

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF A REQUEST BY THE
CITY OF ASHLAND FOR AN EXEMPTION
FROM STOPPING FOR SCHOOL BUSES
AND HAZARDOUS MATERIALS VEHICLES
AT THE STATE ROUTE 58/UNION STREET
ASHLAND RAILWAY GRADE CROSSING
IN ASHLAND COUNTY.

CASE NO. 19-1779-RR-RCP

OPINION AND ORDER

Entered in the Journal on April 8, 2020

I. SUMMARY

{¶ 1} The Commission denies a request by the Law Director for the city of Ashland, filed on behalf of the city of Ashland, for an exemption from stopping for school buses and hazardous materials vehicles at the State Route 58/Union Street Ashland Railway grade crossing in Ashland County because the grade crossing is already closed.

II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} On September 16, 2019, Richard P. Wolfe (Mr. Wolfe), the Law Director for the city of Ashland (Ashland), which is the local authority, filed a letter requesting an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at the State Route 58/Union Street grade crossing, United States Department of Transportation (DOT) No. 265034C, in Ashland County, formerly used by Ashland Railway (ASRY). Mr. Wolfe explained that the crossing is no longer used, yet school bus traffic is still affected by it. According to Mr. Wolfe, the property that once used this railway no longer uses rail service at the property, and Ashland is not aware of any plans to repurpose the property to need rail service. Mr. Wolfe also advised that ASRY has indicated its support for the crossing exemption.

{¶ 3} By Entry issued November 7, 2019, the attorney examiner scheduled a local public hearing in this matter for December 5, 2019. The attorney examiner directed the Secretary of the Commission to publish notice of the hearing in a newspaper of general circulation in Ashland County. The Entry also directed Staff to file, no later than December

17, 2019, a report of its investigation on the exemption request. Finally, the attorney examiner directed interested persons to file comments on the exemption request by December 5, 2019.

{¶ 4} A public hearing was conducted on December 5, 2019, at the city of Ashland Council Chambers, Ashland, Ohio.

{¶ 5} On December 31, 2019, Staff filed a staff report (Staff Report) regarding its investigation of the request made by Mr. Wolfe. Staff recommends that the exemption request be denied and, instead, the tracks removed since the subject crossing was closed as of March 16, 2010.

{¶ 6} On March 2, 2020, Mr. Wolfe, on behalf of Ashland, filed correspondence acknowledging that Ashland thoroughly reviewed the Staff Report, agrees with Staff's assessments, and concurs with Staff's recommendations. Further, Ashland states that it desires that the tracks be removed from the closed crossing and wishes to use funds from the railroad supplemental program to assist with such removal. Ashland also clarified that the application listed the incorrect DOT No. for the subject grade crossing, which should have been DOT No. 264995F.

III. LAW

{¶ 7} 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

{¶ 8} In its Staff Report filed on December 31, 2019, Staff indicates that the grade crossing listed in the application, DOT No. 26034C, lies just south of the ASRY's mainline that traverses a bridge over State Route 58/Union Street, though Staff understands that Ashland intended to request exemption for the grade crossing just north of the mainline, DOT No. 264995F. Staff proceeded to discuss both crossings within the Staff Report. Staff observes that the DOT No. 264995F crossing is owned by ASRY. According to Staff, ASRY confirmed that this siding to the mainline served an industry many years ago, that no freight cars have been delivered to this siding for at least twenty-five years, that the switch off of the mainline west of this State Route 58/Union Street crossing was removed years ago, and that the rails between the switch and the crossing were also removed years ago. Staff notes that the grade crossing does not have crossing warning devices and that the tracks in the roadway still remain yet have been paved over. Staff further notes that trees have grown within the gage and that the crossing was listed as closed on March 16, 2010, in the Commission's and DOT's databases. (Staff Report 4-5.)

{¶ 9} With regard to the State Route 58/Union Street grade crossing, DOT No. 264995F, Staff recommends denying the exemption request because the crossing is already closed and advising that removing the rails is the best course of action moving forward. Staff further recommends the Commission require Staff to work with Ashland to remove the rails from the roadway and provide information to Ashland regarding the Commission's supplemental program for financial assistance. Staff also recommends that Ashland submit a new exemption request for DOT No. 265034C, the crossing located south of the overhead mainline on State Route 58/Union Street. (Staff Report at 8.)

{¶ 10} At the December 5, 2019 hearing, three witnesses testified in support of the exemption request; there was no opposing testimony. Mr. Wolfe testified that, since State Route 58/Union Street is a main artery north of Ashland, school bus traffic is frequent. He indicated that the close proximity between the subject crossing and the crossing just south of ASRY's mainline creates a time issue and a safety hazard for school bus drivers since each bus is required to stop for both crossings. (Tr. at 5-6, 10-11.) Shane Kremser, the City Engineer for Ashland, also testified and advised that local school bus drivers did not understand why they had to stop at the grade crossing since the crossing appeared unused, especially considering the rails were overgrown with vegetation on one side of the crossing. Mr. Kremser also noted that he contacted ASRY, who advised that it approved of an exemption. (Tr. at 6-7.) Doug Marrah, Superintendent of the Ashland City School District, testified that he agreed with the other witnesses' statements as well as the request for an exemption and reiterated that bus drivers have expressed concerns regarding safety and timing issues. (Tr. at 8-9.)

