

THE PUBLIC UTILITIES COMMISSION OF OHIO

**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 DIEHL
ROAD, BAILEY ROAD, AND ELLSWORTH
ROAD GRADE CROSSINGS IN
MAHONING COUNTY.**

CASE No. 18-1114-RR-RCP

**IN THE MATTER OF A REQUEST BY THE
OHIO DEPARTMENT OF
TRANSPORTATION FOR AN EXEMPTION
FROM STOPPING FOR SCHOOL BUSES
AND HAZARDOUS MATERIALS VEHICLES
AT THE STATE ROUTE 14, STATE ROUTE
534, AND U.S. ROUTE 224 GRADE
CROSSINGS IN MAHONING COUNTY.**

CASE No. 18-1278-RR-RCP

OPINION AND ORDER

Entered in the Journal on February 6, 2019

I. SUMMARY

{¶ 1} The Commission grants a request by the Mahoning County Engineer for an exemption from stopping for school buses and hazardous materials vehicles at the Diehl Road, Bailey Road, and Ellsworth Road grade crossings in Mahoning County. In addition, the Commission grants a request by the Ohio Department of Transportation for an exemption from stopping for school buses and hazardous materials vehicles at the State Route 14, State Route 534, and U.S. Route 224 grade crossings in Mahoning County.

II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} On July 12, 2018, a letter was filed pursuant to R.C. 4511.63 by Bob Durbin, Deputy Engineer for Mahoning County, requesting that school buses and motor vehicles carrying certain hazardous materials be exempt from stopping at the Diehl Road (DOT#502480B), Bailey Road (DOT#502476L), and Ellsworth Road (DOT#502479G) (collectively, Diehl/Bailey/Ellsworth) grade crossings in Mahoning County. Mr. Durbin

noted that the crossings immediately north and south of the three crossings have already been given exempt status and the tracks have been paved over.

{¶ 3} On August 14, 2018, a letter was filed pursuant to R.C. 4511.63 by Brian Honaker, District 4 Railroad Coordinator for the Ohio Department of Transportation (ODOT), requesting that school buses and motor vehicles carrying certain hazardous materials be exempt from stopping at the State Route 14 (DOT#502470V), State Route 534 (DOT#502473R) and U.S. Route 224 (DOT#502474X) (collectively, S.R. 14/S.R. 534/U.S. 224) grade crossings in Mahoning County. Mr. Honaker states that the “rail line [at all three crossings] has not been in use for several decades,” and he adds that an exemption at the crossings “will result in an increase in safety for the traveling public.”

{¶ 4} By Entry issued September 27, 2018, a local public hearing was scheduled for October 19, 2018. 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 September 27, 2018 Entry also directed Staff to file, no later than October 16, 2018, a report of its investigation on the exemption request.

{¶ 5} On October 17, 2018, Staff filed investigative reports regarding the requests made by the Mahoning County Engineer and ODOT. 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.

{¶ 6} On October 19, 2018, Norfolk Southern Railway (NS) filed a response to the six exemption requests, stating that it has no objection to the requests made by the Mahoning County Engineer or ODOT.

{¶ 7} The hearing was conducted on October 19, 2018, at West Branch High School in Beloit, Ohio.

III. LAW

{¶ 8} 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

{¶ 9} In its investigative reports concerning the requests made by ODOT and the Mahoning County Engineer, Staff observes that the six crossings are owned and maintained by Norfolk Southern Railway. According to Staff, NS has confirmed that the rail line is out of service and that there is no train service at these crossings. (Diehl/Bailey/Ellsworth Staff Report at 3; S.R. 14/S.R. 274/U.S. 224 Staff Report at 3.)

{¶ 10} Staff indicates that the Bailey Road (DOT#502476L) and Diehl Road (DOT#502480B) grade crossings have passive warning devices, while the Ellsworth Road (DOT#509479G) grade crossing has gates and warning lights, the S.R. 14 (DOT#502470V) grade crossing has no warning devices, and the S.R. 534 (DOT#502473R) and U.S. 224 (DOT#502474X) grade crossings are equipped with active warning devices. (Diehl/Bailey/Ellsworth Staff Report at 4; S.R. 14/S.R. 274/U.S. 224 Staff Report at 4.) According to Staff, at all six grade crossings there is "heavy vegetation growing over the

rails on both sides of each crossing, signifying no recent train traffic.” Staff further states that each of the crossings has a “moderate volume” of vehicle traffic, with school buses from West Branch Local School District and Marlinton Local Schools stopping at the crossings at least once daily. (Diehl/Bailey/Ellsworth Staff Report at 4; S.R. 14/S.R. 274/U.S. 224 Staff Report at 4.)

