could be repealed or it could be amended to permit city attorneys to come into court at the level of district attorneys. He suggested that the amendment be prepared by the staff and submitted to Mr. Mattis for comment.

Senator Carson observed that one of his concerns was that if the municipal judicial system was to be continued, it should be upgraded at least to the extent that municipal judges would be independent of the city council to guarantee that the judge was able to render his decision independently. If he should fine the son of a councilman, he could not then be fired from his position, as happened in Corvallis sometime ago.

Mr. Mattis remarked that in the last 10 to 15 years there had been a shift in the small communities from the judge who performed multiple municipal services to the system of contracting or appointing an attorney to fill the judge's role. His guess was that perhaps 1/3 of the cities in the state now fell into this latter category. Chairman Browne suggested that this subject was more appropriate to the Subcommittee on Adjudication.

Judge Wayne Thompson, Municipal Judge for the City of Salem, offered his assistance to the subcommittee and asked that he be placed on the mailing list. He also declared his support of the proposal to extend major traffic offenses to areas other than highways so as to include areas open to the public.

Senator Carson said he would like at some future time to talk to municipal judges and solicit their opinion on the independence of judges. Judge Thompson said he too felt strongly on this matter and expressed his willingness to meet on this subject.

Rep. Marx commented that one of the city attorneys had recently discussed with him the impact on cities of loss of revenue should certain changes be made by this committee in the Motor Vehicle Code. He asked Judge Thompson if he personally felt any pressure to maintain a certain amount of city revenue from the municipal court. Judge Thompson said he recognized the problem, but he felt no pressure whatsoever. He said it cost the City of Salem about $50,000 per year to operate the municipal court, but he did not know the amount of the revenue derived.

Mr. Paillette asked Judge Thompson if he had any statistics showing the percentage of his caseload made up of traffic cases. Judge Thompson estimated that it would be between 80 and 90 percent. Mr. Paillette asked if his court would be fairly typical of other municipal courts in the state and was told that in Salem the municipal court did not have jurisdiction over shoplifting cases; they were all prosecuted under state law. Shoplifting was of substantial consequence in some municipal courts, but, aside from that exception, he believed his court was fairly typical.

Chairman Browne asked Judge Thompson for his reaction to making traffic offenses civil rather than criminal as far as procedure was concerned. Judge Thompson's response was that he would oppose such a proposal because conviction would then require only a civil burden of proof -- preponderance of the evidence. Even on minor traffic offenses, he said, he believed an individual had a right to be judged and to be proven guilty beyond a reasonable doubt.

Mr. Dean Blakely of the Oregon Traffic Safety Commission indicated that the Judiciary Committee's request for federal funding had been approved and he would be in touch with Mr. Paillette the following week to work out the necessary details.

Captain John Williams of the State Police Traffic Division expressed approval of the draft before the committee and asked in what form the committee would like to receive future comments his department might have regarding drafts. Chairman Browne indicated that the subcommittee would appreciate having him or a representative of his office present at meetings to make whatever comments they wished. Senator Carson urged Captain Williams to be outspoken and aggressive in his comments to the subcommittee because it was important to hear from law enforcement representatives during the course of the revision.

With respect to the draft before the committee, Captain Williams commented on section 7, subsection (4). He indicated that the State

Police Control Technique Manual specified certain times when the use of a siren was not in the best interest of the public, but basically left the decision to sound a siren to the judgment of the officer. The use of the siren had somewhat declined, he said, since legalization of the visual signal in Oregon.

When police were going through intersections at high speeds, Senator Carson suggested it might be appropriate to require the use of a siren. He also raised the question of police chases and asked Captain Williams if he would approve of making a public policy to outlaw police chases on the ground that they were frequently disasters. Captain Williams was of the opinion that if the right to chase were to be taken away, it would remove an effective law enforcement tool. He suggested that one way to resolve at least part of the problem would be to adopt guidelines for chase such as those set out in the Patrol Technique Manual. That manual said that the officer was not to chase every car that was exceeding the speed limit and was not to engage in chase without regard for the safety of other motorists, but the chase was to be used with good judgment. He agreed with Senator Carson that intersections posed a problem as to how the public should be alerted that an emergency vehicle was passing through.

Mrs. Embick commented that under a Supreme Court decision there were no special privileges granted to an officer, such as exceeding the speed limit, when his audible signal was not in use.

Senator Carson suggested that subsection (4) of section 7 could be broken down into actions an officer could take without a siren and situations where he would be required to use a siren.

With respect to the earlier discussion regarding the enforcement of the traffic code on public highways, Captain Williams indicated that the State Police frequently encountered problem drivers on forest service roads. He encouraged the committee to extend coverage so the officers could at least arrest drunk drivers who were driving in private areas of that kind.

Mr. Paillette asked Captain Williams if he believed the provision in subsection (4) of section 7 relating to audible and visual signals should be stated disjunctively rather than conjunctively and that there should be some type of reference to control of signal procedures by rules or regulations rather than by statute. Captain Williams replied that in his opinion the statutory requirement should be optional.

Senator Carson asked him if he believed a visual signal was sufficient at intersections. Captain Williams stated that officers were trained to get through intersections the safest way possible, and they were not permitted to run red lights or stop signs without

justifying their action. In some cases, he said, they found it expedient to turn off all signals and proceed through an intersection with the normal flow of traffic.

Chairman Browne asked Captain Williams to supply Mrs. Embick with a copy of the State Police Patrol Technique Manual to which he had referred earlier, and he agreed to do so.

