

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF A REQUEST BY THE MAHONING COUNTY ENGINEER FROM STOPPING FOR SCHOOL BUSES AND HAZARDOUS MATERIALS VEHICLES AT COUNTY ROAD CROSSINGS 84, 22, 23, 28, 25, AND 32, AND TOWNSHIP ROAD CROSSINGS 29 AND 30 IN MAHONING COUNTY.

CASE No. 18-1606-RR-RCP

IN THE MATTER OF A REQUEST BY THE MAHONING COUNTY ENGINEER FOR AN EXEMPTION FROM STOPPING FOR SCHOOL BUSES AND HAZARDOUS MATERIALS VEHICLES AT THE COUNTY ROAD 49 CROSSING IN MAHONING COUNTY.

CASE No. 18-1902-RR-RCP

IN THE MATTER OF A REQUEST BY THE VILLAGE OF SEBRING FOR AN EXEMPTION FROM STOPPING FOR SCHOOL BUSES AND HAZARDOUS MATERIALS VEHICLES AT THE NORTH JOHNSON ROAD CROSSING IN MAHONING COUNTY.

CASE No. 19-1488-RR-RCP

IN THE MATTER OF A REQUEST BY THE MAHONING COUNTY ENGINEER FOR AN EXEMPTION FROM STOPPING FOR SCHOOL BUSES AND HAZARDOUS MATERIALS VEHICLES AT COUNTY ROAD CROSSINGS 11 AND 26 IN MAHONING COUNTY.

CASE No. 19-1891-RR-RCP

OPINION AND ORDER

Entered in the Journal on February 26, 2020

I. SUMMARY

{¶ 1} The Commission grants a request by the Mahoning County Engineer for an exemption from stopping at 12 grade crossings in Mahoning County. In addition, the Commission grants a request by the village of Sebring for an exemption from stopping for

school buses and hazardous materials vehicles at the North Johnson Road grade crossing in Mahoning County.

II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} On October 18, 2018, on behalf of the West Branch School District in Beloit, Ohio, Bob Durbin (Mr. Durbin) of the Mahoning County Engineer's office filed a letter requesting an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at eight grade crossings in Mahoning County. Mr. Durbin noted that two of the eight crossings are maintained by Goshen Township and that he had received approval to file the request on behalf of the township. The letter emphasizes that, presently, school buses must stop at the crossings, even though there is no longer any train traffic, and that stopping endangers children on the bus, because other vehicles do not expect the bus to stop. The crossings are at C.R. 84/Alliance Sebring Road (DOT#502462D), C.R. 22/Courtney Road (DOT#502464S), C.R. 23/North 12th Street (DOT#502465Y), C.R. 28/West Middletown Road (DOT#502466F), C.R. 25/Beloit Snodes Road (DOT#502467M), C.R. 32/Western Reserve Road (DOT#502471C), T.R. 29/Smith Goshen Road (DOT#502468U), and T.R. 30/Calla Road (DOT#502469B).

{¶ 3} On February 1, 2019, on behalf of Western Reserve Local School District in Berlin Center, Ohio, Mr. Durbin filed a letter requesting an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at the C.R. 49/Weaver Road (DOT#502477T) grade crossing. Attached was a letter from Douglas McGlynn, Superintendent of Western Reserve School District, stating that "the rail line is paved over * * * [and] has not been in use for decades" and asserting that an exemption from stopping " * * * could eliminate potential accidents in the future."

{¶ 4} On June 25, 2019, as amended on October 9, 2019, the village of Sebring filed a letter requesting an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at the North Johnson Road (DOT#502463K) grade crossing.

{¶ 5} On October 11, 2019, Mr. Durbin filed a letter requesting an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at the C.R. 11/Oyster Road (DOT#544765D) and C.R 26/South Range Road (DOT#544764W) grade crossings.

{¶ 6} By Entry issued October 24, 2019, a local public hearing was scheduled for November 15, 2019. Notice of the hearing was published in the Youngstown Vindicator, a newspaper of general circulation in Mahoning County, and in press releases issued by the Commission. The Entry also directed Staff to file, no later than December 6, 2019, a report of its investigation on the exemption request.

{¶ 7} The hearing was conducted on November 15, 2019, at West Branch High School in Beloit, Ohio.

{¶ 8} On December 6, 2019, Norfolk Southern Railway (NS) filed a response to the exemption requests, stating that it has no objection to the requests made by the Mahoning County Engineer or the village of Sebring.

{¶ 9} On December 13, 2019, Staff filed an investigative report regarding the exemption requests made by the Mahoning County Engineer and village of Sebring. Staff recommends that both exemption requests be granted, with the requirement that the railroad place a stop and flag order on each crossing for any future train movements.

