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No. 94675

Hyman A. Pressman vs Henry Barnes

Injunction - Challenging Authority of Director of Traffic to Set Speed limits and Provide Penalties For Violations - Conflict - Police Powers

Circuit Court

Mr. Harlan - Mr. Gallagher - Mr. Ricciati

Clerk

IN THE COURT OF APPEALS OF MARYLAND

No. 140

October Term, 1955

Hyman A. Pressman et al.,

v.

Henry A. Barnes, Director of Traffic, and City of Baltimore

Brune, C. J.,
Delaplaine,
Collins,
Henderson,
Hammond,
JJ.

Opinion by Delaplaine, J.

Filed: April 10, 1956

This suit was instituted in the Circuit Court of Baltimore City by Hyman A. Pressman, a citizen and taxpayer of Baltimore, against Henry A. Barnes, Director of Traffic, and the Mayor and City Council of Baltimore to invalidate (1) portions of Ordinance 786, approved July 14, 1953, creating the office of Director of Traffic, and (2) an administrative regulation promulgated by the Director of Traffic prescribing speed limits.

Under the Uniform Declaratory Judgments Act, Code 1951, art. 31A, sec.2, any person whose rights, status or other relations are affected by a statute or municipal ordinance may have determined any question of construction or validity arising under the statute or ordinance and obtain a declaration of rights, status or other legal relations thereunder. Pressman v. State Tax Commission, 204 Md. 78, 102 A. 2d 821; Kirkwood v. Provident Savings Bank, 205 Md. 48, 106 A. 2d 103. The law is also established that a taxpayer may invoke the aid of a court of equity to restrain the action of a public official or an administrative agency when such action is illegal or ultra vires and may injuriously affect the taxpayer's

rights and property. Masson v. Reindollar, 193 Md. 683, 69 A. 2d 482; Reed v. McKeldin, 207 Md. 553, 558, 115 A. 2d 281.

The ordinance in question provides that the Director of Traffic shall be appointed by the Mayor of Baltimore, and that he may adopt such rules and regulations as he may deem necessary for the proper transaction of his business.

Section 2 of the ordinance enumerates the Director's powers, including the power to designate through highways, to install traffic signs, pylons, and channels, and to approve or disapprove the location of bus stops.

Section 2(I) empowers the Director to "have and exercise all control over traffic that the Police Commissioner for the City of Baltimore had prior to the time this ordinance becomes effective, including the power to establish "No Parking" spaces; * * *."

Complainant contended that this provision conflicts with the provision of the Baltimore City Charter that no ordinance or act of any municipal officer shall con-

flict or interfere with the powers of the Police Commissioner.

Section 2(K) empowers the Director to "adopt and promulgate rules, regulations, orders and directives relating to, or in connection with, the movement of vehicular and pedestrian traffic in the City of Baltimore. * * * "

Complainant attacked this provision on two grounds: (1) that it unlawfully delegates legislative functions to an administrative official, and (2) that it does not provide proper standards for the guidance of the Director in adopting his rules, regulations, orders and directives.

The administrative regulation in question was promulgated by Henry A. Barnes, Director of Traffic, to become effective on August 9, 1955. Complainant's chief objections to the regulation were: (1) that the legislative function of setting speed limits cannot be lawfully delegated by the Mayor and City Council, and (2) that the regulation sets the speed limits on all of the streets of the City, including those which have been designated as a part

of the State or Federal highway system or an extension thereof.

Complainant also objected to one of the penalty provisions on the ground that it conflicted with the Maryland Motor Vehicle Law. Code 1951, art. 66½, sec. 176(g). He further complained that the regulation was self-contradictory in that in some parts it refers to the speed limits as being prima facie, while in another part it refers to them as conclusive.

Complainant alleged that the Director of Traffic, unless restrained by the Court, would illegally expend many thousands of dollars of the City's revenues for the erection of signs and other devices; that the erection of these signs would inform motorists of speed limits which are not legally correct and would tend to cause accidents and subject the Mayor and City Council to damage suits, thereby causing complainant and other taxpayers to suffer irreparable loss and damage.

Complainant prayed for a decree (1) declaring the assailed portions of the ordinance and the Traffic Director's regulation invalid, and (2) enjoining defendants

from expending public funds for the erection of signs or other devices in pursuance of the ordinance and regulation.

On August 23, 1955, the Circuit Court passed an order permitting 44 other citizens and taxpayers to be made parties plaintiff to the proceeding.

At the trial of the case Ernest W. Bunting, Associate Engineer of the Traffic Division of the State Roads Commission, testified that he did not know of any Federal highway that reached the boundary line of Baltimore, and that he did not know whether there were any extensions of the State highway system within the City, although he admitted that "State and Federal numbered highways came up to the boundaries of the City and took up at the other side of the City."

Mr. Barnes testified that the City, in an agreement with the State Roads Commission on June 2, 1955, agreed to mark the streets in the City with the State and Federal numerals. He surmised that there was no extension of the State highway system into the City for the reason that he had obtained permission to change the location of any of these signs.

On September 30, 1955, the Court entered a decree declaring that the ordinance and the Traffic Director's regulation are valid, with the exception of the provisions in the regulation as to minimum fines and presumptions as to guilt, which are invalid. Appeal was entered by complainants from that decree.

I.

The first contention of appellants is that the power to set speed limits is a legislative power, and the Mayor and City Council cannot lawfully delegate it to an administrative official.

It is a fundamental principle that, except when authorized by the Constitution, the Legislature cannot delegate the power to make laws to any other authority. As the law-making function, under the doctrine of separation of powers, is assigned exclusively to the Legislature, any attempt to abdicate it in any particular field is unconstitutional. This principle is not violated, however, where a municipal corporation is vested with powers of legislation as to matters of local concern.