Obedience to and Effect of Traffic Laws; General Provisions; Preliminary Draft No. 1; October 1973

Mrs. Embick explained that in revising ORS chapter 483, Rules of the Road, the plan was to follow generally the sequence of the traffic codes in the states that had most recently undergone revision which also conformed for the most part to the sequence in the Rules of the Road provisions in the Uniform Vehicle Code. The first Article in ORS chapter 483 would be devoted to General Definitions to be formulated as the committee proceeded with the revision and would consist of definitions of specific terms used in the code. Mrs. Embick noted that the draft contained no mention of penalties, but they too would be inserted later.

Section 1. Provisions of chapter to be applicable, uniform and controlling throughout state, including ocean shore. Mrs. Embick explained that section 1 abbreviated the present provisions of ORS 483.036.

Chairman Browne asked why the draft deleted the conflict provision in the present law and was told by Mrs. Embick that the same provision appeared in subsection (1) of ORS 483.042 and was therefore redundant. Mrs. Embick said she did not believe it was necessary to relocate the last sentence of the section and recommended that it be deleted in its entirety.

Section 2. Provisions of chapter refer to vehicles upon the highways and ocean shore; exceptions. Mrs. Embick read section 2 and proposed to change the opening paragraph of the draft to read "ocean shore" rather than "shore of the ocean". She advised that ORS 483.602 through 483.612 were provisions in the current law relating to accidents and accident reporting while the reference to ORS 483.992 contained the penalty provisions for driving under the influence. She also pointed out that the definition of "highway" as amended by the 1973 legislature was far more encompassing than the old definition and would probably include forest service roads and places used by the public.

Chairman Browne asked if the new definition of "highway" would be codified in ORS chapter 483 and was told by Mrs. Embick that Chapter 223, Oregon Laws 1973, amended the definition of "highway" as it appeared in ORS 481.020 and it would be moved to the definitions section of ORS chapter 483. The amended definition reads:

"(2) 'Highway,' 'road' or 'street' has the meaning given the term 'highway' by ORS 481.020, except that as used in ORS 483.502 to 483.536 and 483.994 to 483.998 the terms do not include any road or thoroughfare or property in private ownership or any road or thoroughfare, other than a state highway or county road, used pursuant to any agreement with any agency of the United States or with a licensee of such agency, or both."

Senator Carson pointed out that in order to avoid conflicting definitions, it should be made clear that when the term "highway" was used, it referred not only to ORS chapter 483 but to all the other statutes as well. In fairness to the public, he said, the word should not mean one thing when talking to a police officer and something else when talking to a representative of another state agency.

Ms. Howard remarked that at the federal level a new definition of "automobile accidents" had been developed. Formerly, to be classified as a "motor vehicle traffic accident," the accident had to occur on a public street or highway which excluded accidents on private parking lots. The definition had now been broadened and as a result the Motor Vehicle Division next year would probably be including in their statistics accidents involving "motor vehicles in transport" which appeared to include accidents in areas open to public use, i.e., forest service roads, parking lots, etc.

Mrs. Embick suggested that the subcommittee consider whether the accident reporting requirements should extend to accidents on a highway only. She noted that the Uniform Code and the codes of a number of other states required accident reports no matter where they occurred. Senator Carson said he would agree that they should be picked up, particularly since Oregon had eliminated the reporting requirement for minor traffic accidents.

Mr. Ralph Sipprell proposed that the committee include ORS 483.999 (penalty for driving with .15 blood alcohol content) in subsection (2) of section 2. The subcommittee concurred.

Senator Carson recommended that subsection (2) of section 2 be rephrased so as to make it more understandable to the reader. His concern was that the public be given more notice that the provisions referred to by ORS number actually meant the major traffic offenses. Mrs. Embick indicated that Senator Carson's proposal could be accomplished easily by substituting the names of the offenses for the ORS section numbers.

Mr. Paillette stated that in his opinion the amended definition of "highway" in Chapter 223, Oregon Laws 1973, excluded private property and areas such as shopping center parking lots.

Ms. Howard was of the opinion that it would be advisable to extend the definition of "highway" to include private parking lots because traffic entering and leaving those lots had a direct impact on the traffic on the public way.

Mr. Jim Dutoit called attention to the Fred Meyer parking lot north of Salem where drivers cut across the lot at high speeds to take advantage of the many exits on the lot, particularly during rush hour traffic. It showed a definite need for speed control in that kind of area because the lot was used as a connector street.

Mr. Phil Roberts commented that not all the rules of the road would be equally applicable to parking lots and suggested that certain of the rules be separated. He was dubious about going so far as to apply all major traffic offenses to private property and recommended that they be restricted to areas to which the public had been invited.

Mr. Paillette recalled that Mr. Mattis' suggestion was to limit applicability to the major traffic offenses by deleting "highway" as an element of the particular offense. Senator Carson observed that such an approach would extend to a person driving in his own driveway. Mrs. Embick indicated that the draft as proposed would include the serious violations when committed other than on a highway. Senator Carson said the question was whether to broaden the law using the yardstick of the type of crime committed or to broaden it using the measurement of the general public use involved. He proposed to leave the definition of "highway" as it appeared in Chapter 223, Oregon Laws 1973, and if the committee perceived a need to extend the rules of the road to private areas open to the public, that could be done. They could later face the separate issue of whether to remove the requirement that a major traffic offense would only be applicable when committed on a highway.

Mr. Paillette suggested that the subcommittee flag this area as one they might want to apply to other than a public highway and as they went through subsequent drafts defining specific offenses, they could decide at that time what offenses they wanted to apply outside of the traditional public highway area. In that manner the subcommittee could decide on a section-by-section basis which specific offenses they wanted to apply to private property and which to public highways.