{¶ 11} In light of the foregoing, Staff concludes, an exemption would help reduce the possibility of rear end collisions at these grade crossings where there is no train traffic. Staff recommends granting the exemption requests, with the requirement that NS places a stop and flag order at the crossings for any future train movements. Staff further recommends that NS must notify the Commission if train traffic will resume at the crossings, so that the exemption status can be reviewed to determine if it should stay in place. Finally, Staff recommends that it conducts a follow-up inspection to verify that exemption signs are posted, and to update the rail database. (Diehl/Bailey/Ellsworth Staff Report at 9; S.R. 14/S.R. 274/U.S. 224 Staff Report at 9.)

{¶ 12} At the October 19, 2018 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 it is unsafe for the buses to continue stopping at grade crossings that have no rail traffic, because oncoming vehicles and vehicles following the buses do not stop. She explained that “it’s public knowledge” that there are “not usable tracks” at the crossings. According to Ms. Malloy, West Branch Local Schools buses cross the S.R. 14 (DOT#502470V) grade crossing six times daily. (Tr. at 7.) She added that two buses travel over the S.R. 534 (DOT#502473R) and S.R. 224 (DOT#502474X) grade crossings twice when the buses are transporting students to the technical center, on field trips, or to extracurricular activities (Tr. at 7-9).

{¶ 13} ODOT’s Larry Poage testified next. According to Mr. Poage, the tracks at the S.R. 14 (DOT#502470V) grade crossing are paved over, and there are no warning devices,

but rather only pavement markings, Because of this, he contends, drivers behind the school buses and school vans have no indication that the buses and vans will stop at the crossing. Mr. Poage added that drivers familiar with the S.R. 14 (DOT#502470V) crossing know that it is not in use for train traffic, so they are unlikely to stop before crossing the tracks. (Tr. at 12, 14.) Mr. Poage also asserts that, although the S.R. 534 (DOT#502473R) and U.S. 224 (DOT#502474X) grade crossings still have warning devices and the tracks have not been paved over, neither crossing is utilized for rail traffic (Tr. at 13).

{¶ 14} Tom Mather, school bus mechanic for Marlinton Local Schools and former Transportation Supervisor for nearby Salem City Schools, also testified. Like Mr. Poage, Mr. Mather noted that the tracks at S.R. 14 (DOT#502470V) crossing are paved over and the crossbucks have been knocked over, so local traffic does not slow down when school buses stop at the crossing. He also contends that local traffic does not slow down at the S.R. 534 (DOT#502473R) and U.S. 224 (DOT#502474X) grade crossings. (Tr. at 17, 19.) He concluded that, because local traffic does not slow down at the S.R. 14 (DOT#502470V), S.R. 534 (DOT#502473R), and U.S. 224 (DOT#502474X) grade crossings, there could be collisions when school buses stop before proceeding over the crossings (Tr. at 20).

{¶ 15} After the hearing, correspondence was filed on December 10, 2018, by Douglas McGlynn, Superintendent of Western Reserve Schools. Mr. McGlynn contends that the Bailey Road (DOT#502476L), Diehl Road (DOT#502480B), and Ellsworth Road (DOT#509479B) grade crossings have been paved over for many years and are not usable for train traffic. Mr. McGlynn notes that three buses use the crossings twice a day, and he asserts that "the way the crossings are laid out, cars cannot always see the buses with enough time to turn or stop safely." He adds that, in 2017, a delivery truck did not see a stopped bus and collided with it when students were on board; fortunately, there were no injuries. He supports the exemption request for each of the crossings.

V. COMMISSION CONCLUSION

{¶ 16} 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.

{¶ 17} After consideration of the evidence, we find that, pursuant to R.C. 4511.63, the request for an exemption is warranted at the S.R. 14 (DOT#502470V), S.R. 534 (DOT#502473R), U.S. 224 (DOT#502474X), Bailey Road (DOT#502476L), Diehl Road (DOT#502480B), and Ellsworth Road (DOT#502479G) grade crossings.

{¶ 18} 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 5, 10). 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 5, 8-9, 11). An even greater possibility of such collisions exists when the school buses travel over the crossings after darkness, when sports events have ended, and when some buses travel over the crossings several times daily (Tr. at 8-9, 11-12).

{¶ 19} 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.

{¶ 20} Accordingly, ODOT and the Mahoning County Engineer, 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.