This Court has recognized that the same restrictions which rest upon the Legislature as to the delegation of legislative powers conferred upon it by the Constitution rest upon a municipal corporation as to powers granted to it by the Legislature. City of Baltimore v. Wollman, 123 Md. 310, 315, 91 A. 339. But it is now accepted that a municipal corporation may delegate to subordinate officials the power to carry ordinances into effect, even though such delegation requires the exercise of a certain amount of discretion which may be regarded as part of the police power, if such discretion is guided and restrained by standards sufficient to protect the citizen against arbitrary or unreasonable exercise thereof. Tighe v. Osborne, 149 Md. 349, 360, 131 A. 801, 43 A. L. R. 819.

In recent years the increasing multiplicity and complexity of administrative affairs has made it increasingly necessary for municipal councils to entrust important functions to administrative boards and officials. Zoning cases are an illustration of the trend toward broader delegation of powers to administrative officials. In Tighe v. Osborne, 150 Md. 452, 457, 133 A. 465, 467,

46 A. L. R. 80, the Court of Appeals sustained the right of the Mayor and City Council of Baltimore to delegate to the Zoning Commissioner the power to determine whether "buildings or the proposed use of them would menace the public security, health, or morals." Less than a year ago this Court, in an opinion by Judge Henderson in Givner v. Com'r of Health of Baltimore City, 207 Md. 184, 113 A.2d 899, observed that even more flexible standards must be permitted in the domain of public health than in zoning, redevelopment, and public education.

On account of the tremendous growth of traffic and the need for constant supervision of traffic control, it has also become increasingly imperative for city councils in metropolitan centers to delegate to traffic experts a reasonable amount of discretion in their administrative duties. New traffic problems are constantly arising, and therefore to require the enactment of an ordinance to cover each specific problem would be likely to result in widespread delays and even serious hazards. It is obvious that there is a practical necessity for expert and prompt judgment in the application of the concept of public safety to concrete situations, and that the standards for administra -

tive officials in the domain of public safety should be at least as flexible as in the domain of public health. Of course, the question whether a particular regulation of an administrative official is arbitrary or unreasonable, or not fairly within the scope of the delegated power, is subject to judicial review; but if the matter is fairly debatable, the court should not substitute its judgment for the judgment of the administrative official who is charged with the duty of promulgating the regulation.

In Taylor v. Roberts, 84 Fla. 658, 94 So. 874, the Supreme Court of Florida held that the grant of authority to the Chief of Police of Jacksonville to regulate traffic at any congested part of the city was not an unlawful delegation of legislative power.

In City of Cleveland v. Gustafson, 124 Ohio St. 607, 180 N. E. 59, the Supreme Court of Ohio held that an ordinance authorizing the Director of Public Safety to establish safety zones was within the power of the City Council.

In Borum v. Graham, 4 Cal. App. 2d 331, 40 P. 2d 866, an ordinance of the City of Pasadena authorizing the

Chief of Police to mark crosswalks for pedestrians was held valid.

In Staley v. Vaughn, 92 Colo. 6, 17 P. 2d 299, the Supreme Court of Colorado held that, while the power to provide for the designation of "through traffic" streets is legislative, the designation of such streets is administrative action based upon an exercise of discretion.

In Gould v. Western Dairy Products, Inc., 12 Cal. App. 2d 188, 55 P. 2d 274, 276, it was held that the City Council of Burbank could delegate to the Board of Police Commissioners the power to determine which intersections should be designated as boulevard stop intersections.

In view of present-day public necessity and in accordance with the modern trend of judicial decisions, we hold that the Mayor and City Council may lawfully delegate to the Director of Traffic the power to promulgate rules setting speed limits on the streets of Baltimore, and that the Director may make any such rules that are reasonable and do not conflict with Acts of the Legislature.

II.

There is likewise no merit in the contention that the ordinance fails to prescribe sufficient standards for the guidance of the Director of Traffic in adopting rules and regulations.

The general rule is universally accepted that a statute or ordinance which vests in administrative officials an arbitrary discretion with respect to lawful businesses or professions without prescribing a uniform rule of action is unconstitutional. The reason for the rule is that the failure to prescribe standards for the exercise of authority might result in arbitrary discriminations beyond the proper scope of the police power. Commissioners of Prince George's County v. Northwest Cemetery Co., 160 Md. 653, 656, 154 A. 452.

Generally a statute or ordinance vesting discretion in administrative officials without fixing any standards for its guidance is an unconstitutional delegation of legislative power. But we also hold, as a qualification of the general rule, that where the discretion to be exercised relates to police regulations for the protection of public morals, health, safety, or general welfare, and it

is impracticable to fix standards without destroying the flexibility necessary to enable the administrative officials to carry out the legislative will, legislation delegating such discretion without such restrictions may be valid. Thompson v. Smith, 155 Va. 367, 154 S. E. 579, 71 A. L. R. 604; American Baseball Club of Philadelphia v. City of Philadelphia, 312 Pa. 311, 167 A. 891, 92 A. L. R. 386, 410; Katz v. J. L. Curtis Cartage Co., 132 Ohio St. 271, 7 N. E. 2d 220. It is recognized that it would not always be possible for Legislature or City Council to deal directly with the multitude of details in the complex situations upon which it operates. Comptroller of Treasury v. M. E. Rockhill, Inc., 205 Md. 226, 232, 107 A. 2d 93. The modern tendency of the courts is toward greater liberality in permitting grants of discretion to administrative officials in order to facilitate the administration of the laws as the complexity of governmental and economic conditions increases.

In Petrushansky v. State, 182 Md. 164, 32 A. 2d 696, this Court had under consideration an ordinance requiring that dwellings be kept "free and clean from dirt,

filth, rubbish, garbage and similar matter, and free from vermin and rodent infestation, and in good repair fit for human habitation." The Commissioner of Health was empowered to adopt all such rules and regulations that he might deem necessary for the enforcement of the ordinance and to issue orders compelling compliance with its provisions. The ordinance was held valid.