Senator Carson approved of Mr. Paillette's proposal but said he would be willing to go one step further and apply all major traffic offenses to private property, which was the way the draft read at the present time.

Mr. Mattis said the same thing could be accomplished by deleting the reference to highways which would make it clear that the provisions applied throughout the state. Senator Carson concurred with this suggestion and added that the subsection could be rephrased by deleting

the reference to highways and then stating affirmatively that the major traffic offenses were applicable on public and private lands throughout the state.

Rep. Marx voiced his reluctance to make reckless driving applicable to private lands because there were instances in the rural areas where residents engaged in participant sports involving reckless driving -- for example, jeep or motorcycle races. He was in favor of drawing a distinction between driving on a person's own property as opposed to driving on private property open to the public.

Senator Carson said that Mr. Paillette's suggestion to delete subsection (2) of section 2 and face each issue as it arose might be a better way to tackle the problem. It could well be, he said, that the subcommittee would later decide that reckless driving should be applicable only to highways, but DUIL might be one of the major offenses the members would want to extend to private property.

Mrs. Embick noted that subsection (1) of ORS 483.992 contained the reference to reckless driving and it was excluded from subsection (2) of section 2 of the draft so that as the draft was written, reckless driving would be enforceable only on public highways. She called attention to a letter written to Senator Browne by Judge Alderson, District Judge in Lane County, suggesting that reckless driving be included in section 2. A copy of that letter is attached as Appendix C.

Senator Carson suggested that the problem be referred to a number of organization such as the League of Oregon Cities, State Police, district attorneys, Bureau of Municipal Research, AAA and others. They could be told that the subcommittee was considering making one or more of the major traffic offenses applicable to both highways and private property and their comments solicited. Chairman Browne expressed approval of this suggestion and asked Mrs. Embick to follow up on it.

Chairman Browne requested the subcommittee to resolve the question of whether to include reckless driving in subsection (2) of section 2. Senator Carson was in favor of including reckless driving, at least initially, and if the subcommittee later decided to do so, it could be removed. Rep. Marx said he would be more comfortable if the draft were made applicable only to areas normally open to the public rather than to all lands throughout the state. He said he would support the inclusion of reckless driving in subsection (2) only if it were not applicable to private farmlands.

Mr. Paillette commented that one of the advantages of dealing with the subject on an offense-by-offense basis would be that one of the elements of the offense could be the places where it applied, i.e., highways, forest roads, etc.

Senator Carson said another tactic that could be used would be to define three areas: (1) Highways; (2) those areas that were private property but were so frequently used by the motoring public that they had taken on a public nature; and (3) truly private property. Some of the traffic offenses could then be extended to all three areas and others to only one or two of the areas.

Lt. Marvin Acheson agreed with Senator Carson's proposal. The major traffic offenses, he said, should be inclusive of the private property which was open to the general use of the public such as the Crown-Zellerbach road from Molalla to Oregon City where the public traveled frequently but at their own risk. He added, however, that the statute should not be so broad as to cause problems for the private owner who let the public use his property. If too many laws contrary to the private owner's operations were enacted, the private owner might be forced to shut the public out. He believed, however, that if enforcement were confined to major traffic offenses, the private owners would be willing to have violators apprehended.

Mr. Paillette stated that the staff would check with the organizations suggested by Senator Carson and draft alternative sections for the subcommittee's consideration at its next meeting.

Pages 5 and 6 of Preliminary Draft No. 1. Mr. Paillette noted that pages 5 and 6 set out ORS sections not affected by the draft but some of the statutes contained references to the "State Highway Commission." The 1973 legislature changed the name of that agency to "Oregon Transportation Commission" and he asked if it was necessary to revise that reference in each section where it appeared. Mr. Sipprell said he believed Legislative Counsel was given authority to make that change, and Mr. Paillette indicated that the staff would check to make certain this was the case.

Section 3. Required obedience to traffic laws. Mrs. Embick suggested that the word "violation," when used throughout the revision, be changed to some phrase such as "traffic infraction" in order to set apart a violation of the minor traffic offenses. Mr. Paillette agreed that there might be some merit in using such a term in the revised code. The offense would have the same effect as a violation, he said, but the term could be defined along with its penalty in the General Definitions section.

Mr. Paillette called attention to the fact that section 3 decriminalized the traffic code by saying that unless a statute specifically classified an offense as a felony or misdemeanor, the only penalty that would attach would be a maximum fine of $250 because everything else would be a "violation," a term of art specifically defined in the Criminal Code. This section, he said, contemplated that the 990 penalty sections would be repealed in the Motor Vehicle Code.

Senator Carson said the section would also mean that every time an offense was encountered where the committee wanted the fine to be more than $250, they would have to specifically grade that offense as a felony or misdemeanor, the same as the system followed in the new Criminal Code.

Mr. Paillette's recommendation was that the committee adopt this section. The 990 sections in the present code, he said, made it almost impossible to determine the penalty for any given offense. Senator Carson concurred.

ORS 483.048. Duty to obey traffic officers; uniform or badge required. Mrs. Embick pointed out that although ORS 483.048 was not amended by this draft, she wanted the subcommittee to be aware that most states did not adopt a provision such as subsection (2).

Lt. Acheson stated that he was not aware of any problem the State Police had encountered in operating under this section except that it did take away some authority from the officer in plain clothes. He added that he had often wondered why this statute was applicable only to speed laws. Senator Carson commented that a plain clothesman would ordinarily have a badge with him and by putting on the badge he could make an arrest.

At this point the subcommittee recessed for lunch and reconvened at 1:15 p.m. The same members were present for the afternoon session as attended the morning session.

