

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF A REQUEST BY THE CITY
OF TALLMADGE, OHIO FOR AN EXEMPTION
FROM THE REQUIREMENT UNDER R.C.
4511.63 FOR SCHOOL BUSES AND
HAZARDOUS MATERIALS VEHICLES TO
STOP AT A GRADE CROSSING LOCATED AT
MIDDLEBURY ROAD IN THE CITY OF
TALLMADGE OHIO.**

CASE NO. 16-1946-RR-RCP

OPINION AND ORDER

Entered in the Journal on February 23, 2017

I. SUMMARY

{¶ 1} The Commission grants the request for exemption from the statutory requirement for school buses and hazardous materials vehicles to stop at a specific railway crossing located at Middlebury Road in Tallmadge, Ohio.

II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} On September 27, 2016, David G. Kline, Mayor of the city of Tallmadge, Ohio filed a letter pursuant to R.C. 4511.63, requesting an exemption from the statutory requirement for school buses and motor vehicles carrying certain hazardous materials to stop at a specific grade crossing (identified as DOT#264-889X) at Middlebury Road in the city of Tallmadge, Ohio, on the county line between Portage and Summit counties, but identified under Federal Railroad Administration (FRA) guidelines as being within Portage County, Ohio.

{¶ 3} By Entry issued November 3, 2016, a local public hearing was scheduled for, and held, on December 7, 2016, in Tallmadge, Ohio. Notice of the hearing was duly sent to METRO RTA, the owner of the rail line at the Middlebury Road crossing. Additionally, notice of the hearing also was given in a press release issued by the Commission. Finally, notice of the hearing was published in the Akron Beacon Journal, a newspaper of general circulation in Summit County, Ohio, and in the Record-Courier

a newspaper of general circulation in Portage County. Proof of publication in both newspapers was filed on December 2, 2016.

{¶ 4} On December 2, 2016, Staff filed an investigative report in this case, recommending that the requested exemption be granted under certain conditions.

III. LAW

{¶ 5} 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

{¶ 6} In its investigative report, Staff notes that the Middlebury Road crossing is owned by METRO RTA, and operated by The Shelley Company, a gravel and stone business located close to the crossing. Neither the owner nor the operating company have any objection to, and indeed both support, the request for exemption submitted in this case. The crossing consists of one main track which runs east and west intersected by Middlebury Road traveling in a north-south direction. Passive warning devices, namely cross-bucks, are installed at the crossing. The crossing has no train traffic. Indeed, a pile of gravel currently blocks rail traffic from the east direction, while the rail

has been removed on the west side of the crossing. Heavy vegetation has grown over the rails signifying that, for an extensive period, no rail traffic has approached the crossing. On the other hand, a moderate volume of vehicular traffic, including both multiple school buses and hazardous material vehicles, currently make daily use of the crossing. In Staff's view, a grant of the requested exemption would help reduce the possibility of rear-end collisions at the crossing. (Staff Report, at 3, 7.)

{¶ 7} Staff recommends that the requested exemption be granted to reduce the possibility of rear-end collisions. Further, Staff recommends that the involved railroad be required: (a) to place a derail device at the crossing to prohibit trains from entering the crossing; (b) to place a stop and flag order on the crossing for any future train movements; and (c) to notify the Commission beforehand if train traffic were ever to begin again at the crossing, so that the exempt status of the involved crossing can be reviewed and a determination made whether it should remain in place.

{¶ 8} Two witnesses testified at the December 7, 2016 hearing, both in support of the exemption request. No member of the public appeared or testified in opposition to the exemption request.

{¶ 9} Mr. David G. Kline, Mayor of the city of Tallmadge, began his testimony by explaining how the involved crossing is situated in relationship to various political boundaries. The crossing itself is located entirely within the city of Tallmadge, Ohio. Nevertheless, it is situated on a boundary with the city of Stow, in Summit County, Ohio and also on a boundary with the city of Kent, in Portage County, Ohio (Tr. 6, 7; Hearing Exs. A, B, and C). He testified that his city's request for exemption began because his office, the Commission, and METRO RTA began fielding complaints from school bus drivers who questioned the safety of being required to stop at the involved crossing that no longer bears train traffic (Tr. 8, Hearing Ex. D). Mr. Kline testified from personal knowledge that the rail is broken, disconnected, and has been removed from the west side of the crossing; and that a big pile of stones has been placed on the track to the east

