

COMMITTEE ON JUDICIARY

Subcommittee on Revision

November 13, 1973

Minutes

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

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

Also Present: Ms. Vinita Howard, Public Information and
Publications, Motor Vehicles Division
Mr. Sid King, Auto Club of Oregon
Mr. Robert G. Ross, Amalgamated Transit Union

Agenda: OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS
General Provisions; Preliminary Draft No. 2

The meeting was called to order at 9:45 a.m. by Senator Elizabeth W. Browne, Chairman, in Room 14, State Capitol.

Approval of Minutes of Meeting of October 30, 1973

The minutes of the meeting of October 30, 1973 were unanimously approved as submitted.

Obedience to and Effect of Traffic Laws; General Provisions; Preliminary Draft No. 2, November 1973.

Mrs. Embick advised that Preliminary Draft No. 2 will incorporate a style of stating the specific offenses which will be used consistently throughout, with the penalties to be added at a later date.

Section 1. Provisions of chapter to be applicable, uniform and controlling throughout the state, including ocean shore. The section, Mrs. Embick reported, contains no substantial change from that of Preliminary Draft No. 1, but merely changes the language to create greater clarity.

Senator Carson referred to the language "no local authority" in subsection (1) which had been deleted from Preliminary Draft No. 1 as it had already been set out elsewhere and therefore redundant.

He questioned if it might be desirable to retain this language in the draft as a warning to the cities and counties which now have ordinances that they may not enact or enforce any rule or regulation in conflict with the provisions stated.

Senator Carson next referred to the words "all portions" in line three of subsection (2) and was of the opinion the language should be deleted, leaving the draft to state, beginning with line five of subsection [(1)]: "therein and on the ocean shore which has been or may be declared". Mr. Paillette agreed with this proposal but stressed caution that in doing so, legislative intent with respect to the motor vehicles on beaches would not be inadvertently changed.

Representative Marx questioned if someone was in an area which was not declared to be a state recreation area and was driving recklessly, would the driver be arrested for reckless driving. Mrs. Embick explained that this would be related to section 2 of the draft which states that the rules of the road apply to highways and the ocean shore, except where a different place is specifically referred to in a given section.

The section limits the operation of the vehicle, Mrs. Embick pointed out, and that existing law requires that an offense of reckless driving or DUIL requires proof for conviction that the operation of the vehicle was on a highway, street or road. It does not include driving a vehicle on the ocean shore as an element of proof for conviction and it would appear that section 2 would provide a restriction on the general application provisions of section 1.

Mr. Paillette remarked that, assuming the subcommittee did not wish to change the policy reflected in chapter 390, the commentary should refer to these statutes in chapter 390 with respect to the terms set out in ORS 390.605 and specifically ORS 390.668 which refers to establishing zones for motorized traffic. The section, he said, makes no change in the policy set out in chapter 390 with respect to the ocean shore and provides that part of the shore is looked upon the same as a public highway, not because the offenses are major offenses, but because the policy has been to consider them the same as a public highway.

Senator Carson suggested amending section 1 to delete the "all portions" language and continue with the same language referring to a state recreation area. Traffic laws should apply to the areas the state has jurisdiction over, he said, and the privately owned areas would be dealt with the same as farmlands, timberlands, etc.

Section 2. Provisions of chapter refer to vehicles upon the highways and ocean shore; exceptions. Mrs. Embick explained that the section states that the provisions of the chapter would be restricted to vehicles on highways and ocean shore except for the provisions which involve serious offenses and the reporting of accidents. She indicated that

the revised section 2 omits the special exceptions on the applicability of the traffic laws for serious offenses and accidents. This will leave it open as the subcommittee continues its work on the sections relating to the serious traffic offenses or any other type of offense, to state it applies everywhere throughout the state or on a particular type of property, or whether it might apply solely on the operation of vehicles on the highway.

Chairman Browne recalled the discussion at the meeting of October 30 as DUIL and reckless driving and whether there should be jurisdiction if this occurs on private property or whether the draft should state only "highway" as it does in its present stage. No decision was made at that meeting, she said, except not to change the definition and to consider these offenses individually as the subcommittee encounters the major traffic offenses.