{¶ 21} 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, ODOT regarding the S.R. 14 (DOT#50470V), S.R. 534 (DOT#502473R), and U.S. 224 (DOT#502474X) grade crossings, the Mahoning County Engineer regarding the Diehl Road (DOT#502480B), Bailey Road (DOT#502476L), and Ellsworth Road (DOT#502479G) grade crossings, the Transportation Director for LaBrae Local Schools, the Transportation Director for Southington Local Schools, and the Transportation Director 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

{¶ 22} On July 12, 2018, a letter was filed pursuant to R.C. 4511.63 by Bob Durbin, Deputy Engineer for Mahoning County, requesting that school buses and motor vehicles carrying certain hazardous materials be exempt from stopping at the Diehl Road (DOT#502480B), Bailey Road (DOT#502476L), and Ellsworth Road (DOT#502479G) grade crossings in Mahoning County.

{¶ 23} On August 14, 2018, a letter was filed pursuant to R.C. 4511.63 by Brian Honaker, ODOT District 4 Railroad Coordinator, requesting that school buses and motor vehicles carrying certain hazardous materials be exempt from stopping at the State Route 14 (DOT#502470V), State Route 534 (DOT#502473R) and U.S. Route 224 (DOT#502474X) grade crossings in Mahoning County.

{¶ 24} 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.

{¶ 25} On October 17, 2018, Staff filed investigative reports regarding the exemption requests.

{¶ 26} A hearing was held on October 19, 2018, at West Branch High School in Beloit, Ohio.

{¶ 27} 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 six crossings.

VII. ORDER

{¶ 28} It is, therefore,

{¶ 29} 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 Diehl Road (DOT#502480B), Bailey Road (DOT#502476L), Ellsworth Road (DOT#502479G), S.R. 14 (DOT#502470V), S.R. 534 (DOT#502473R) and U.S. 224 (DOT#502474X) grade crossings in Mahoning County. It is, further,

{¶ 30} ORDERED, That ODOT, as the LHA, place signs marked "Exempt" that are in conformance with the Ohio Manual of Uniform Traffic Control Devices at the S.R. 14 (DOT#502470V), S.R. 534 (DOT#502473R) and U.S. 224 (DOT#502474X) grade crossings in Mahoning County, and at other appropriate locations in advance of the crossing. It is, further,

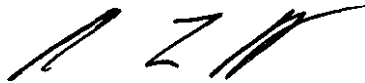
{¶ 31} ORDERED, That the Mahoning County Engineer, as the LHA, place signs marked "Exempt" that are in conformance with the Ohio Manual of Uniform Traffic Control Devices at the Diehl Road (DOT#502480B), Bailey Road (DOT#502476L), and Ellsworth Road (DOT#502479G) grade crossings, and at other appropriate locations in advance of the crossing. It is, further,

{¶ 32} 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,

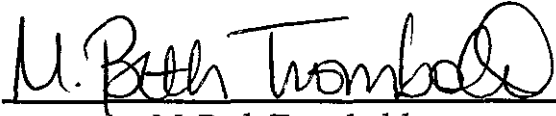
{¶ 33} ORDERED, That Staff should conduct a follow-up inspection to verify that exemption signs are posted, and update the Commission's rail database as needed. It is, further,

{¶ 34} ORDERED, That a copy of this Opinion and Order be served on NS, ODOT, Mahoning County Engineer, and all other persons of record.

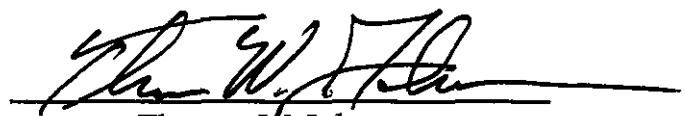
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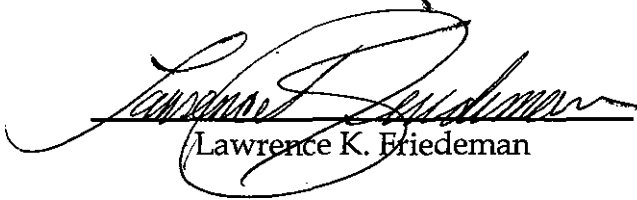
Asim Z. Haque, Chairman



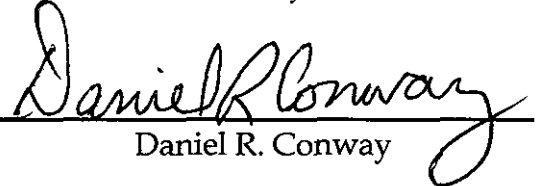
M. Beth Trombold



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Secretary