Section 4. Persons riding animals or driving animal-drawn vehicles. Mrs. Embick explained that section 4 changed existing law by deleting the applicability of the rules of the road to persons on bicycles with the understanding that there would subsequently be a specific section on that subject. It also deleted the reference in existing law to persons leading or driving animals. There was, she said, case law to the effect that a person leading or driving an animal was a pedestrian and pedestrians did not belong in this section.

Senator Carson asked if there were many equestrian accidents involving automobiles. Lt. Acheson replied that he did not believe they were a major problem. Ms. Howard advised that the MVD's statistics indicated there were 690 accidents in 1972 involving motor vehicles and animals with 5 deaths and 201 injuries. That data included deer, horses, cows and all animals.

Senator Carson said that if animal-oriented accidents were a serious traffic safety problem, the committee should consider it in more depth, but if not, there was no point in spending much time on the subject. Ms. Howard said her guess would be that the majority of the accidents involved deer.

Chairman Browne asked if it was permissible to ride a horse on a freeway. Mr. Sipprell indicated that ORS 607.527 in effect made the freeways a public range subject to the herd law. Mr. Dutoit expressed the belief that there should be some restriction on any animal being on a freeway system. Senator Carson agreed that the subcommittee should face the issue of allowing horses, bicycles and pedestrians on the freeways. Chairman Browne commented that if horses were allowed on freeways, the subcommittee might repeal ORS 483.314 (passing horses or other animals) and shift the burden to the equestrian to maintain control of the horse.

After further discussion, Senator Carson suggested that interested groups such as the Oregon Horse Breeders' Association be contacted to see whether they believed there should be any adjustments made to the laws relating to animals on highways and roads. The subcommittee adopted this suggestion.

Section 5. Public officers and employes. Mrs. Embick explained that section 5 did not make a substantive change in existing law as set out in subsection (1) of ORS 483.032 but substituted a more concise general statement. She also noted that the reference in the first paragraph of the commentary should be to ORS chapter "483" rather than "453."

Mr. Paillette asked Lt. Acheson if he had any thoughts as to whether the State Police would feel more restricted from an enforcement standpoint if the term "driver" were used in the statutes as opposed to the broader term, "operator of a vehicle." Lt. Acheson said "operator" would probably be a more definitive term. Senator Carson suggested that "operator" be defined to include "driver" and the statutes could then refer to "driver," the term most often used by the ordinary citizen.

Section 6. Persons working on highways; exceptions. Mrs. Embick suggested that again in section 6 the offenses should be substituted by name for the ORS section numbers.

Senator Carson noted that the trend today in road construction was to keep the highways open and maintain traffic during construction when at all possible. In view of that policy, he questioned whether it was wise to exempt motor vehicles and equipment engaged in work on the highways from the rules of the road. He pointed out that section 6 said "shall apply to such persons and vehicles when traveling to or from such work" and he would interpret that to mean that a driver would be exempt from the rules of the road while driving to or from the project area.

Mr. Sipprell explained that the exemption was intended to cover only vehicles working within the project area itself and was generally regarded as not applicable outside the project limits of the contract.

Construction vehicles were not ordinarily permitted to operate in defiance of the rules of the road when driving to or from the project area, he said. Lt. Acheson confirmed that the State Police took this position also. He added that ORS 483.999 (penalty for driving with .15 blood alcohol content) should probably be added to this section and the subcommittee concurred.

Section 7. Application of speed regulation and traffic signals to emergency vehicles. Mrs. Embick advised that subsection (1) of section 7 should be compared to the definition of "authorized emergency vehicle" in existing law, ORS 483.002 (1). Section 7 proposed to change that definition and to separate the requirements for using audible and visual signals from the definition itself.

She indicated she had discussed this section with Mr. George who was present at the morning session and he said the position of the Highway Division would be in favor of permitting both the audible and visual signal to be used by an emergency vehicle.

Mrs. Embick pointed out that under existing law ambulances operated under very different rules from police and fire vehicles and she had therefore placed ambulances in a separate section in the draft. Chairman Browne asked if it was a valid division to separate ambulances from other emergency vehicles. Mrs. Embick said Oregon was the only state which made so great a distinction for ambulances. Other states made some distinction but did not go nearly as far as Oregon.

Senator Carson asked how someone who wanted, for example, to go into the rescue business would get authorization to characterize his vehicle as an "emergency vehicle." Ms. Howard contended that it was difficult to put into a statute every vehicle that could possibly qualify as an emergency vehicle, but she could see some need for someone to decide whether a vehicle so qualified. Question had been raised in the past, she said, as to whether a volunteer fireman could display a flashing red or blue light.

Chairman Browne suggested that the problem could be better reached by rules and regulations than by statute and directed Mrs. Embick to add a provision granting the Motor Vehicles Division the authority to promulgate the necessary rules.

Senator Carson next asked if there was any reason to separate police and fire vehicles and provide for different rules to apply to each of them. Lt. Acheson replied that since both responded to emergencies, he could see little reason to make that distinction. Senator Carson pointed out that the legislature had already said that although an ambulance might have a person in it who could be dying, ambulances were nevertheless restricted more than police and fire vehicles. He felt it was difficult to justify the position that the saving of property was worth more than a human life and therefore questioned whether other emergency vehicles should be permitted to travel at high speeds, excepting police chases, when ambulances did not have that authority.

