

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Request for an)
Exemption from Stopping for School)
Buses and Other Motor Vehicles at the)
Graham Road Grade Crossing)
(503578H), in the Village of Silver Lake,) Case No. 10-2354-RR-RCP
Ohio and the Hudson Drive Grade)
Crossing (503580J), and the Front)
Street/SR59 Grade Crossing (503581R),)
in Cuyahoga Falls, Ohio.)

OPINION AND ORDER

The Commission, considering the applicable law, exhibits, and evidence of record, and being otherwise fully advised, hereby issues its opinion and order in this matter.

OPINION:

I. Procedural History

On October 13, 2010, Cuyahoga Falls City Schools filed a request, pursuant to Section 4511.63, Revised Code, for an exemption from stopping at the Graham Road Grade Crossing (503578H) in Silver Lake and the Hudson Drive Grade Crossing (503580J) and the Front Street/SR59 Grade Crossing (503581R) in Cuyahoga Falls, in Summit County, Ohio. In the request, Cuyahoga Falls City Schools claims that requiring school buses to follow the "flashing lights, stop and look" requirement, even though no train has used the tracks in many years, is hazardous.

On November 12, 2010, the Cuyahoga Falls City Engineer filed a letter stating that, provided none of the existing pavement marking or signage needs removed, and any additional signage will be done by others, the city of Cuyahoga Falls does not object to the requested exemption at the crossings which have been inactive since 2002.

On October 20, 2010, Commission staff filed an investigative report on the exemption request. By entry issued November 29, 2010, a public hearing was scheduled for December 21, 2010, in Cuyahoga Falls, and the Commission's Docketing Division was directed to publish notice of the hearing in a newspaper of general circulation in Summit County. In addition, the November 29, 2010, entry directed that any interested person could file comments on the exemption request by December 17, 2010. Copies of

the entry were served on Metro Regional Transit Authority (MRTA), Cuyahoga Falls City Schools, the Cuyahoga Falls City Engineer, the Mayor of Silver Lake, Ohio, and Ohio Department of Transportation District 4 (ODOT). Subsequently, notice of the hearing was published in the *Akron Beacon Journal*.

On December 20, 2010, MRTA filed a letter stating that it has no objection to the exemption. No other comments were filed on the exemption request.

On December 21, 2010, a public hearing was held as scheduled. At the hearing, two witnesses testified in favor of the exemption request and no one testified in opposition.

II. Applicable Law

The Commission's authority to grant exemptions for vehicles from stopping at railroad grade crossings is found in Section 4511.63, Revised Code. Section 4511.63(A), Revised Code, 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 C.F.R. Parts 100-185, before crossing at grade any track of a railroad, shall stop the vehicle....

Section 4511.63(B), Revised Code, provides that Section 4511.63(A), Revised Code, does not apply when the Commission has authorized and approved an exempt crossing pursuant to the division.

III. Summary of the Evidence

In its report, Staff stated that its investigation of the crossings disclosed that all three crossings were protected with overhead cantilevers with flashers and gates. Moreover, Staff stated that all three road crossings have a single train track crossing them with heavy vegetation growing over the rails on both sides of each crossing, signifying no recent train traffic. According to Staff, Commission records confirm that all three crossings have been inactive since 2002. Staff also observed that these crossings have a high volume of vehicle traffic over them and all 22 school buses of the Cuyahoga Falls City Schools must stop at these crossings at least once per day to comply with the "flashing lights, stop, and listen" requirement of Section 4511.63, Revised Code. Staff further observed that the flow of vehicles is adversely affected by the requirement that vehicles observe the "flashing lights, stop, and listen" requirement.

Staff concluded that the three crossings have no traffic at this time; that MRTA, the owner and operator is in agreement with the request for an exemption, and that granting the exemption will improve traffic flow in the area by allowing the school bus fleet to proceed over the crossings without stopping. In sum, Staff recommended that the exemption be granted.

Two witnesses testified at the December 21, 2010, local public hearing. The first witness, Douglas Hardgrove, Transportation Supervisor for the Cuyahoga Falls City Schools, testified that the crossings at issue have been inactive since 2002, and that he feels that requiring school buses to stop at these crossings puts the lives of students in danger due to the proximity of the railroad tracks to the intersection of Hudson Drive and Front Street where multiple lanes of traffic flow through. According to witness Hardgrove, this creates a situation where a bus may be stopped at any of the crossings with traffic passing on either side.

The second witness, Edwin Holland, Superintendent of Cuyahoga Falls City Schools testified that these crossings have been an issue with the surrounding community because as soon as buses proceed through an intersection, or make a turn, they are required to stop at the railroad crossing. Witness Holland testified that this results in other vehicles turning a corner or crossing an intersection and immediately encountering a stopped school bus. According to Witness Holland numerous vehicles have almost hit a stopped school bus at these crossings and that the community and the traveling public would be safer if buses were not required to stop at these crossings.