In Ashland Transfer Co. v. State Tax Commission, 247 Ky. 144, 56 S. W. [illegible] 97 S. W. 2d 534, the Court of Appeals of Kentucky held that legislative power was not delegated unconstitutionally to the State Highway Commission and to the various County Judges of the State by a statute empowering the Commission with reference to State roads, and County Judges with reference to County roads, to reduce the maximum limit of loads and speed established by it for motor trucks, whenever in the judgment of those agencies any road, bridge, or culvert shall be liable to be damaged or destroyed by trucks of a greater weight or speed than that fixed by them.

III.

Appellant further contends that the Traffic Director's regulation setting speed limits violates Section 6(24) of the Baltimore City Charter, 1949 Ed., which provides that "no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct or interfere with the powers of the Police Commissioner."

The Charter of Baltimore, which was adopted in 1918 under the Home Rule Amendment of the Constitution of Maryland, conferred upon the Mayor and City Council the power to regulate the use of streets. It was accordingly held by this Court in State v. Stewart, 152 Md. 419, 137 A. 39, that the Act of the Legislature authorizing the Police Commissioner of Baltimore to make rules and regulations for the control of traffic, Laws 1924, ch. 436, was invalid, as the Home Rule Amendment provides that no local law shall be enacted by the Legislature on any subject covered by the express powers granted.

We must reject appellants' contention in view of the fact that the Home Rule Amendment provides that after the adoption of a Charter, the Mayor and City Council of

Baltimore shall have full power to enact local laws of said City, including the power to repeal or amend local laws enacted by the General Assembly, upon all matters covered by the express powers granted. Md. Constitution, art. 11A, sec. 3.

Moreover, it has been held by this Court that the provision in the Charter of Baltimore that no ordinance shall interfere with the powers of the Police Commissioner relates to the Commissioner's executive powers, and does not restrict the City's power to legislate on matters within the scope of the police power, even though such legislation may reduce his duties as to local law enforcement. G. I. Veterans' Taxicab Ass'n. v. Yellow Cab Co., 192 Md. 551, 65 A. 2d 173, 8 A. L. R. 2d 568.

IV.

Appellant finally contends that the City has no power to regulate the speed of vehicles on any street which is a part of the State or Federal highway system or an extension thereof.

By Chapter 43 of the Laws of 1955, the Legislature added a new section to the Motor Vehicle Law of Mary-

land, which took effect as an emergency measure upon its approval by Governor McKeldin on February 24, 1955, granting additional powers to cities, towns and villages as follows:

> "Notwithstanding any other provision of this Article, the appropriate authorities of any incorporated city, town or village are authorized and empowered to regulate the speed of vehicles on any road, street, lane or alley which is within their respective corporate limits and which has not been designated or maintained as a part of the State or Federal highway system or an extension thereof."

Code Supp. 1955, art. 66½, sec. 151A.

The City says, however, that it has no streets which are "designated or maintained as a part of the State or Federal highway system or an extension thereof." Appellants maintain, on the contrary, that, while it may be true that the State does not maintain any of the streets in Baltimore, a number of the streets in that City are a part of the State highway system or at least extensions of

that system.

There was a difference of opinion as to whether the road map prepared by the State Roads Commission indicates that some of the streets in Baltimore are extensions of the State highway system. The map designates State highways by certain types of lines and numerals and U. S. Highways by other types of lines and numerals. The City maintains that the map does not designate these streets as an extension of the State or Federal highway system, there being no lines or numerals indicating State Highways and U. S. Highways within the City lines. On the other hand, appellants point out that these highways do not stop at the City line, but proceed as continuations of the State and Federal highways systems. In any event, there is significance in the fact that signs have been erected by the State Roads Commission on these thoroughfares within the City displaying the same numbers of the State and Federal highway systems that are displayed on the signs outside the City.

The cardinal rule of statutory construction is that statutes should always be construed to effectuate the

intention of the Legislature. In determining the legislative intention of an enactment, the court considers its language in its natural and ordinary signification, and if there is no obscurity or ambiguity on the face of it there is no occasion for construction. In such a case, the court is not at liberty to distort the words of the statute from their apparent meaning. As a general rule, the words in a statute are presumed to be used in their popular sense, unless there is reason to believe from the face of the statute that the words were intended to have some other meaning. If the words used are of doubtful or ambiguous meaning, their signification may be enlarged or restricted as may be necessary to make them conform to the intention of the Legislature, if the intention is clearly and certainly ascertained by the process of construction. The meaning must then depend upon the history of the adoption of the statute and the objects in view. Hence, the proper course of construction in every case is to adopt that meaning of the words which best harmonizes with the context and promotes the policy and objects of the Legislature. United States v. Hartwell, 6 Wall. 385, 18 L. Ed. 830, 833; Norfolk & Portsmouth Traction Co. v. Ellington's Adm'r, 108 Va. 245, 61 S. E.

779, 782; Wadsworth v. Boysen, 8 Cir., 148 F. 771; Massachusetts Loan & Trust Co. v. Hamilton, 9 Cir., 88 F. 588, 591.

The word "extension," both by etymology and by common usage, is a flexible term, lending itself to a variety of meanings which must be gathered from the context, since it is a relative term referring to something already begun. Extension is not confined to mere linear prolongation, but may be a broadening in any direction.