Mrs. Embick called attention to page 4 of the draft and the definition of "highway" which she said contained a proposed extension with the addition of the phrase "including the entire width between the boundary lines thereof,". Mrs. Embick thought this proposal necessary so that when speaking in terms of highways which have two roadways separated by an area between the switches, the definition would include both roadways and the area between. In this manner, when one must pinpoint where on a highway and where on the one-way portion of the highway (which would be defined as a roadway) the infraction occurred, the definition would be more exact.

Representative Bunn asked whether this inclusion diminishes or increases the ability to hitchhike in any way, which he said would affect his feelings on the provisions. Senator Carson was of the opinion it would do neither until the subcommittee encounters the hitchhiking provisions, at which time it could go either way.

Senator Carson called attention to the words "boundary lines" contained in the proposed definition and was of the opinion this would be interpreted as "right-of-way." He remarked that it could be time to call the highway whatever the public right-of-way is, whether from a stake in the ground or a fence and across to another stake or fence. Caution must be taken then in defining the different types of backing up, hitchhiking and stopping the vehicle on the highway, he said, and that a set of common definitions should be established and work within those definitions.

Representative Bunn noted that if "right-of-way" is included, it would define every place the hitchhiker would stand and would, in his opinion, be more easy to restrict hitchhiking than to expand or maintain its present level. Senator Carson agreed with this assessment and said those favoring hitchhiking would not favor the direct definition but he did not believe the issue should be drawn as to where to hitchhike.

Senator Carson next posed a hypothetical situation whereby an intoxicated driver had pulled off the freeway onto a grassy area. He wondered if the person could be arrested inasmuch as he was not observed driving the vehicle. Mr. Paillette responded that the driver could be arrested on circumstantial evidence that he had been operating the vehicle. There is nothing specifically stated in the statutes, he said, but the courts do allow this type of evidence.

Senator Carson suggested that rather than declaring "highway" to be all inclusive, the subcommittee may wish to use "highway" and "right-of-way." He stated that "highway" could be given the narrow definition of the traveled portion and if the boundary lines actually mean the right-of-way, the draft could speak to the traveled portion plus the right-of-way.

Ms. Howard referred to ORS 483.218 which states that a person shall not hitchhike when standing in a roadway or on the paved or graveled shoulder designed for vehicle use. This would allow a person on the grassy hillside, she said, but not on the part attended to by the Highway Division.

Chairman Browne inquired whether the definition of highway was contemplated to remain in the commentary and was informed it will be placed in a separate article on definitions, but at times it may be appropriate to place them in the commentary for the consideration of the subcommittee.

Senator Carson noted that ORS 483.020 defines roadway as "that portion of a street or highway improved, designed or ordinarily used for vehicular travel."

Representative Bunn expressed agreement to Senator Carson's earlier suggestion to substitute the words "right-of-way" in place of "boundary lines thereof," and Senator Carson suggested the staff check with Mr. Sipprell of the Transportation Department regarding the definition of a highway, beginning with a right-of-way, traveled portions, roadway and other terms which may be adopted by the subcommittee. After setting the definitions the penalties could then be worked around those, he said. Senator Carson noted that the difficulty arises because normally the penalty has been written with the definition and Mr. Paillette pointed out that as much uniformity as possible must be given to the definition of "highway."

Senator Carson moved the adoption of sections 1 and 2, amended as follows:

Section 1: on line 3 of subsection (2), delete "all portions of the shore of" and on line 4, delete "have" and insert "has".

Section 2: delete from the commentary on page 4 the last two paragraphs containing the definition of highway.

Mr. Paillette noted that section 2 would need a conforming amendment to correspond to that made in section 1.

Voting for the motion: Bunn, Carson, Chairman Browne. Not voting: Marx.

ORS 483.038 to 483.045. Pages 5 and 6 of the draft, Mrs. Embick reported, are a continuation of the present ORS sections and the reference to the State Highway Commission will be changed to the Oregon Transportation Commission in accordance with Chapter 249, Oregon Laws 1973. These are not necessarily rules of the road sections, she pointed out, but rather a delineation of authority between the local authorities and the Oregon Transportation Commission. Mr. Paillette advised that these changes would be made by Legislative Counsel.

Senator Carson spoke to ORS 483.041 on page 5 of the draft and stated he believed a definition of "freeway" would be established, conforming ORS 483.041 to match that definition.