III. LAW

{¶ 10} The Commission's authority to grant an exemption from stopping at railroad grade crossings, applicable to school buses and vehicles placarded for hazardous materials, is found in R.C. 4511.63, which provides, in part:

Except as provided in division (B) of this section, the operator of any bus, any school vehicle, or any vehicle transporting a material or materials required to be placarded under 49 Code of Federal

Regulations (C.F.R.) Parts 100-185, before crossing at grade any track of a railroad, shall stop the vehicle.

Division (B) of Section 4511.63, Revised Code, provides that the section does not apply at railroad grade crossings when the Commission has authorized and approved an exempt crossing pursuant to the division.

IV. SUMMARY OF THE EVIDENCE

{¶ 11} In its investigative reports concerning the requests made by the village of Sebring and the Mahoning County Engineer, Staff observes that each of the crossings for which an exemption is requested are owned and maintained by NS. According to Staff, NS has confirmed that the rail line is out of service and that there is no train service at these crossings on that rail line. (Staff Report at 2.)

{¶ 12} Staff's report indicates that active warning devices, i.e. lights and gates, are present at the C.R. 84/Alliance Sebring Road (DOT#502462D), C.R. 23/North 12th Street (DOT#502465Y), C.R. 28/Middletown Road (DOT#502466F), and C.R. 25/Beloit Snodes Road (DOT#502467M) grade crossings (Staff Report at 4, 14, 19, 24). Passive warning devices, i.e. at least one crossbuck and/or at least one yield sign, are present at the C.R. 22/Courtney Road (DOT#502464S), T.R. 29/Smith Goshen Road (DOT#502468U), T.R. 30/Calla Road (DOT#502469B), North Johnson Road (DOT#502463K), and C.R. 49/Weaver Road (DOT#502477T) grade crossings (Staff Report at 9, 29, 34, 44, 59). There are no warning devices at the C.R. 32/Western Reserve Road (DOT#502471C), C.R. 11/Oyster Road (DOT#544765D) and C.R. 26/South Range Road (DOT#544764W) grade crossings (Staff Report at 39, 49, 54). Finally, Staff notes that the rail at the T.R. 30/Calla Road grade crossing has been paved over, and that NS has classified as out of service and inaccessible to trains the grade crossings at North Johnson Road (DOT#502469B), C.R. 26/South Range Road (DOT#544764W), and C.R. 11/Oyster Road (DOT#544765D) (Staff Report at 44, 49, 54).

{¶ 13} Given its findings, Staff recommends approval of the exemption requests, as there is no train traffic at any of the crossings. Staff further recommends that the Commission require NS to place a stop and flag order at the crossings if train traffic resumes, and that NS notify the Commission upon resumption of train traffic, so that the exemptions can be reviewed to determine if they should stay in place. Finally, Staff recommends that it conduct a follow-up inspection to verify that exemption signs are posted, and to update the rail database. (Staff Report at 64.)

{¶ 14} At the November 15, 2019 hearing, three witnesses testified in support of the exemption requests; there was no opposing testimony. Sherri Malloy, Transportation Supervisor at West Branch Local Schools, contends that the crossings for which exemptions are requested are “unused,” and that the tracks are paved over at some of the crossings, while at other crossings trees and grass have overgrown the tracks (Tr. at 5-6). She emphasizes that, although state law requires school buses to stop at the crossings, drivers following the buses “* * * are either impatient or don’t understand why we have to stop, and we are trying to prevent rear-end collisions * * * ” (Tr. at 6). Ms. Malloy adds that “* * * we drive eight ton school buses * * * [and] if you’re * * * in a car behind us, you’re going to take the brunt [of a collision] * * * ” (Tr. at 6-7). Ms. Malloy asserts that “we have had close calls” with near-collisions and emphasizes that, if the buses did not have to stop at the crossings, safety would improve (Tr. at 7). Ms. Malloy stated that her safety concerns address not just when buses transport students at the beginning and end of the school day, but also during transportation to after-school events such as sports (Tr. at 8-9).

{¶ 15} Douglas McGlynn, Superintendent of Western Reserve Local Schools, testified that Weaver Road is on an incline. He added that, as buses descend the incline and stop at the grade crossing, drivers attempt to pass the buses, increasing the likelihood of a front-end collision with drivers proceeding in the opposite direction (Tr. at 10). He noted that “we had some close calls” in which buses were nearly involved in a collision with other vehicles (Tr. at 11). In Mr. McGlynn’s opinion, an exemption would eliminate

the risks associated with the buses stopping at the crossing, not just at the start and finish of the school day, but during activities after school (Tr. at 11-12). Mr. McGlynn added that there are grass and trees growing through the tracks at Weaver Road (Tr. at 11).