In New Jersey it has been held that an extension of a railway is a prolongation of it from one of its termini to some other designated point. Trenton Street Ry. Co. v. Pennsylvania R. Co., 63 N. J. Eq. 279, 49 A. 481, 483. In California it has been held that a system of street railway lines in a large city is of necessity a radiating system responding in its enlargements to the trend of population and taking off from original laterals at such points of contact as the economics of construction require, and that the construction of an addition to the system connecting with existing lines constitutes an "extension" even though it does not proceed from existing

termini of the system. Hunt v. Boyle, 204 Cal. 151, 267 P. 97.

In Louisiana it has been held that an extension of a highway means its prolongation in the direction to which it points, and if insurmountable physical objects compel a deflection it must resume its course towards its objective point. City of Monroe v. Police Jury of Ouachita Parish, 47 La. Ann., 17 So. 498, 499.

We hold that a street within the corporate limits of a city which is a continuation of a State highway and is marked by State signs similar to the signs outside the city is at least an extension of the State highway system, even if not an actual part of it.

In 1954 the Legislature passed House Bill 45, designed to add a new section to the Motor Vehicle Law providing as follows:

> "Notwithstanding any other provision of this Article, the appropriate authorities of any incorporated city, town or village are authorized and empowered to regulate the speed of vehicles on any road, street,

lane or alley which is within their respective corporate limits and which has not been designated by the State Roads Commission as a part of the State highway system."

That bill differed from the Act of 1955 in that it did not contain the words "or an extension thereof." The Automobile Club of Maryland voiced opposition to the bill. It was pointed out that it is often difficult for a motorist to determine when he has entered one of the small towns and it would be almost impossible for him to familiarize himself with the various speed limits in the State. The bill was accordingly vetoed by Governor McKeldin. Laws 1954, Vetoes, 299-301.

In the Court below the Associate Engineer of the State Roads Commission admitted that the Commission had erected a number of signs on highways within the limits of the City similar to the signs on these highways outside the City. Among these highways entering the City are the National Highway, Charles Street Avenue, Falls Road, Park Heights Avenue, Reisterstown Road, Liberty Heights Avenue and the Baltimore-Washington Expressway.

In the light of this testimony, the conclusion is irresistible that the City has no power to regulate the speed of vehicles on any street which is a part of the State or Federal highway system or an extension thereof. We further hold that the Court below should issue an injunction to restrain the Director of Traffic from setting the speed limits on such highways.

Decree affirmed in part and reversed in part, and case remanded for modification of the decree in accordance with this opinion, each side to pay its own costs.

IN THE

Court of Appeals of Maryland

OCTOBER TERM, 1955

No. 140

HYMAN A. PRESSMAN, ET AL.,
Appellants,

VS.

HENRY A. BARNES, DIRECTOR OF TRAFFIC,
AND
MAYOR AND CITY COUNCIL OF BALTIMORE,
A MUNICIPAL CORPORATION,
Appellees.

APPEAL FROM THE CIRCUIT COURT OF BALTIMORE CITY
(HERMAN M. MOSER, Judge)

APPELLEES' BRIEF

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Deputy City Solicitor,
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Solicitors for Appellees.

The Daily Record Co., Baltimore 3, Md.

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APPEAL FROM THE CIRCUIT COURT OF BALTIMORE CITY
(HERMAN M. MOSER, Judge)

APPELLEES' BRIEF

STATEMENT OF THE CASE

The Mayor and City Council of Baltimore enacted Ordinance No. 786 of 1952-53 (App. 10) which was approved by the Acting Mayor on July 14, 1953, and which created the position of Director of Traffic of the City of Baltimore and conferred upon him certain powers dealing with the movement of traffic and the safety of the citizens using the streets of Baltimore. Said ordinance amended Sections 1 through 9 of Article 38 of the Baltimore City Code, 1950 edition. In

1955, the General Assembly of Maryland passed Senate Bill No. 149, Chapter 43, approved by the Governor on February 24, 1955, which added Section 151A to Article 66½ of the Annotated Code of Maryland, 1951 edition. That section reads as follows:

> "151A. (Powers of Cities, Towns and Villages.) Notwithstanding any other provision of this Article, the appropriate authorities of any incorporated city, town or village are authorized and empowered to regulate the speed of vehicles on any road, street, lane or alley which is within their respective corporate limits and which has not been designated or maintained as a part of the State or Federal highway system or an extension thereof."

Effective August 9, 1955, the Traffic Director of Baltimore City, Henry A. Barnes, Appellee, pursuant to the authority contained in Article 66½, Section 151A of the Annotated Code of Maryland, 1951 edition as amended, and pursuant to the authority contained in Section 2K of Article 38 of the Baltimore City Code, 1950 edition, as such section was amended by Ordinance No. 786 of 1953, issued and promulgated Administrative Regulation No. 7 (App. 17). The object of this Regulation was to set legal speeds for motor vehicles on all roads, streets, lanes and alleys within the corporate limits of Baltimore City.

Appellant, Hyman A. Pressman, who was later joined by forty-four other taxpayers, filed a Bill of Complaint attacking the validity of certain parts of Ordinance No. 786 of 1953 together with the validity of Administrative Regulation No. 7.

Appellants also asked for an injunction prohibiting the spending of public funds for the erection of signs or other devices in pursuance of those portions of the Ordinance attacked as invalid and also in pursuance of the Adminis-

trative Regulation No. 7. After the taking of testimony, the lower court decreed that Ordinance No. 786 of 1953 was valid in its entirety and that Administrative Regulation No. 7 was also valid, with the exception that the setting of the minimum fines and presumptions as to guilt in the said Regulation was invalid. Thereupon, the Appellants appealed from said decree.

QUESTIONS PRESENTED

I. Is Ordinance No. 786 of 1953 a valid and proper enactment of the Mayor and City Council of Baltimore?

(a) Does the said Ordinance supply proper standards for the guidance of the Director of Traffic?

(b) Can the power to set speed limits throughout the City be delegated to the Director of Traffic and has it been so delegated?