of the crossing "to prevent anybody from bringing anything down that track" (Tr. 9, 10; Hearing Ex. G). Mayor Kline testified that there is an "S" curve in the road as it approaches the crossing (Hearing Ex. I). Also, the slope of the roadway in the vicinity of the crossing contributes to limited visibility for vehicular traffic as it approaches the crossing (Tr. 11, Hearing Ex. H). Consequently, a potential for rear-end collisions exists at the crossing because cars coming around the curve and up the slope in the roadway have only a very limited opportunity to see whether, in front of them, might be a school bus or other vehicle that, perhaps unexpectedly, is engaged in stopping at the crossing (Tr. 10, 11; Hearing Ex. I). It is Mr. Kline's professional opinion, as the Safety Director for the city of Tallmadge, that the current configuration of track and grade at the crossing, especially given that train traffic no longer exists at the crossing, presents a safety issue involving an unnecessary and increased potential for rear-end collisions, that could be alleviated by a grant of the exemption being requested in this case (Tr. 11, 12).

{¶ 10} One of the exhibits introduced to support Mayor Kline's oral testimony, admitted as evidence at the hearing, was a letter, dated November 18, 2016, from the Executive Director of METRO RTA, indicating that the owners of the rail line have no objection to, and actually support, the exemption request filed in this case (Tr. 12; Hearing Exhibit J).

{¶ 11} Jim Soyars, Director of Business Services for the Kent City School District, testified that he is in charge of that school district's transportation needs and also serves as substitute school bus driver (Tr. 13). On school days, Kent City School District school buses move over the involved crossing ten times per day (Tr. 14; Hearing Ex. K). Thus, school buses currently stop at the crossing approximately 1,800 times throughout the school year (Tr. 15). Overall, his testimony supports the conclusion that the requested exemption, if granted, would both increase student transportation efficiency and improve public safety by helping to alleviate the existing potential for rear-end collisions with school busses by members of the traveling public (Tr. 13-15).

V. COMMISSION CONCLUSION

{¶ 12} R.C. 4511.63 provides that, after considering any comments or other information received, the Commission may approve or reject the application 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 of record, we find that, pursuant to R.C. 4511.63, the request for an exemption from stopping for school buses and hazardous materials haulers at the involved Middlebury Road crossing in Tallmadge is warranted. From a review of the evidence, there are currently no trains operating on the tracks at the crossing involved in this case. The current legal requirement for school buses and certain other vehicles to stop at the crossing is creating needless delay for all of the traveling public who make use of the grade crossing (Tr. at 12-15). In addition, because this crossing is no longer used for train traffic, drivers of motor vehicles are not expecting school buses and hazardous material vehicles to stop at the crossing, and because of the manner in which the crossing is configured, have a very limited opportunity to discern as they approach the crossing, whether buses and other vehicles ahead of them are stopping there, which creates a safety hazard (Tr. at 10-15).

{¶ 14} Upon considering all of the evidence, the Commission finds it reasonable to grant, pursuant to R.C. 4511.63, the request to exempt school buses and certain hazardous materials vehicles from stopping at the crossing involved in this case, as would ordinarily be required by 49 C.F.R. 392.10. We agree that, because there are no rail movements at the crossing there is no risk of a train/vehicle collision. Further, the risk of accidents at the involved crossing, created by stopped buses or placarded vehicles being struck from behind by vehicles outweighs the potential of a vehicle/train accident, particularly so long as no operations are being conducted over the subject rails. Drivers of school buses and commercial motor vehicles transporting hazardous materials are

professional drivers and are required to understand the rules applicable to the transportation of vehicles they are operating, irrespective of whether these crossings are exempt or nonexempt. Because exempt signs modify the legal requirements for professional drives of certain vehicles at certain locations, all such drivers are legally required to know what such signage means and what actions such signage permits.

{¶ 15} Notwithstanding our granting of this 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 these crossings.

{¶ 16} Accordingly, the city of Tallmadge, as the local highway authority, should place at the involved Middlebury Road crossing signs marked "Exempt" that are in conformance with the Ohio Manual of Uniform Traffic Control Devices. Once this occurs, the city of Tallmadge should send written notice to Staff that such signs have been placed.

{¶ 17} Also, METRO RTA should place a derail device at the crossing to prohibit trains from entering the crossing and, once this has occurred, send written notice to Staff that the derail device has been placed.

{¶ 18} Once Staff receives notice from the local highway authority that the exempt signs have been placed, and notice from the involved railroad that the derail device has been placed, Staff should complete a follow-up inspection of the involved rail crossing and, thereafter, file a notice in this docket, setting forth Staff's findings concerning whether the local highway authority and the involved railroad have achieved compliance with all of the directives to them which are set forth in this Opinion and Order as pertains to placement of exempt signs and derail devices.