{¶ 16} Bob Durbin of the Mahoning County Engineer's Office stated that he has visited each of the crossings maintained by Mahoning County and the two crossings maintained by Goshen Township (Tr. at 12). He contends that each of these crossings should be exempt for the reasons stated by Ms. Malloy and Mr. McGlynn. In Mr. Durbin's opinion, " * * there could be some hazardous situations created by buses having to stop at these crossings, due to other traffic not wanting to stop or not needing to stop" (Tr. at 13). Mr. Durbin fully supports the exemption requests (Tr. at 13.)

V. COMMISSION CONCLUSION

{¶ 17} R.C. 4511.63 provides that, after considering any comments or other information received, the Commission may approve or reject an application for an exemption and may establish conditions for the exempt crossing designation. R.C. 4511.63(B)(2) also provides that an exempt crossing becomes effective only when appropriate signs giving notice of the exempt designation are erected at the crossing, as ordered by the Commission, and any other conditions ordered by the Commission are satisfied.

{¶ 18} After consideration of the evidence, we find that, pursuant to R.C. 4511.63, the request for an exemption is warranted at the 12 grade crossings.

{¶ 19} Staff's investigative reports, as well as testimony at the hearing, indicate that there are currently no trains using any of the crossings (Tr. at 12). The evidence also shows that, because none of the crossings are used for train traffic, some motor vehicle drivers do not expect school buses to stop at the crossings; consequently, the likelihood for motor vehicle accidents is increased (Tr. at 6-7, 10-11, 13). An even greater possibility of

such collisions exists when the school buses travel over the crossings to after-school sports and other events (Tr. at 8-9, 11-12).

{¶ 20} Upon considering all of the evidence, and pursuant to R.C. 4511.63, the Commission finds it reasonable to grant the request to exempt school buses and certain hazardous materials vehicles from stopping at the crossings, as would usually be required by 49 C.F.R. 392.10. We note that, because there are no rail movements at the crossings, there is no risk of train/vehicle collisions. Furthermore, the exemption will decrease the potential for accidents caused by inattentive drivers not realizing that a school bus or placarded vehicle has stopped in front of them. Notwithstanding our granting of the exemption request, all vehicles, including those covered by the exemption, must fully comply with all other state of Ohio motor vehicle safety rules and obey all existing warning devices whenever a train is operating over a grade crossing.

{¶ 21} Accordingly, the Mahoning County Engineer, Goshen Township, and the village of Sebring, as the local highway authorities (LHA), should place signs marked “Exempt” that are in conformance with the Ohio Manual of Uniform Traffic Control Devices at the respective crossings and at other appropriate locations in advance of the grade crossings. Additionally, we find that NS must place a stop and flag order at the crossing for any future train movements over the crossings.

{¶ 22} Further, R.C. 4511.63 provides that the Commission may rescind any exempt crossing designation made under this section, if it finds that a condition at the exempt crossing has changed to such an extent that continuing the exempt crossing designation compromises public safety. If NS or any other railroad files a petition to rescind the granted exemption, we shall reconsider such petitions according to R.C. 4511.63. We note that the granting of the exemption request has no impact on the railroad, since NS is not currently conducting any operations affecting the crossing under consideration in these proceedings. Nevertheless, NS should provide advance notice to the Commission, the Mahoning County Engineer, the village of Sebring, the Transportation Director for West

Branch Local Schools, and the Principal for Western Reserve Schools in the event that NS intends to resume rail operations at the crossings, which would impact school bus or hazardous material transportation activities. In the event rail operations are to resume at the crossings, the Commission will reevaluate the exemption.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 23} On October 18, 2018, on behalf of the West Branch School District in Beloit, Ohio, Bob Durbin of the Mahoning County Engineer's office filed a letter requesting an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at the following grade crossings: C.R. 84/Alliance Sebring Road (DOT#502462D), C.R. 22/Courtney Road (DOT#502464S), C.R. 23/North 12th Street (DOT#502465Y), C.R. 28/West Middletown Road (DOT#502466F), C.R. 25/Beloit Snodes Road (DOT#502467M), and C.R. 32/Western Reserve Road (DOT#502471C) C.R. 49/Weaver Road (DOT#502477T). In addition, on behalf Goshen Township, Mr. Durbin filed exemption requests for T.R. 29/Smith Goshen Road (DOT#502468U) and T.R. 30/Calla Road (DOT#502469B).

{¶ 24} On February 1, 2019, on behalf of Western Reserve Local School District in Berlin Center, Ohio, Mr. Durbin filed a letter requesting an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at the C.R. 49/Weaver Road (DOT#502477T) grade crossing.

{¶ 25} On June 25, 2019, as amended on October 9, 2019, the Village of Sebring filed a letter requesting an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at the North Johnson Road (DOT#502463K) grade crossing.