Mr. Paillette asked Mrs. Embick if her intent was to repeal the definition in ORS 483.002 and substitute the definition in section 7 (1). Mrs. Embick replied affirmatively but added that she was not satisfied that the definition was adequate; it was in the draft to give the subcommittee a basis for discussion. She noted that the Uniform Vehicle Code definition of "authorized emergency vehicle" in s 1-104 read:

> "Such fire department vehicles, police vehicles and ambulances as are publicly owned, and such other publicly or privately owned vehicles as are designated by the commissioner (or other appropriate state official) under s 15-111 of this act."

With respect to subsection (2), Mrs. Embick indicated that Oregon law did not presently contain a similar provision except that an emergency vehicle was defined in terms of using signals and the definition appeared to be ambiguous as to whether it referred to all emergency vehicles or merely to ambulances. The general provision limiting the times when the privileges could be exercised was lacking in the current statute and subsection (2), taken from the UVC, was therefore added to the draft.

Subsection (4), she said, was the provision discussed earlier by the subcommittee (see discussion beginning on page 4 of these minutes) as to whether the provision should be changed to permit either an audible or a visual signal rather than requiring both.

Senator Carson questioned whether the draft required the audible signal to be going while a driver was parking or standing on a highway. Looking at subsections (3) (a) and (4) together, it could be so interpreted, he said. He suggested that the section be broken down to say that as long as the visual signal was operating, the driver could park or stand, exceed the speed limit and disregard regulations governing direction of movement or turning, but when proceeding past a red or stop signal, then he must have both audible and visual signals operating. In other words, paragraphs (a), (c) and (d) of subsection (3) would be disjunctive but paragraph (b) would be conjunctive.

Chairman Browne asked what effect Senator Carson's suggestion would have on unmarked police cars. Lt. Acheson replied that since an unmarked car was not readily identifiable to the public as either a police or emergency vehicle, marked units should probably respond to emergencies whenever possible. In reply to a further question by Chairman Browne, Lt. Acheson said that at the present time unmarked cars were rarely used for apprehending speeders. Senator Carson said that if an unmarked car had a "pop-up" visual signal, the driver could do everything but proceed through an intersection, should his suggestion be adopted.

Mr. Sipprell proposed to insert in subsection (3) (a) the phrase, "in a manner that impedes traffic," after "Park or stand." Senator Carson believed the proposal was too restrictive. He said he would hate to tell a policeman he could not leave his signal light on for his own safety when he had stopped someone on the shoulder of the road even though he might not be impeding traffic. He added that the officer could park or stand anywhere without his signal on so long as he was not violating a rule of the road.

Ms. Howard suggested changing the language in paragraph (3) (b) to "Proceed past a traffic control device" rather than "Proceed past a red or stop signal or stop sign." It would then cover signs such as "Yield right of way." Mrs. Embick reported that "traffic control device" was used in many recently revised codes as well as the UVC and covered all the signs and lights directing drivers how to proceed. She said it could be used in a number of places in the revision as a substitute for "red or stop signal or stop sign."

Senator Carson cautioned against getting into a situation where an emergency vehicle would have to blow its siren because there was a "duck crossing" sign on some street.

Ms. Howard noted that the UVC definition of "official traffic-control devices" in s 1-139 was:

> "All signs, signals, markings and devices not inconsistent with this act placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic."

She was of the opinion that this definition was too broad and could be interpreted to include warning signs which in certain situations would be going too far.

Mr. Paillette asked Mrs. Embick if she felt "traffic control device" was too broad to use in subsection (3) and was told that, if used, it should be qualified to refer to traffic control devices requiring the driver to come to a stop. Otherwise, the language should remain as written, she said.

Following further discussion, the subcommittee agreed that section 7 should be rewritten using the definition of "emergency vehicle" in the UVC and placing the discretion in the Motor Vehicles Division to make the necessary rules for a vehicle to qualify as an emergency vehicle. Police and fire vehicles would automatically qualify, but all others would have to be approved by MVD before receiving the exemption.

Section 8. Application of speed regulations and traffic signals to ambulances. Senator Carson commented that inasmuch as "ambulance" was redefined by the 1973 legislature, it was not necessary for this committee to tamper with that definition. Mrs. Embick confirmed that the draft as written conformed exactly to the definition in Chapter 407, Oregon Laws 1973.

Chairman Browne inquired as to the derivation of the 10 mile provision in subsection (3) (b) of section 8 and was told by Mrs. Embick that it came from existing law, ORS 483.120. Ms. Howard explained that according to her best recollection, the provision was enacted to take care of instances where, for example, ambulance drivers were going 100 miles an hour to transport a dead body to the morgue and exceeding speed limits when it was totally unnecessary. She added that in recent years the quality of ambulance operators had much improved. In answer to a question by Chairman Browne, she indicated there were 31 accidents last year involving emergency vehicles.

In response to a remark by Mr. Dutoit regarding a provision in Chapter 407, Oregon Laws 1973, giving counties the option to adopt or not to adopt the state standard requiring all ambulance drivers to be trained, Senator Carson indicated that the legislature had apparently enacted that provision to accommodate the small communities and had placed that discretion in the hands of the county commissioners. The draft, he said, should probably reflect that policy by saying that the privileges granted to an ambulance driver applied only when he was a qualified emergency medical technician.

Mrs. Embick requested the subcommittee's reaction to subsection (5) of section 8 which used the language of the Criminal Code, i.e., "reckless or criminally negligent act or conduct." She noted that the same language appeared in section 7 and suggested that the members might wish to place a period after "with due regard for the safety of all persons" and delete the balance of the sentence.