The Chairman asked the intention of ORS 483.038 on page 5 of the draft and was advised that this would prevent the owner of private property who allows the public the use of his land from establishing rules contrary to state law. Representative Bunn asked whether ORS 483.038 spoke to the Fred Meyer parking lot situation and was informed it primarily spoke to logging roads but by extension it could apply to the parking lot although it had not been designed to do so. It was the opinion of Representative Bunn that by approving ORS 483.038 it would be making a policy decision whereby Fred Meyer's could make rules different than the rules of the road, either more strict or more lenient to which the members concurred. Senator Carson believed this was in keeping with the Legislature's previous philosophy of not interfering with private property open to the public. He stated that if the subcommittee is going the direction of considering six or seven major traffic offenses separately, it may be desirable for the draft to state that "Except as provided in ORS" in order to limit the private owners from making other rules which they could be inclined to do for their patrons. He suggested that the subcommittee flag this area for future study.

Senator Carson next referred to subsection (3) of ORS 483.044 (page 6 of the draft) and inquired if there was any justification in continuing the practice that except in cities of over 50,000 inhabitants, the commission would have the general supervision over the placement of official traffic signs and signals, and he asked Mrs. Embick to confer with Mr. Sipprell or the League of Oregon Cities as to whether to raise, lower or eliminate the exception.

Section 3. Required obedience to traffic laws. Mrs. Embick advised that the section was not altered from Preliminary Draft No. 1 and will decriminalize a major part of the traffic code. The types of violations are set out on page 8 of the draft, and ORS 161.565 is taken from the Criminal Code.

In answer to the Chairman's inquiry as to why the term "violation" had been placed in the draft, Mr. Paillette responded that it is desirable to wait until all the offenses are defined and then as a single step of the revision project, examine the offenses and compare one to the other and arrive at a logical and rational grading of similar offenses.

Mr. Paillette called attention to the final report of the Ad Hoc Task Force on Adjudication of the National Highway Safety Advisory Committee whose Recommendation No. 2 recommends that the states re-classify all but the most serious traffic offenses from the category of criminal felonies and misdemeanors into a newly created third level offense to be known as "traffic infraction." The subcommittee may wish to adopt this and may desire to have a range of penalties different than the penalties set out in Chapter 161 of the Criminal Code. It might be expedient to have a class of traffic infractions which are in turn classified as a Class C, B, and A, thereby giving more ways to specifically insert certain types of offenses, he remarked.

Senator Carson moved the adoption of section 3 with the proviso that the section be flagged to enable the subcommittee to turn its attention to it again at a later date. Motion carried unanimously.

Section 4. Permitting unlawful operation of vehicle. Mrs. Embick explained the provision is a restatement of ORS 483.046 and shows the principal-agent relationship. Although there is no substantive change, the structure of the statement of the offense is more direct.

Mr. Paillette pointed out that the section has no penalty written into it and if the section and other similarly drafted are adopted, the effect would be that this offense would be a violation and not carry a criminal penalty, unless so provided.

Representative Bunn stated that his interpretation of the section would be that if he knowingly allowed the operation of his vehicle, regardless of whether or not he knew it was being operated contrary to law, he would be held liable for those acts. Mr. Paillette commented that the courts might impose liability without showing there was any knowledge on the part of the defendant that the car was going to be operated unlawfully if this were graded as a violation. With respect to culpability, the Criminal Code requires that unless the statutes specifically and clearly indicate the legislative intent to impose strict liability on the part of the defendant for that particular act, some type of culpability, such as recklessness, criminal negligence, etc., is required.

Senator Carson believed it was not permitting the operation of the vehicle on a public highway that was operative, but it was permitting the vehicle that has the defects to operate on the highway and suggested deleting the words "operation of a motor vehicle upon a public highway when:" in lines 5 and 6 and inserting this phrase at the conclusion of the section.

Mr. Sid King reported to the subcommittee that the Auto Club loans vehicles to certain individuals on several occasions and wondered if it would be held guilty of a violation under this provision if liquor was found in the car when in the possession of one of these individuals. Chairman Browne explained that the intent of the amendment proposed by Senator Carson would require the Auto Club to knowingly permit the car to be operated under these circumstances.