{¶ 26} On October 11, 2019, Mr. Durbin filed a letter requesting an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at the

C.R. 11/Oyster Road (DOT#544765D) and C.R 26/South Range Road (DOT#544764W) grade crossings.

{¶ 27} Notice of the hearing was duly published in the Youngstown Vindicator, a newspaper of general circulation in Mahoning County, and in press releases issued by the Commission.

{¶ 28} A hearing was held on November 15, 2019, at West Branch High School in Beloit, Ohio.

{¶ 29} On December 6, 2019, NS filed a response to the exemption requests, stating that it has no objection to the requests made by the Mahoning County Engineer or the village of Sebring.

{¶ 30} On December 13, 2019, Staff filed investigative reports regarding the exemption requests.

{¶ 31} The request for an exemption from stopping for school buses, as well as certain commercial motor vehicles, as specified in 49 C.F.R. 392.10, is warranted based upon the evidence presented at the hearing for all 12 of the crossings.

VII. ORDER

{¶ 32} It is, therefore,

{¶ 33} ORDERED, That an exemption, pursuant to R.C. 4511.63, be granted to allow school buses and certain commercial motor vehicles, as specified in 49 C.F.R. 392.10, to proceed without stopping at the C.R. 84/Alliance Sebring Road (DOT#502462D), C.R. 22/Courtney Road (DOT#502464S), C.R. 23/North 12th Street (DOT#502465Y), C.R. 28/West Middletown Road (DOT#502466F), C.R. 25/Beloit Snodes Road (DOT#502467M), C.R. 32/Western Reserve Road (DOT#502471C), C.R. 49/Weaver Road (DOT#502477T),

C.R. 11/Oyster Road (DOT#544765D), and C.R 26/South Range Road (DOT#544764W) grade crossings in Mahoning County. It is, further,

{¶ 34} ORDERED, That the Mahoning County Engineer, as the LHA, place signs marked “Exempt” that are in conformance with the Ohio Manual of Uniform Traffic Control Devices at the C.R. 84/Alliance Sebring Road (DOT#502462D), C.R. 22/Courtney Road (DOT#502464S), C.R. 23/North 12th Street (DOT#502465Y), C.R. 28/West Middletown Road (DOT#502466F), C.R. 25/Beloit Snodes Road (DOT#502467M), C.R. 32/Western Reserve Road (DOT#502471C), C.R. 49/Weaver Road (DOT#502477T), C.R. 11/Oyster Road (DOT#544765D) and C.R 26/South Range Road (DOT#544764W) grade crossings in Mahoning County, and at other appropriate locations in advance of the crossing. It is, further,

{¶ 35} ORDERED, That an exemption, pursuant to R.C. 4511.63, be granted to allow school buses and certain commercial motor vehicles, as specified in 49 C.F.R. 392.10, to proceed without stopping at the T.R. 29/Smith Goshen Road (DOT#502468U), and T.R. 30/Calla Road (DOT#502469B) in Goshen Township. It is, further,

{¶ 36} ORDERED, That Goshen Township, as the LHA place signs marked “Exempt” that are in conformance with the Ohio Manual of Uniform Traffic Control Devices at the two grade crossings in Goshen Township, and at other appropriate locations in advance of the crossing. It is, further,

{¶ 37} ORDERED, That an exemption, pursuant to R.C. 4511.63, be granted to allow school buses and certain commercial motor vehicles, as specified in 49 C.F.R. 392.10, to proceed without stopping at the North Johnson Road (DOT#502463K) grade crossing.

{¶ 38} ORDERED, That the village of Sebring, as the LHA, place signs marked “Exempt” that are in conformance with the Ohio Manual of Uniform Traffic Control Devices at the North Johnson Road (DOT#502463K) grade crossing, and at other appropriate locations in advance of the crossing. It is, further,

{¶ 39} ORDERED, That NS place a stop and flag order at the crossings when train movements occur, and if train traffic increases at the crossings, notify the Commission of the increase in train movements. It is, further,

{¶ 40} ORDERED, That Staff should conduct a follow-up inspection to verify that exemption signs are posted and update the Commission's rail database as needed. It is, further,

{¶ 41} ORDERED, That a copy of this Opinion and Order be served on NS, the village of Sebring, Goshen Township Trustees, Mahoning County Engineer, and all other persons of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JML/hac

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Summary: Opinion & Order that the Commission grants a request by the Mahoning County Engineer for an exemption from stopping at 12 grade crossings in Mahoning County. In addition, the Commission grants a request by the village of Sebring for an exemption from stopping for school buses and hazardous materials vehicles at the North Johnson Road grade crossing in Mahoning County electronically filed by Docketing Staff on behalf of Docketing