{¶ 19} Additionally, METRO RTA should: (a) place a stop and flag order on the crossing for any future train movements; and (b) notify the Commission beforehand if

train traffic were ever to begin again at the crossing, so that the exemption status of the involved crossing can be reviewed to verify if it should remain in place.

{¶ 20} 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 the continuation of the exempt crossing designation compromises public safety. Thus, if METRO RTA 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 should have no immediate significant impact on METRO RTA since it is not currently conducting any operations effecting the crossing under consideration in this proceeding. Nevertheless, METRO RTA should provide advance notice to the Commission, the city of Tallmadge, and the superintendent of the Kent City School District in the event METRO RTA intends to resume rail operations at its involved crossing which would impact school bus or hazard material transportation activities. In the event rail operations resume at this crossing, the Commission will reevaluate this exemption.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 21} On September 27, 2016, David G. Kline, Mayor of the city of Tallmadge, Ohio filed a letter pursuant to R.C. 4511.63, requesting an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at a grade crossing (identified as DOT#264-889X) at Middlebury Road in the city of Tallmadge, Ohio, on the county line between Portage and Summit counties, but identified under Federal Railroad Administration (FRA) guidelines as being within Portage County, Ohio.

{¶ 22} On December 2, 2016, Staff filed its investigative report regarding the exemption request.

{¶ 23} A hearing was held on December 7, 2016, in Tallmadge, Ohio.

{¶ 24} Notice of the hearing was duly published in the Akron Beacon Journal, a newspaper of general circulation in Summit County, Ohio, and in the Record-Courier, a newspaper of general circulation in Portage County, Ohio, and was also the subject by a press release issued by the Commission in advance of the hearing. Proof of publication was filed on December 2, 2016.

{¶ 25} 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 at the involved Middlebury Road crossing, based upon the evidence presented at the hearing.

VII. ORDER

{¶ 26} It is, therefore,

{¶ 27} 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 grade crossing identified in Paragraph 2 of this Opinion and Order. It is, further,

{¶ 28} ORDERED, That the city of Tallmadge, as the local highway authority, should place at the involved Middlebury Road crossing signs marked "Exempt" that are in conformance with the Ohio Manual of Uniform Traffic Control Devices. Additionally, once this occurs, the city of Tallmadge should send written notice to Staff that such signs have been placed. It is, further,

{¶ 29} ORDERED, That METRO RTA must place a derail device at the crossing to prohibit trains from entering the crossing and, once this has occurred, send written notice to Staff that the derail device has been placed. It is, further,

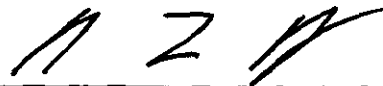
{¶ 30} ORDERED, That once Staff receives notice from the local highway authority that the exempt signs have been placed, and notice from the involved railroad that the derail device has been placed, Staff should complete a follow-up inspection of the

involved rail crossing and, thereafter, file a notice in this docket, setting forth Staff's findings concerning whether the local highway authority and the involved railroad have achieved compliance with all of directives addressed to them which are set forth in this Opinion and Order as pertains to placement of exempt signs and derail devices. It is, further,

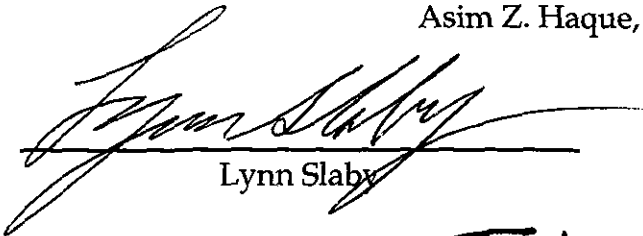
{¶ 31} ORDERED, That METRO RTA should both place a stop and flag order on the crossing for any future train movements; and also notify the Commission beforehand if train traffic were ever to begin again at the crossing, so that the exemption status of the involved crossing can be reviewed to verify if it should remain in place. It is, further,

{¶ 32} ORDERED, That a copy of this Opinion and Order be served on METRO RTA, the city of Tallmadge, the Superintendent of the Kent City School District, the Portage County Commissioners, the Summit County Commissioners, the Ohio Trucking Association, the National Tank Truck Carriers, Inc., the Ohio Rail Development Commission, and all other persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman



Lynn Slaby



M. Beth Trombold



Thomas W. Johnson

DEF/dah

Entered in the Journal

FEB 23 2017Barcy F. McNeal
Secretary