Mr. Paillette advised that Mrs. Embick had included the "reckless or criminally negligent" language in the draft at his suggestion and the reason he proposed to include it was to negate any possibility that the privileges granted to ambulance drivers would be used as a defense in a negligent homicide prosecution, a criminally negligent homicide or any other type of act resulting in a serious criminal charge. It was not meant to say that an operator could drive recklessly or with a .15 blood alcohol content but was designed to get at that special issue that might be raised. "Reckless" and "criminally negligent" were both culpability terms defined in the Criminal Code, he said.

Senator Carson noted that reckless driving was one of the major traffic offenses and wanted to make certain that subsection (5) could not be construed to refer only to reckless driving, leaving the other major offenses outside the provision. Mr. Paillette assured him this was not the intent. He added that subsection (5) was based on paragraph (d) of section 11-106 of the UVC which said, " . . . nor shall such provisions protect the driver from the consequences of his

reckless disregard for the safety of others." He said he disliked the phrase, "reckless disregard," because the vehicular homicide statute referred either to reckless conduct or criminally negligent conduct, and reckless vehicular homicide constituted manslaughter.

Senator Carson's concern was that subsection (5) detracted from the benefits bestowed by subsection (3). It modified those benefits but did not touch the rest of the law. He suggested it would be preferable to state in subsection (5): "The privileges in subsection (3) of section 8 do not protect the driver of an ambulance from the consequences of any reckless or criminally negligent act or conduct." In other words, an ambulance driver would be required to obey all the traffic laws with the exception of the three privileges granted in subsection (3), but even then he would still not be protected from the consequences of any reckless or criminally negligent act.

Mrs. Embick pointed out that subsection (5) had reference to section 8 in its entirety. Mr. Paillette believed it was a good idea to have a statement such as subsection (5) in the law because it could save needless litigation in the future.

Senator Carson suggested that section 7, subsection (3), be amended to read:

> "The driver of the emergency vehicle may, with due regard for the safety of all persons:
>
> "(a), (b), (c) and (d) . . . . "

The statement that it shall be no defense to any driver charged with any reckless or criminally negligent act or conduct could then be placed after subsection (3). Mr. Paillette expressed approval of the above suggestion.

Ms. Howard suggested amending section 8, (3) (b), to read:

> "Exceed the speed limits by not more than 10 miles an hour except at intersections for which there is a traffic control sign or signal."

Senator Carson commented that exceeding the speed limit through an intersection was not the essence of the provision because, apart from the control device, the speed limit in an intersection was the same as the limit at both ends of the intersection. The privilege of going through a red light was not granted to an ambulance driver and he therefore proposed to delete from subsection (3) (b) the opening clause, "Except in an intersection for which there is a traffic control sign." His view was that speeding and stopping were two different things and should be separated. He said he would also favor deletion of the 10 mile per hour speed limitation unless someone knew why it was imposed by the legislature. He believed it should be applicable

to all emergency vehicles or none at all. He could see little rationale for allowing a police officer to exceed the speed limit to catch someone who turned from the wrong lane or to allow a fire engine to exceed the speed limit to save someone's orchard while at the same time an ambulance could not go more than 10 miles over the speed limit to save a human life.

Mr. Dutoit asked if the intent was that ambulances were to stop at a red light and remain standing until the light turned green and was told by Mrs. Embick that ORS 483.120 (2) (b) clearly imposed that requirement. Mr. Dutoit said he could see no reason why an ambulance should sit at a red light in the middle of the night waiting for the light to change and said it would seem appropriate to give ambulances the same privilege as other emergency vehicles, namely, to slow down or stop when entering an intersection and then proceed through a red light with an audio and visual signal in operation.

Ms. Howard said that she and Mr. Sipprell interpreted "is required by a traffic sign or traffic control signal to stop or to remain standing" as used in subsection (2) (b) of ORS 483.120 to mean that the ambulance did not necessarily have to remain standing. It meant that at a place where other traffic would have to stop and remain standing, the ambulance must first stop before proceeding, perhaps against the light. She believed that had been the understanding of that statute by the State Highway Division and the Motor Vehicles Division for many years. Lt. Acheson agreed that the intent of the law was to prevent an ambulance from approaching an intersection without decreasing speed and without due regard for the safety of others, even though its siren was going.

Mr. Paillette suggested that before the draft was submitted to the ambulance associations for their comments, as the Chairman had suggested earlier, the staff should try to find some legislative history with respect to ORS 483.120.

Mrs. Embick proposed to redraft the section to require an ambulance to come to a stop before proceeding through an intersection and then state the right to exceed the speed limit by 10 miles per hour in a separate paragraph.

Funeral processions. Senator Carson objected to continuing the practice of allowing funeral parlors to hire an off-duty or retired police officer to don a uniform that looked like a police officer's uniform and then permit funeral processions to violate the rules of the road. This was probably, he said, being carried on under a city ordinance but he believed it was poor practice.

Future Meetings

The subcommittee agreed to hold its next meeting on Tuesday, November 13, and the one following that on Monday, November 26, 1973.

The meeting was adjourned at 3:10 p.m.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Committee on Judiciary

Appendix A
Committee on Judiciary
Subcommittee on Revision
October 30, 1973

STATEMENT TO SUBCOMMITTEE ON REVISION

Prepared for
Joint Judiciary Committee
October 30, 1973

by
James M. Mattis
Legal Consultant,
Bureau of Governmental Research and Service
and
League of Oregon Cities

In 1971, the Bureau of Governmental Research and Service, with Traffic Safety funding, prepared a Suggested Uniform Traffic Ordinance for Oregon Cities. The final product was preceded by three drafts, and all three of these drafts received scrutiny and guidance from an advisory committee consisting of city attorneys, a municipal judge, a city manager and a traffic engineer.