{¶ 11} On March 2, 2020, Mr. Wolfe, on behalf of Ashland, filed a letter indicating that Ashland reviewed the Staff Report, that it agrees with Staff's assessments, and that it concurs with Staff's recommendations. Further, Ashland states that it desires that the tracks be removed from the closed crossing and wishes to use funds from the railroad supplemental program to assist with such removal. Ashland also clarified that the application incorrectly listed the DOT No. for the subject grade crossing, which is correctly classified as DOT No. 264995F.

V. COMMISSION CONCLUSION

{¶ 12} 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.

{¶ 13} After consideration of the evidence, we find that, in light of Staff's recommendations and Ashland's agreement with them, pursuant to R.C. 4511.63, the request for an exemption is denied for the State Route 58/Union Street grade crossing (DOT No. 264995F). Staff's investigative report as well as testimony at the hearing indicate that the ASRY-owned rail line siding in question is out of service, there is no train service at the State Route 58/Union Street grade crossing, and the crossing is closed (Staff Report at 4-5; Tr. at 6-7). The evidence also shows that, because the crossing is not in use, there is some likelihood that local motor vehicle drivers do not expect school buses and hazardous materials vehicles to stop at the crossing, thereby increasing the risk of accidents (Tr. at 5-6, 10-11). Staff's investigative report also indicates that, since the crossing is closed, the paved-over rails should be removed from the roadway (Staff Report at 5, 8).

{¶ 14} Upon considering the evidence, and pursuant to R.C. 4511.63, the Commission finds it reasonable to deny the request to exempt school buses and certain hazardous materials vehicles from stopping at the crossing, as required by 49 C.F.R. 392.10 and R.C. 4511.63(A), with the understanding that, once the tracks are removed from the closed crossing, school buses and hazardous materials vehicles do not need to stop at the crossing. The Commission finds it reasonable to require Staff to work with Ashland to remove the rails from the grade crossing and provide information to Ashland regarding the Commission's supplemental program for financial assistance. Removing the tracks obviates any potential concern/question regarding whether school buses and certain hazardous materials vehicles still need to stop at a closed crossing when no exemption is granted but tracks remain in the roadway. Also, this decision eliminates the potential additional cost involved with requiring both the installation of exempt signs and track removal. We note that, because there are no rail movements at the crossing, there is no risk of train/vehicle collisions. Furthermore, removing the tracks 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 the Commission's decision in this matter, all vehicles 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.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 15} On September 16, 2019, pursuant to R.C. 4511.63, Richard P. Wolfe, the Law Director for Ashland, filed a letter on behalf of Ashland. In the letter, Mr. Wolfe requested an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at the State Route 58/Union Street grade crossing, DOT No. 265034C, in Ashland County.

{¶ 16} A public hearing was conducted on December 5, 2019, at the city of Ashland Council Chambers, Ashland, Ohio.

{¶ 17} On December 31, 2019, Staff filed a staff report regarding its investigation into the exemption request and, among other findings, advised that the application accidentally misidentified the grade crossing designation, which should have been identified as DOT No. 264995F.

{¶ 18} On March 2, 2020, Mr. Wolfe, on behalf of Ashland, filed correspondence advising that Ashland agrees with Staff's recommendations and acknowledging that the exemption request in this matter pertains to DOT No. 264995F and not DOT No. 265034C.

{¶ 19} 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 denied based upon Staff's investigation, the evidence presented at the hearing regarding the crossing, and the correspondence filed by Ashland regarding its agreement with Staff's recommendation to deny the exemption but to remove the tracks thereby allowing the above vehicles to proceed without stopping before the crossing.

VII. ORDER

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That an exemption, pursuant to R.C. 4511.63, be denied, with the understanding that once the rails are removed from the crossing, school buses and certain commercial motor vehicles, as specified in 49 C.F.R. 392.10, may proceed without stopping at the State Route 58/Union Street grade crossing, DOT No. 264995F, in Ashland County. It is, further,

{¶ 22} ORDERED, That Staff work with Ashland to remove the rails from the grade crossing and provide information to Ashland regarding the Commission's supplemental program for financial assistance. It is, further,

{¶ 23} ORDERED, That Staff should conduct a follow-up inspection to verify that the rails have been removed, and update the Commission's rail database as needed. It is, further,

{¶ 24} ORDERED, That a copy of this Opinion and Order be served on ASRY, the Law Director of the city of Ashland, and all other persons of record.

COMMISSIONERS:*Approving:*

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

MJS/mef

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