(c) May the City Council of Baltimore by ordinance transfer to the Director of Traffic certain duties relating to traffic formerly vested in the Police Commissioner by ordinance of the Mayor and City Council of Baltimore and by public local laws?

II. May the City of Baltimore regulate the speed of vehicles on its roads, streets, lanes or alleys within its corporate limits and which have not been designated or maintained as a part of the State or Federal highway system or an extension thereof?

STATEMENT OF FACTS

The Appellee, Henry A. Barnes, was appointed to the post of Director of Traffic of Baltimore City which was created by Ordinance No. 786 of 1953. Said Ordinance gives the Director of Traffic full power and authority under Section 2K to adopt and promulgate rules, regulations, orders and

directives related to, or in connection with, the movement of vehicular and pedestrian traffic in the City of Baltimore, providing therein certain mandatory provisions to guide said Director of Traffic in the exercise of his powers.

Section 2-I of Ordinance No. 786 of 1953 grants to the Director of Traffic all control over traffic that the Police Commissioner for the City of Baltimore had prior to the time this Ordinance became effective, withholding from the Director of Traffic, however, the power to make and enforce special regulations with regard to traffic as set forth in Article 38, Section 87 of the Baltimore City Code, 1950 edition.

Administrative Regulation No. 7 promulgated by the Director of Traffic of Baltimore City declares that State speed laws are inapplicable upon all roads, streets, lanes or alleys within Baltimore City, except as the Administrative Regulation, as authorized by State law and City ordinance, hereby declares and determines upon the basis of engineering and traffic investigation that certain speed regulations shall be applicable upon specified streets or in certain areas. The Regulation cited penalties which Ordinance No. 786 of 1953 provided for violations of Administrative Regulations issued thereunder, and which the Chief Magistrate of the Traffic Court of Baltimore City had indicated he intended to impose for violations of the said Administrative Regulation No. 7.

Mr. Ernest W. Bunting, Associate Engineer of the Traffic Division of the Maryland State Roads Commission, indicated that he was without knowledge of whether or not there were any roads, streets, lanes or alleys within the corporate limits of Baltimore City which were designated or maintained as a part of the State or Federal highway system or an extension thereof. The most Mr. Bunting

could testify to was that there were such highways outside the corporate limits of Baltimore City and that they lead up to Baltimore City to one side and begin at another side of the City (App. 25 and 26).

Mr. Bunting further testified that there are no roads, streets, lanes or alleys within Baltimore City that are maintained by the State Roads Commission (App. 29). Mr. Bunting also admitted that he had heard about an agreement made between the State Roads Commission and the Director of Traffic of Baltimore City in which it had been agreed that the Director of Traffic was to designate the roads in Baltimore City (App. 30). Finally, Mr. Bunting testified that he did not know of any Federal highways maintained by the Federal Government that reached the City line of Baltimore or were within the limits of the City of Baltimore (App. 32). He expressed doubt as to whether there were any federally designated highways within the limits of Baltimore City although he did state that there are several that reached the City and leave the City.

The Appellant introduced into evidence what was identified as the official highway map of the State of Maryland, published by the State Roads Commission (App. 24). Upon viewing this map, Mr. Bunting was stll unable to say whether there were within the corporate limits of Baltimore City any roads, streets, lanes or alleys which had been designated or maintained as a part of the State or Federal highway system or any extensions thereof (App. 25).

Henry A. Barnes, Director of Traffic of Baltimore City, testified that as a result of a meeting with Mr. George Lewis, Traffic Engineer for the State Roads Commission, it was agreed that the Department of Traffic Engineering of Baltimore City was to designate all the roads in Baltimore City and mark them (App. 37-38). Said agreement

was confirmed by letter of June 30, 1955, from Barnes to Lewis (App. 23). In answer to the question of whether there are any State or Federal highway systems or any extensions thereof designated or maintained in Baltimore City, Mr. Barnes represented that there were not (App. 39). Mr. Barnes further testified that his department has placed new route numbers in places where the route did not formerly exist (App. 40). He has also created an additional route or changes in route (App. 40).

The court found as a fact from the testimony that there were no roads, streets, lanes or alleys within the corporate limits of Baltimore City which had been designated or maintained as part of a State or Federal highway system or an extension thereof.

ARGUMENT

I. ORDINANCE NO. 786 OF THE MAYOR AND CITY COUNCIL OF BALTIMORE IS A VALID AND PROPER ENACTMENT.

The Appellees deem it advisable, at the outset, to call to the attention of this Court, the conduits of authority involved in this case. The Legislature of Maryland has accorded the Mayor and City Council of Baltimore certain powers under the City's charter. The Appellees respectfully submit that there are at least three charter powers involved in traffic regulation. They are found in Section 6, sub-section (29)(d), sub-section (39), and sub-section (24).

Section 6 reads:

> "The Mayor and City Council of Baltimore shall have full power and authority to exercise all of the powers heretofore or hereafter granted to it by the Constitution of Maryland or by any Public General or Public Local Laws of the State of Maryland; and in particular, without limitation upon the foregoing; shall have power by ordinance, or such other method as may be

provided for in its Charter, subject to the provisions of said Constitution and Public General Laws:

"(29)(d) To regulate the use of streets and public ways by persons, animals and vehicles; to prohibit the use of such streets and public ways by any or all motor vehicles under such circumstances or upon such conditions as it may, from time to time, by ordinance, deem necessary or expedient in the interest of the public.

"(39) To pass any ordinance, not inconsistent with the provisions of this Charter or the laws of the State, which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, as well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City.

"(24) To have and exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise said power within said limits; provided, however, that no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner."

Pursuant to the above powers, the Mayor and City Council has passed from time to time certain ordinances relating to traffic. Many of these ordinances are now contained in Article 38 of the Baltimore City Code, 1950, titled "Traffic Regulations."