The heart of the Uniform Traffic Ordinance (UTO) is a prospective referential adoption of the state traffic code—this automatically brings a city's major rules of the road into conformance with the state law, even as amended by the legislature. It is the position of the Bureau and the advisory committee that in an area of the law where it has been judicially determined that state legislative mandates are of primary dominance (statewide concern), then it is not only good policy but legally justified for cities to adopt the future amendments that a popularly elected legislature may add to the traffic code—some dicta of the Oregon Supreme Court notwithstanding.

Because the UTO was based on the theory and practice utilized in many city ordinances currently "on the books" in 1971, we can confidently report that presently at least one-third of Oregon's cities have adopted the UTO in name and that probably the percentage of cities enforcing present state traffic laws in ordinance form, through the same technique as utilized in the UTO, is considerably greater than that. See letter of July 9, 1973 to Mr. Gil Bellamy.

In drafting the UTO, a number of provisions were created because of the lack of statutory coverage. Under the doctrine that no city may adopt and enforce any regulation "in conflict" with the state code (which is required both by statute and case law relative to many traffic concerns), cities can and have "supplemented" the state code. It is this type of provision which makes up the bulk of the UTO's length. It was the concensus of the advisory committee that some (but not all) of these provisions should logically apply to the whole state, within or without

corporate limits. The rapid increase in population of suburban areas as witnessed by the 1970 census and the continued decline of meaningful city boundaries to delineate urban-rural areas further accentuates the need for statutory coverage in many areas. It is therefore suggested that many provisions of the UTO specifically outlined in a letter already given to your project director be considered for inclusion in statutory form in order to be made applicable throughout the state. I note that one of those provisions is already before you in draft form—that is, Section 2 of Preliminary Draft No. 1 which would make major traffic offenses punishable as such whether or not they occurred on a "highway." What is worth even more than the substantive merit of a suggestion of applying the major traffic offenses to occurences on other property open to public travel, is the preservation of the "conflict doctrine" in the traffic code, for it allows local authorities to act in (1) remedial ways where state legislation may be defective and (2)in more positive substantive content areas where the local legislative body desires to act in a way that is not "conflicting" with the state's requirements.

During your deliberations, we hope you will request the comments of local government representatives, and we will make every effort possible to see that constructive suggestions are made available to you. Many people within the "municipal family" including traffic engineers and municipal judges, to name only a few, have noted with interest the subject matter you are charged to make legislative suggestions about. A total traffic control system can only occur if state and local efforts are coordinated. The state traffic code itself can foster or impede this coordination, and in the process of revising the code, we believe local government representatives may have many suggestions for strengthening the total system.

Traffic

Appendix B
Committee on Judiciary
Subcommittee on Revision
October 30, 1973

January 13, 1971

Mr. Gil Bellamy
Executive Secretary
Oregon Traffic Safety Commission
1905 Lana Avenue, N.E.
Salem, Oregon 97310

Dear Gil:

This letter is a follow-up of our conversation of January 8 concerning the work on the Suggested Uniform Traffic Ordinance for Oregon as it relates to Oregon statutory material. You indicated that the Commission would be interested in forwarding proposals to the legislature. As you recall, development of the ordinance was financed in part through the Federal Highway Safety Act of 1966 with a grant approved by the Oregon State Highway Safety Commission. Reference will be made to the ordinance and two copies are enclosed.

During the preparation of the uniform ordinance, the Bureau staff prepared three drafts, all of which were reviewed by an advisory committee of the League of Oregon Cities. The advisory committee consisted of city attorneys, a municipal judge, a city manager and a traffic engineer.

In drafting the uniform traffic ordinance, a number of provisions were created because of the lack of statutory coverage. Other provisions are now commonly found in Oregon city traffic ordinances--again because of lack of statutory coverage. It was the consensus of the advisory committee that some (but not all) of these provisions should logically apply to the whole state, within or without corporate limits. The rapid increase in population of suburban areas as witnessed by the 1970 census and the continued decline of meaningful city boundaries to delineate urban-rural areas further accentuates the need for statutory coverage in many areas. It was therefore suggested that the following be considered by the legislature for inclusion in statutory form in order to be made applicable throughout the state:

1. Sections 37 through 42 of the uniform ordinance impose municipal sanctions against those who ordinarily would be deemed to

have violated major state traffic law provisions, except that the violations did not occur on "highways" as defined in ORS 483.010(2). See comment subsection 10 of section 3, p.11. The deletion of the term "highway" in the statutory material prohibiting driving under the influence, careless driving, reckless driving and duties of an operator at an accident would accomplish the same ends. This result was accomplished by a similar means in the Uniform Vehicle Code suggested by the National Committee on Uniform Traffic Laws and Ordinances. UVC, Sec. 11-101(2) and Sec. 11-901 through 11-904 (1968). The advisory committee for the uniform ordinance recommends the deletion of the term "highway" from ORS 483.343, 483.602, 483.604 and 483.992.

2. Several provisions of the uniform ordinance as outlined below should be considered for inclusion in the statutes either "as is" or with some small modification. Uniformity of road rules would be the primary impetus for this suggestion, but also because traffic law is both historically and judicially recognized as primarily within the state legislative domain. The following provisions are recommended for legislative consideration:

Section	Subject
9	Obedience to and alteration of control devices
10	Evidence
12	Rules of road
13	Crossing private property
14	Emerging from vehicle
15	Unlawful riding
16	Clinging to vehicles
17	Sleds on streets
19	Obstructing streets
20	Removing glass and debris
22	Method of parking
23(1)	Prohibited parking and standing
26	Leaving unattended vehicle
39	Obedience to bridge and railroad signals
48	Owner responsibility
49	Registerdd owner presumption

To our knowledge, the Suggested Uniform Traffic Ordinance for Oregon, published in the summer of 1970, has already been adopted by such cities as La Grande, Woodburn, Malin and Pilot Rock. We also know that it is presently being considered for adoption in Eugene, Lincoln City, Beaverton and Jefferson. If it is received well, many of the cities in the state will have relatively uniform traffic control provisions including those above. However, the wisdom of the legislation outlined above is equally applicable within and without corporate boundaries.