Mr. Paillette reported the section would be redrafted to clarify the type of culpability which was intended.

Section 5. Failing to obey traffic officer.

Section 6. Uniform or badge required.

Mrs. Embick reported that section 5 is a restatement of subsection (1) of ORS 483.048 and section 6 contains a major change in existing law in that ORS 483.048 (2) requires a police officer enforcing speed laws to be in uniform whereas the draft proposes that the officer attempting to enforce the traffic laws must also be in uniform. Mrs. Embick commented that she failed to see any justification for limiting the requirement of wearing the badge and being in uniform only to speed enforcement.

Senator Carson recalled the discussion at the meeting of October 30 relating to the funeral motorcycle drivers and was of the opinion that the Legislature has extended extra privileges to law enforcement officers and that if the funeral homes are in need of these drivers, the duties should perhaps be carried out by city or state policemen or someone deputized. For this reason he suggested the deletion of "traffic" officer and the insertion of "police" which is defined in ORS 483.013 (3) as a member of the Oregon State Police, sheriff or deputy sheriff and a city policeman.

Mrs. Embick called attention to the fact that by limiting the two sections to police officers, the fire department personnel who at times direct a fire truck would be eliminated. Senator Carson proposed that if there is a specific need to authorize persons under certain circumstances to fall into the category of being able to direct traffic, then it could be replaced in the draft. If the term "traffic officer" is used, he said, it should be defined.

Vote was taken on the adoption of sections 5 and 6, amended as follows:

Section 5: Delete "traffic" in line 2 and insert "police" and in line 4, delete "traffic or."

Section 6: Delete "traffic or" in line 1.

Voting for the motion: Carson, Marx, Chairman Browne. Not voting: Bunn. Motion carried.

Section 7. Persons riding animals or driving animal-drawn vehicles and driving or leading an animal. Mrs. Embick explained that the section provides that persons riding, leading or driving animal-drawn vehicles are subject to the duties of Chapter 483 which are applicable to the driver of a vehicle. She suggested the insertion of "upon a highway" in line 5 of the draft, following "animal." Although the Supreme Court has defined persons leading animals as "pedestrians," she said, it is her contention that persons driving or leading animals should be contained in the section. Bicycles have been deleted from the section and this area will be covered in another Article.

Mr. Paillette referred to the commentary to the section which relates to persons leading animals and who were defined as pedestrians and the language in Sertic v. McCullough, 155 Or 216, 63 P2d 884 (1936). He asked if the above case overruled the language in ORS 483.034 regarding the person leading an animal being subject to the provisions applicable to the driver and Mrs. Embick replied in the negative.

Chairman Browne noted that if the court has held that such a person is a pedestrian, it would seem to create a problem by stating he possesses all the rights and duties of the driver. Mrs. Embick answered that the other sections relating to motorcycles, bicycles and pedestrians each will state that they are subject to the rules of the road, as does this section. She observed that if a person is dismounting and has one foot on the road, by using a situation such as this and placing him in this section, it is being covered on both bases. The draft, she said, is not excluding him at any time.

Senator Carson wondered if it might be desirable to state that those using the highway are subject to the rules, "unless specifically provided elsewhere."

Representative Marx inquired if the rules of the road change if the person leads the horse or rides the horse. He was of the opinion if he is leading, he should be on one side of the road and an ambiguity could arise on this question.

Ms. Howard called attention to the work involved from the standpoint of disseminating material throughout the states relating to the different laws. If it could be organized so that all the laws regarding one area could be inserted in one place, and which is the approach taken by the UVC, the task would be much easier.

Senator Carson noted that section 7 was a specific provision and not a general one and concerns itself only with those riding animals, driving carts and leading an animal. If a general provision is desired, he felt it should be inserted so as to state that if a person is on the road he is subject to the certain provisions. If it is not felt desirable to have this general provision and should be broken down, then he believed the pedestrian aspects should be in the pedestrian section and the animal section remain as section 7 and relate only to those riding the animal or driving the cart.

Chairman Browne inquired if Senator Carson's suggestion was to make a general statement that the laws apply to everyone using the highway

and then set forth the exceptions for highway construction. Senator Carson replied that it would be a very complex plan to state that a person must comply with certain rights and duties and then list the exceptions but in his view he believed it should be so stated.