IV. Commission Conclusion

Section 4511.63(B)(2), Revised Code, provides that, after considering any comments or other information received, the Commission may approve or reject an exemption request. In this case, the evidence supports the granting of the request for an exemption. Because of the out-of-service status of the crossings, there is currently no possibility of rail traffic over the crossings. Therefore, approving an exempt status for the crossings will not impair safety at the crossing. Indeed, the risk of vehicle accidents at the crossings, created by stopped buses being struck from behind, may be lowered. Accordingly, we find that the request for an exemption for vehicles from stopping at the Graham Road Grade Crossing (503578H) the Hudson Drive Grade Crossing (503580J) and the Front Street/SR59 Grade Crossing (503581R) pursuant to Section 4511.63, Revised Code, should be granted. The local highway authority should place signs marked "Exempt" that are in conformance with the Ohio Manual of Uniform Traffic Control Devices at appropriate locations in advance of the crossing. Local highway authorities may apply to the Commission for financial assistance for the cost of signage.

Finally, Section 4511.63(B)(3), Revised Code, also 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 the continuation of the exempt crossing designation compromises public safety. We note that the granting of this exemption request has no impact on MRTA's operations on this rail line which, as we have stated, are not currently occurring. Nevertheless, MRTA should provide at least 90 days advance notice to the Commission, Cuyahoga City Falls Schools, the Cuyahoga Falls City Engineer, and the Mayor of Silver Lake in the event it intends to commence rail operations at these crossings in the future. In the event rail operations commence at any of these crossings, the Commission may reevaluate this exemption.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On October 13, 2010, Cuyahoga Falls City Schools filed a request, pursuant to Section 4511.63, Revised Code, for an exemption from stopping at the Graham Road Grade Crossing (503578H) in Silver Lake and the Hudson Drive Grade Crossing (503580J) and the Front Street/SR59 Grade Crossing (503581R) in Cuyahoga Falls, in Summit County, Ohio. Thereafter, on November 12, 2010, the Cuyahoga Falls City Engineer, filed a letter stating that, provided none of the existing pavement marking or signage needs removed, and any additional signage will be done by others, the city of Cuyahoga Falls does not object to the requested exemption at the crossings which have been inactive since 2002.
- (2) On October 20, 2010, Commission staff filed an investigative report on the exemption request.
- (3) By entry issued November 29, 2010, a public hearing was scheduled, a deadline was established for filing comments, and the Commission's Docketing Division was directed to publish notice of the hearing in a newspaper of general circulation in Summit County. Copies of the entry were served on MRTA, Cuyahoga Falls City Schools, the Cuyahoga Falls City Engineer, the Mayor of Silver Lake, and the Ohio Department of Transportation District 4.
- (4) On December 20, 2010, MRTA filed a letter stating that it has no objection to the exemption.
- (5) Notice of the hearing was published in the *Akron Beacon Journal*.

- (6) The hearing was held on December 21, 2010, in Cuyahoga Falls, Ohio. Two witnesses testified in favor of the crossing exemption; no one testified in opposition.
- (7) Because of the out-of-service status of crossing, there is currently no possibility of rail traffic over the crossing. Therefore, approving an exempt status for the Graham Road Grade Crossing (503578H), the Hudson Drive Grade Crossing (503580J), and the Front Street/SR59 Grade Crossing (503581R) will not impair safety at the crossing.
- (8) The request for an exemption for vehicles from stopping at the Graham Road Grade Crossing (503578H), the Hudson Drive Grade Crossing (503580J), and the Front Street/SR59 Grade Crossing (503581R), pursuant to Section 4511.63, Revised Code, should be granted.

ORDER:

It is, therefore,

ORDERED, That an exemption, pursuant to Section 4511.63, Revised Code, be granted to allow buses, school buses, and any vehicle transporting a material or materials required to be placarded under 49 C.F.R. Parts 100-185, to proceed without stopping at the grade crossing located at Graham Road Grade Crossing (503578H), the Hudson Drive Grade Crossing (503580J), and the Front Street/SR59 Grade Crossing (503581R), in Summit County, Ohio. It is, further,

ORDERED, That local highway authority place "Exempt" signs at appropriate locations in advance of the crossing. It is, further,

ORDERED, That MRTA should provide at least 90 days advance notice to the Commission, the Ohio Department of Transportation District 4, Cuyahoga City Falls Schools, the Cuyahoga Falls City Engineer, and the Mayor of Silver Lake, in the event it intends to commence rail operations at the crossing in the future. It is, further,

ORDERED, That a copy of this opinion and order be served on MRTA and its counsel, ODOT, Cuyahoga City Falls Schools, the Cuyahoga Falls City Engineer, and the Mayor of Silver Lake, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Steven D. Lesser, Chairman



Paul A. Centolella



Valerie A. Lemmie



Cheryl L. Roberto

KLS/dah

Entered in the Journal **FEB 02 2011**



Renee J. Jenkins
Secretary