The state's ability to adequately enforce all of the provisions on a statewide basis--and especially one such as section 26, for example,(prohibiting leaving keys in unattended vehicles)--may raise questions just as it has in some of the smaller cities. However, half of the purpose of a law is direction, and to that extent, statewide legislation on such subjects would prove useful.

The recommendations of the advisory committee have the support of the League of Oregon Cities Legislative Committee.

Sincerely yours,

/

James M. Mattis
Research Attorney

JMM:is

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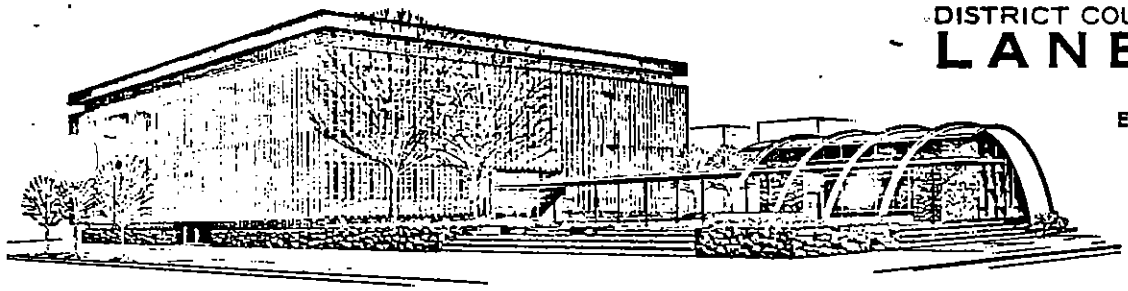

DISTRICT COURT FOR
LANE COUNTY
COURTHOUSE
EUGENE, OREGON 97401

DISTRICT JUDGES
WILLIAM A. BECKETT
FRANK R. ALDERSON
WINFRID K. LIEPE

October 24, 1973

Senator Elizabeth W. Browne
P.O. Box 413
Oakridge, Oregon 97463

Re: Preliminary Draft No. 1, General Provisions--
Proposed New Oregon Vehicle Code

Dear Senator Browne:

I appreciated receiving the Preliminary Draft No. 1 of the proposed new traffic code. I will attempt to respond as time allows and will probably have to respond "piecemeal."

Referring to Section (2), subsection (2), I would suggest that that be amended to read as follows: "The provisions of ORS 483.602 through 483.612 and ORS 483.992 shall apply upon highways and elsewhere throughout the state."

This proposed revision would cause these provisions to apply to charges of reckless driving as well as driving while under the influence of intoxicating liquor and drugs. In this day and age of huge shopping center parking lots, etc. I feel that at least statutes covering reckless driving and driving while under the influence should apply throughout the state and not merely on public streets and highways.

Section 7 defines emergency vehicle and would exempt the driver of emergency vehicles from certain specified traffic laws if the vehicle was operating a siren and emergency light at the time but would "not relieve the driver. . .from the duty to drive with due regard for the safety of all persons, nor shall they protect the driver from the consequences of any reckless or criminally negligent act or conduct." I feel that very serious thought should be given to an overall revamping of this section because I feel that the proposed wording could cause serious problems from a law enforcement standpoint but could also raise very serious questions in the trial of cases, both civil and traffic.

The proposed section would allow the driver of the emergency vehicle to "violate" only certain specified traffic laws but there are several others not named therein which would presumably still apply and that the driver would have to obey. It would probably be almost impossible to specify all of them.

Referring to subsection (c) under subsection (2), I recommend that the word "life" should be changed to "persons."

The proposed section would apparently require the emergency vehicles to obey all traffic rules and regulations unless the vehicle was operating the siren and emergency lights. Police agencies will tell you that there are many occasions when it is highly desirable, if not absolutely necessary, that the police vehicle be able to arrive at the scene as quickly as possible but also without use of emergency lights or siren. This is particularly true of the answering of silent burglar alarms, peeping Tom complaints, etc. I do not feel that the law should be worded in such a way that the police must use their lights and sirens or else obey all the requirements of the traffic code, unless the circumstances present would reasonably require the use of such warning devices for the protection of the people.

I would suggest, as a starting point, the following possible wording in place of the proposed subsection (2), (3), (4), and (5) of Section 7. "(2) The driver of an emergency vehicle, when responding to an emergency call or when in pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, shall not be subject to the motor vehicle laws pertaining to the operation of motor vehicles but if the safety of persons or property reasonably require it, then such exemption shall not apply unless the emergency vehicle is making use of an audible signal meeting the requirements of subsection (4) of ORS 483.446 and a visual signal meeting the requirements of _____, except that: (a) An emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible in front of the vehicle.

(b) An emergency vehicle is not required to use audible signals while parked or standing.

(3) The provisions of this section do not exempt the driver of an emergency vehicle from the provisions of ORS 483.992.

As indicated above, I have not given this proposed wording any lengthy thought or research but I do feel it is worthy of consideration.

Very truly yours,

Frank Alderson

Frank Alderson
District Judge

FA/vgr

cc: Committee on Judiciary, Salem
Chief Dale Allen, Eugene Police Department