Chairman Browne next inquired as to the disposition of ORS 483.032 and Mr. Paillette reported that subsection (1) is contained in section 8 and subsection (2) is set forth in section 9. Subsection (3), the Chairman observed, would belong in the equipment section of the entire chapter and stressed caution in not eliminating this subsection even though the subcommittee will not concern itself with the equipment aspects.

Senator Carson moved the deletion of section 7 and that the subcommittee direct the staff to attach the applicable parts to their specific general category such as was suggested by Ms. Howard.

Voting for the motion: Carson, Marx, Chairman Browne. Not voting: Bunn. Motion carried.

Section 8. Public officers and employees. Senator Carson asked if there was a definite need for this section. Although he realized it was contained in the UVC, he wondered if this stems from a period of time where there was the suggestion that the United States government was not subject to state laws. Mr. Paillette explained this is existing law and by retaining it, it would avoid any implication that by repealing the present statute and not reenacting a counterpart, it could perhaps be suggesting the United States government is not subject to Oregon's traffic laws, and he urged the retention of the section.

Representative Bunn moved the adoption of section 8. Voting for the motion: Bunn, Carson, Marx, Chairman Brown. Motion carried unanimously.

Chairman Browne called attention to a letter received by Chief Judge Schwab, attached as Appendix A, and stated that the members of the consulting committee must be approved by the Judiciary Committee. Senator Carson inquired as to the function of this committee and Mr. Paillette responded that the Advisory Committee would attend the meetings and work with the subcommittees and the full committee. He had urged Judge Schwab to have this committee come to the meetings with specific recommendations concerning the problem areas they are aware exist. Mr. Paillette reported it had not yet been decided whether the committee would divide itself into two subcommittees or attempt to work on some other basis. It was the understanding of the Chairman that they would do the former.

Senator Carson moved the approval of the appointment of the Consulting Committee as contained in the letter received from Chief Judge Schwab. The motion was unanimously approved.

Section 9. Persons working on highways; exceptions. Senator Carson expressed dissatisfaction with the section and the language "work upon a highway." He spoke to the situation whereby maintenance personnel throw tar along the road and said it was this type situation where he believed they should be subject to the rules, although the Transportation Department might construe this to mean "work upon a highway" and

thereby claim the maintenance crew to be exempt. He suggested line five be amended to delete "upon a highway" and insert "at the site of a highway project." He stated that the Transportation Department does call them "projects" when being placed out for bids and he believed this would not exempt them from the purview of the maintenance.

Ms. Howard asked if, in referring to ORS 483.992, 483.993 and 483.999, it was intended that in the final draft those serious offenses will be contained in a separate section. Mrs. Embick advised that this would be the case and pointed out that under existing law, if one of the serious traffic offenses is committed and the person works on a construction site, the above statutes do not apply to him.

Senator Carson inquired as to the rationale for changing the language in subsection (2) of ORS 483.032 inasmuch as it speaks to the "immediate construction project" and Mrs. Embick replied that this language was taken from the UVC. Mr. Paillette reported the language in the draft "while actually engaged in work" was contained in the statutes prior to the 1967 amendment and the draft apparently conforms with the UVC prior to that amendment. The language in subsection (2) ". . . while operated within the immediate construction project," was inserted by the Legislature after that date.

Senator Carson moved the adoption of section 9, amended as follows:

Retain the first two lines of the section and following "ORS 483.999" on line 3, insert the language contained in subsection (2) of ORS 483.032 beginning with "do not apply to persons." Motion carried unanimously.

Section 10. Application of speed regulation and traffic signals to emergency vehicles. Mrs. Embick advised the section is a revision of Preliminary Draft No. 1 and now contains a definition of emergency vehicle in terms of equipment, both audible and visual and which is provided in the equipment statutes (ORS 483.423 and 483.446). Senator Carson recommended the change in the last line of subsection (1) to state "Administrator of the Motor Vehicle Department" in place of "commissioner." Ms. Howard called attention to the last paragraph of the commentary (page 18) wherein it states that authorization must be obtained from the Transportation Commissioner and advised that perhaps this should also be changed.