In addition to the Charter powers hereinbefore enumerated relating to the regulation of traffic within Baltimore City by the Mayor and City Council, the Legislature of Maryland, by Public General Laws, has also empowered Baltimore City and others to regulate certain facets of traffic activity. Of particular importance are two sections in Article 66½, Annotated Code of Maryland, 1951 edition,

as amended. These sections are 151 and 151A, the latter having been passed during the 1955 session of the General Assembly.

"Section 151 (Powers of Local Authorities).

"(a) The provisions of this Article shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from—

(1) Regulating the standing or parking of vehicles;

(2) Regulating traffic by means of peace officers or traffic control devices;

(3) Regulating or prohibiting processions or assemblages on the highways;

(4) Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;

(5) Regulating the speed and weight of vehicles in public parks;

(6) Designating any intersection as a stop intersection requiring all vehicles to stop at one or more entrances to such intersections.

"(b) No ordinance or regulation enacted under subdivisions (4), (5), or (6) of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be appropriate.

"Section 151A — Notwithstanding any other provision of this Article, the appropriate authorities of any incorporated city, town or village are authorized and empowered to regulate the speed of vehicles on any road, street, lane or alley which is within their respective corporate limits and which has not been designated or maintained as a part of the State or federal highway system or an extension thereof."

Pursuant to Section 151 of Article 66½, the Mayor and City Council has enacted a number of ordinances relating

to the subjects set forth. These, also, are contained in Article 38 of the Baltimore City Code, entitled "Traffic Regulations."

The importance of Sections 151 and 151A of Article 66½ cannot be overemphasized particularly when it is observed that Section 1 of Article 66½ states that the provisions of that article are "to be state-wide in their effect". Section 1 continues:

> "and except to the extent that they may be specifically authorized by other provisions of this Article or by Public Local Laws providing for the regulation of taxicabs and the operators thereof, heretofore or hereafter enacted, no City, County or other Municipal subdivision of this State shall have the right to make or enforce any local law, ordinance or regulation upon any subject for which provision is made in this Article. . . ."

Sections 151 and 151A of Article 66½ are specific authorizations to certain of the subdivisions to enact legislation on subjects also contained in Section 66½. It follows, then, that by virtue of the Charter powers set forth and the specific authorizations in Section 66½ of the Annotated Code of Maryland, that the Mayor and City Council have power to regulate certain areas relating to motor vehicles. Specifically, Article 66½, Section 151A, enumerates the control of speed as one of the areas of regulation granted to the City.

The next step is to trace the use of these powers over traffic. Necessarily, of course, this also involves the question of delegation of a part of these powers. The Appellees respectfully include the following background information relating to Baltimore City Traffic Regulations and Ordinances.

Prior to the enactment of state-wide laws by the Maryland General Assembly, the Mayor and City Council, by ordinance, passed most legislation relating to vehicles within Baltimore City. Such ordinances were placed in the City Codes, under the title, "Carriages, Horses, Boats and Scows". See the Baltimore City Code of 1893, Article 8, and the Baltimore City Code of 1927, Article 4. On occasion, the City Council, by ordinance, delegated to the Police Commissioner of Baltimore City certain discretion in making rules and regulations pertaining to limited aspects of traffic and vehicles.

In 1924, the Maryland General Assembly empowered the Police Commissioner of Baltimore City to make rules and regulations for the control and conduct of all vehicles and vehicular traffic in the City of Baltimore. This law was challenged in *State v. Stewart,* 152 Md. 419, and struck down as invalid because the Legislature was "attempting to legislate upon a subject contained in the special grant of powers to the City". The power referred to was the charter power which gave the Mayor and City Council express power "to regulate the use of streets, highways, roads, public places by foot passengers, animals, vehicles, cars, motors, locomotives". This wording is almost identical with that contained in the present Charter, Section 6(29)(d).

When the Act of the Legislature was struck down, Baltimore City found itself without proper traffic regulations and immediately the City Council passed Ordinance 823 of 1926, a very comprehensive act designed to meet the challenge of increasing congestion and new problems presented by the automobile. The Police Commissioner was, under this ordinance, given some discretion in connection with certain matters including the issuance of "No Parking" permits. He was obliged, of course, to enforce all the provisions of the ordinance.

From 1926 until 1950, the City Council delegated very few of its powers over traffic and continued to provide for all traffic regulations by ordinance. Of course, it had to take cognizance of the state-wide jurisdiction over certain areas — such as speed — declared exclusive by the Maryland General Assembly beginning in 1916. Its sphere of activity was limited to the extent which the State had "taken over".

Finally in 1951 — following the post-war "boom" in the production of automobiles and the immense problems that such a "boom" brought to a large municipality — the City Council created by Ordinance No. 1678, the "Traffic Commission of the City of Baltimore" and delegated to that body certain powers over the control of motor vehicles in Baltimore City.

In 1953, upon the hiring of the Appellee Henry A. Barnes, the City Council passed Ordinance No. 786 which amended Ordinance No. 1678 of 1950-51, so that wherever Ordinance No. 1678 had read "Traffic Commission of Baltimore City", it would now read "Director of Traffic of Baltimore City" (Henry A. Barnes in this case) or "Department of Traffic Engineering". This was the only major change accomplished by Ordinance No. 786 of 1953. The powers given to the Traffic Commission were now given verbatim to the Traffic Director, and the Traffic Commission was, in effect, abolished.