Mrs. Embick reported that it has not been stated that an ambulance is within the definition of an emergency vehicle although it could be considered as such. Senator Carson observed that the police departments are now operating rescue vehicles that in some instances have an ambulance character and was informed that subsection (1) of section 11 contains a definition of ambulance which would encompass this type of vehicle. Mrs. Embick raised the question as to whether the ambulance should be excluded in the definition of an emergency vehicle and Senator Carson answered in the affirmative.

Senator Carson moved the exclusion of the ambulance in the definition of an emergency vehicle in section 10 and that the section state that an emergency vehicle does not mean an ambulance as defined in subsection (1) of section 11. Motion carried unanimously.

Subsection (2), Mrs. Embick reported, sets forth the privileges and conditions to which the driver of the emergency vehicle is subject. Senator Carson referred to the fourth line of subsection (2) and suggested the words "a fire alarm" be deleted and "an emergency" substituted therefor. Mr. Paillette cautioned that in excluding ambulances in section 10, a part-time ambulance as defined in section 11 and which may be returning from an emergency should not be excluded in the drafting.

Speaking to subsection (5) of section 10, Representative Bunn was of the opinion that there was a decided difference between an emergency vehicle driver and a driver of an automobile going through a red light and there must be some impact on the defense of the individual using the emergency vehicle. Something that would constitute reckless driving under normal circumstances, he said, may not be reckless conduct where an emergency vehicle is involved and this should be taken into account in the defense of a person having that charge made against him. Senator Carson responded that reckless driving by an ambulance driver, regardless of the circumstances, is not warranted and the subsection so states. Representative Bunn agreed with this assessment but stated that it should be pointed out that although this is not a free license for reckless driving, there is a difference between the two situations. Senator Carson said the question is what constitutes reckless driving and ORS 483.992 states in part:

"Any person who drives any vehicle upon a highway carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others is guilty of reckless driving and shall be punished"

Mr. Paillette advised that the terms "criminal negligence or reckless conduct" in subsection (5) are used as they were meant to be used in the Criminal Code which requires a high degree of culpability, particularly in the reckless conduct which requires proof that the defendant consciously disregarded a known risk. The draft states that if the degree of culpability is that great, then there is no defense to the charge of manslaughter, for example, if the driver kills someone. Criminal negligence, he continued, is a lesser type of culpability in that it is a failure to be aware of a known risk.

Representative Bunn stated that with this definition of reckless conduct, he was satisfied it should remain in the draft but expressed concern about the driver doing a conscientious job but nevertheless was involved in an accident and could be charged with criminal negligence. Senator Carson thought the answer might be that the draft should not go through the vehicle code but through the Criminal Code which shows there must be a high degree of culpability.

Senator Carson moved subsection (5) of section 10 be amended to show that criminal negligence and reckless conduct refer back to the Criminal Code for the definition of these terms. Motion carried unanimously.

Referring to paragraph (b) of subsection (4), Mrs. Embick reported that existing law requires the emergency vehicles to use both the audible and visual signals at all times, and is retained in the draft only in relation to paragraph (b) of subsection (3). Paragraphs (c) and (d) represent departures from existing law.

Senator Carson moved the adoption of section 10, as amended. Motion carried unanimously.

Section 11. Application of speed regulations and traffic signals to ambulances. Mrs. Embick explained the definition of ambulance as well as emergency medical technician have been taken from Chapter 407, Oregon Laws 1973. The section continues the existing privileges of ambulances in subsection (3) and these privileges may only be used when a person who is an emergency medical technician (EMT) or who has been granted an exception from acquiring this certification has reasonable grounds to believe that delay will jeopardize a life and is operating either the audible or visual signal. Subsection (5) is stated in the same terms as subsection (5) of section 10.

Senator Carson moved that subsection (1) be amended to insert in line 7 the phrase "when actually used for ambulance purposes" following "ambulance."

Representative Bunn questioned the rationale for requiring an ambulance to actually come to a stop at a red light and believed it could be stated so as to require it merely to slow down and then continue. The Chairman stated that the stopping requirement is contained in existing law and it had been the general consensus of the members at the previous meeting that many of these drivers are volunteers in small communities and did not have enough experience, therefore they should be required to stop although they need not wait for the light to change.