Pursuant to Section 2(k) of Ordinance No. 786, the Traffic Director issued a number of directives known as "Administrative Regulations". Upon the passage of Section 151A of Article 66½ by the General Assembly of Maryland in 1955 empowering the appropriate authorities of any municipality to set speeds, with certain limitations, the Traffic Director issued "Administrative Regulation #7" dealing with speeds

within the corporate limits of Baltimore City. The Appellants contest the validity of Ordinance No. 786, and impliedly, the validity of Ordinance No. 1678 of 1950-51 (now repealed) together with "Administrative Regulation #7" issued pursuant to Ordinance No. 786 of 1953.

Ordinance No. 786 of 1953

It would seem appropriate to consider in detail the contested Ordinance No. 786 of 1953 (App. 10).

Section 1(a) of the ordinance states that the office of Director of Traffic of Baltimore City is being created "*in order to provide for the safe and expeditious movement of traffic in the City of Baltimore, and to protect the safety of the citizens using its streets. . . .*" After providing for certain modes of operation of the Department of Traffic Engineering in Section 1(b), (c) and (d), Section 2 states that "The Director of Traffic of the City of Baltimore be and is hereby granted full power and authority and *directed to do* any and all of the following:

A. Collect and analyze data relating to traffic needs.
B. Conduct analyses and investigations of traffic conditions.
C. Prepare and submit an annual report.
D. Make recommendations for traffic improvements which cannot be accomplished under his own powers.
E. Hold public hearings.
F. Establish and determine designs etc. relating to traffic control devices.
G. Designate "Stop" intersections or through highways.
H. Approve or disapprove bus stop locations of the Baltimore Transit Company.
I. Have and exercise all control over traffic that the Police Commissioner for the City of Baltimore had

prior to the time this ordinance becomes effective, including the power to establish special "No Parking" spaces; provided, however, that the Director of Traffic of the City of Baltimore shall not have the power to make and enforce special regulations with regard to traffic as set forth in section 87 of this Article (App. 20).

J. Install such traffic signs etc. as heretofore or hereafter directed by ordinance or heretofore directed by the Police Commissioner of Baltimore City.

K. Adopt and promulgate rules, regulations, orders and directives relating to, or in connection with, the movement of vehicular and pedestrian traffic in the City of Baltimore.

Sections 2-I and 2K are set out verbatim inasmuch as these are the two particular sections of the ordinance which the Plaintiff attacks.

At the end of Section 2, the ordinance reserves to the City Council two important powers over traffic:

(1) the establishment of general parking restrictions;
(2) the establishment of one-way streets.

So, in effect, three powers in all are specifically withheld from the Director of Traffic — the two set forth above and the power of the Police Commissioner to make special regulations with regard to traffic, at certain hours when the safety or convenience of the public will be best subserved thereby (Article 38, Section 87, referred to in 2-I of the Ordinance No. 786).

Sections 3, 4, 5 and 6 of the ordinance relate to matters not properly at issue here. But sections 7(a), (b), (c) and (d) makes it unlawful for interference with traffic devices and signs, for refusing to comply with orders and directives of the Traffic Director issued pursuant to 2K, for refusing

to comply with directives on signs or markers erected by authority of the Traffic Director and finally provides that any person doing any of the prohibited acts "shall be guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction, shall be fined for each and every offense not more than $100.00.

Section 8 repeals laws and regulations inconsistent with the ordinance or directives of the Traffic Engineer and Section 9 contains the usual clause as to separability and invalidity.

To review — Ordinance No. 786 of 1953 does not give all power over traffic to the Traffic Director. In fact, it specifically withholds three important powers. The purpose and design of the ordinance is stated at the very beginning — "to provide for the safe and expeditious movement of traffic in the City of Baltimore, and to protect the safety of the citizens using its streets". Certain courses of action in connection with the exercise of the Traffic Director's powers are made mandatory. Section 2 states that the Director of Traffic is *"directed to do"* certain things. These requirements precede the rule-making power in 2K and the Appellees submit that this sequence demonstrates that the City Council intended that these requirements limit the discretion of the Traffic Director and that they should be read in conjunction with the language referring to the safe and expeditious movement of traffic and citizen safety. In so doing, we contend, sufficient guides are provided and discretion is limited. To be any more specific would be to defeat the very purpose of the ordinance — *the use of expert judgment and experience under varying conditions.*

Delegation of Powers and Sufficiency of Standards

The Appellants assail Section 2K of Ordinance No. 786 of 1953 because, the said section delegates legislative func-

tions to an administrative official and fails to provide sufficient standards to guide the Director of Traffic. The Appellees deny this contention and submit a number of Maryland and out-of-state cases demonstrating that Section 2K is a valid enactment. The following Maryland cases are in point: *Petrushansky v. State,* 182 Md. 164; *Schneider v. Pullen,* 198 Md. 64; *Tighe v. Osborne,* 149 Md. 349; *Tighe v. Osborne,* 150 Md. 452; *Mayor and City Council v. Bloecher, et al.,* 149 Md. 648; *Portsmouth Stove & Range Co. v. Mayor and City Council of Baltimore,* 156 Md. 244; *Creaghan v. Mayor and City Council of Baltimore,* 132 Md. 442; *Mayor and City Council of Baltimore v. Wolman,* 123 Md. 310; *State v. Hyman,* 98 Md. 596; *State v. Broadbelt,* 89 Md. 565; *Deems v. Mayor and City Council of Baltimore,* 80 Md. 164.

In the *Petrushansky* case, the Appellant challenged a conviction growing out of his refusal to obey the orders of the Baltimore City Health Commissioner to clean up filthy premises pursuant to Ordinance No. 384 of 1941. Ordinance No. 384 of 1941 was described as adding new sections to the Code "requiring that dwellings be kept free and clean from dirt, filth, rubbish, garbage and similar matter, and free from vermin and rodent infestation, and in good repair fit for human habitation, and authorizing the Commissioner of Health of Baltimore City to issue orders compelling the compliance with said provisions, or to correct the condition, at the expense of the property owner, and charge the property with a lien to the extent of the necessary repairs".