Senator Carson observed that if an ambulance does not come to a full stop but rolls through the intersection and causes an injury to another, the driver would have no protection and could be in much difficulty. For this reason he believed it advisable to return to the old law relating to ambulances which did not require a full stop, to which Representative Marx concurred.

Mrs. Embick called attention to ORS 483.121 wherein a record is required when the ambulances are in service and believed that by this statute, it was at one time felt desirable to further restrict the ambulances.

Ms. Howard recalled a situation in Salem where an ambulance had proceeded past a red light and struck a vehicle, killing the two occupants. She stated there was much discussion relating to this accident and that the general consensus of the public was that the driver did not have that much of an emergency to run the red light.

Representative Bunn was concerned that by allowing the drivers to go through the light, there would be a tendency that it would be done regardless of whether or not it was necessary. Representative Marx suggested that language be inserted in the draft allowing this privilege only when there is an immediate threat to life to which Senator Carson concurred.

Mrs. Embick stated that paragraphs (a) and (b) of subsection (4) intended that the privileges only be exercised if there are grounds to believe that life was endangered and only if the audible and visual signals were being operated. She suggested that perhaps another provision be included stating there should not be any operation of the signals except when the conditions of paragraphs (a) and (b) exist.

Mr. Paillette inquired the reason for not having the language in paragraph (b) of subsection (3) correspond with paragraph (b) of subsection (3) in section 10.

Senator Carson moved the substitution of the language in paragraph (b), subsection (3) of section 10 for that of paragraph (b), subsection (3) of section 11.

In explaining his motion, Senator Carson declared the ambulance driver would thereby be given the same authority as that of the driver of the fire truck. Motion carried unanimously.

Vote was next taken on Senator Carson's earlier motion to insert "when actually used for ambulance purposes" following "ambulance" in line 7 of subsection (1). Motion carried unanimously.

Senator Carson moved the adoption of section 11, as amended. Motion carried unanimously.

Mr. Paillette asked the approval of the subcommittee of Preliminary Draft No. 2, General Provisions, as amended. There being no objections, it was so ordered.

Representative Bunn inquired if the same reference to the Criminal Code would be given to subsection (5) of section 11 and was given an affirmative answer.

Mrs. Embick called attention to ORS 483.121 with respect to the record requirements of ambulances and stated that although it was not discussed by the subcommittee, she was of the opinion it should be retained. There was no objection.

The meeting was adjourned at 1 p.m.

Respectfully submitted,

Norma Schnider, Clerk
Committee on Judiciary

STATE OF OREGON
COURT OF APPEALS
SALEM, OREGON

HERBERT M. SCHWAB
CHIEF JUDGE

November 6, 1973

Mr. Don Paillette
Project Director
Committee on Judiciary
Room 14, State Capitol
Salem, Oregon 97310

Dear Don:

Would you please advise Senator Browne and Representative Cole that I have now organized, subject to formal approval by the committee, a consulting committee consisting of the following:

Hon. Herbert M. Schwab
Court of Appeals
Supreme Court Building
Salem 97310 378-6381

Hon. Philip T. Abraham
Circuit Court Judge
120 Multnomah County Courthouse
Portland 97204 248-3804

Nita Bellows
Justice of the Peace
380 S.W. 1st Avenue
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Jerry Orrick
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Mr. Don Paillette

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Hon. Jack Frost
District Attorney
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926-4464

Lt. Paul Minor
President
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Roseburg Police Dept.
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673-6633

Barnes Ellis
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900 S.W. 5th Avenue
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224-3380

Douglas Houser
Lawyer
500 Pacific Building
Portland

228-6351

For the information of the committee, I consulted with Wes Franklin, President of the Oregon State Bar, and got his authorization to pick two lawyers rather than having the Bar designate them. I did this so that we would not be criticized by the Bar for not having an official representative. Doug Houser, incidentally, is the vice-chairman of the Bar's Judiciary Committee and I got the approval of the chairman, Merv Brink of Hillsboro, before asking Houser to serve. I think this will make an excellent consulting committee.

I would appreciate being advised of the committee's official approval as soon as possible so that I can arrange a meeting of the consulting committee hopefully in Salem on the same day as a meeting of the standing Judiciary Committee.

Sincerely,


Herbert M. Schwab

HMS/jk