Section 156G of Ordinance No. 384 of 1941 reads:

> "The Commissioner of Health is hereby authorized and empowered *to make and adopt such rules and regulations* as he may deem proper and necessary for the enforcement of this ordinance for the better protection of the health of the City."

Section 156H reads:

> "Any person violating any of the provisions of this ordinance or *any lawful order or regulation made and adopted* by the Commissioner of Health in pursuance thereof, shall be guilty of a misdemeanor and shall be subject to a fine not exceeding $50.00 and each day's violation shall constitute a separate offense."

The Appellant challenged the ordinance in several grounds. One was that the ordinance unlawfully delegates to the Commissioner of Health arbitrary discretion whether to enforce it or not. The Court dismissed this objection saying that the Commissioner is presumed by law to do his duty, he has no choice as to offenders; he must treat all alike or subject himself to indictment for non-feasance or misfeasance.

It was also objected that no sufficient standards were defined in the ordinance for the guidance of the Commissioner of Health as to the conditions under which he is to act. The Court replied, "We fail to see how filth can be classified, graduated or standardized, except as filth. *We have a standard,* which we have thought and still think, is the better test, and that is *that the application shall be to all alike.* The only purpose of this ordinance is to protect and preserve the health of all the people of Baltimore; and the Commissioner of Health is obliged to treat all alike. . . . If the Commissioner acts arbitrarily, unreasonably or exceeds his power those injured thereby may obtain relief from the Court."

To the criticism that the Commissioner of Health had unbridled power under the ordinance, the Court quoted from *State v. Hyman,* 98 Md. 596:

> "It may be conceded that some of these provisions, if harshly administered may be or become oppressive; but it by no means follows that the law itself is there-

> fore not a legitimate exercise of the police power. It is not to be assumed that the public functionary will act in an oppressive or unlawful manner. *Discretion must be reposed somewhere.* If an official should transcend the legitimate limits of the authority with which the statute clothes him, the injured party is not without redress."

Finally, it was objected that no review of an order of the Commissioner was permitted to test its validity. But the Court of Appeals replied that the validity of the ordinance is for the courts which are always open for the injured and oppressed; its propriety, which is in the judgment of the Commissioner of Health, can be reviewed by a jury if there is an indictment. The Court concluded that there was nothing in the ordinance which "denied a citizen his day in court."

The Appellees contend that the *Petrushansky* case is extremely close to our own. A comparison of the Ordinance No. 786 of 1953 and Ordinance No. 384 of 1941 show that the former provides a much more thorough set of standards than the latter. Yet the latter was upheld when attacked as not containing sufficient standards. Evidently the Court felt that the general design of the ordinance "for the better protection of the health of the City" was sufficient.

In *Schneider v. Pullen,* supra, the Appellant sought a declaratory judgment and injunctive relief against the State Superintendent of Schools to prohibit the operation of Article 77, Section 14(a) of the Annotated Code of Maryland as amended by Chapter 489 of the Acts of 1947, requiring that every private educational institution must secure a certificate of approval from the State Superintendent of Schools before it could continue or begin to operate in Maryland.

It was contended that the "act is an unlawful delegation of legislative power because it provides no definite standards by which the State Superintendent is to be guided in issuing his regulations and in granting permits."

Chapter 489 of the Acts of 1947 reads, in part:

> "The State Superintendent of Schools shall issue a certificate of approval to any applicant operating or proposing to operate such a private school or educational institution whose conditions of entrance, scholarship, educational qualifications, standards and facilities are adequate and appropriate for the purposes, program, training and courses to be taught or given therein."

Section (d) reads:

> "The State Superintendent of Schools is hereby authorized to issue rules and regulations not inconsistent with this sub-title to supplement and implement the purposes and provisions hereof . . . provided 30 days notice is given . . . opportunity to be heard as to any objections. Such rules and regulations, when approved by the State Board of Education and filed with the Clerk of the Court of Appeals and the Bureau of Legislative Reference shall have the full force and effect of law."

Section (e) reads:

> "Any person, firm or corporation or association violating any of the provisions of this sub-title, or violating the rules and regulations promulgated under the provisions shall be deemed guilty of a misdemeanor and fined not less than $50.00 nor more than $100.00 for each offense."

The Court rejected the contention that the act was an unlawful delegation of legislative power because it provided no definite standards. The Court said:

> "It is, of course, a well-recognized rule that there must be guides and standards given to an administrative body or official where he has to grant permits or make regulations. The Acts which established Section 14(a) as a part of the education laws of the State cover all kinds of schools including trade schools. It is said that some regulation was necessary because many mushroom schools of various characters sprang up in order to take advantage of government subsidies given to veterans of World War II. To cover all types of trade schools, as well as other educational institutions, there could be no one set of standards prescribed, but that need not invalidate *the delegation of power if the general standards, broad though they may be,* are sufficiently explicit to limit the State Superintendent of Schools in his actions and not permit him to exercise an arbitrary power . . . We think that the standards prescribed for so broad a subject are sufficiently definite for us to hold that the statute is not subject to constitutional objection on that ground."

The *Schneider* case, the Appellees maintain, is another example on point which demonstrates that the Maryland Court of Appeals recognizes that there are some fields — education here, traffic in own case — which can operate on a statutory basis only under broad, general rules and that the element of "expertise" must be given sufficient room to operate so as to effectuate the purpose of the statute.

The two zoning cases both known as *Tighe v. Osborne,* supra, furnish excellent examples of what limitations the Court of Appeals feels must be placed upon administrative bodies by statute. In the first case, the Court of Appeals found that Ordinance No. 334 was invalid because the delegation of powers to the Zoning Board to refuse or grant a permit was accompanied by standards that were too "broad and indefinite". Under Ordinance No. 334, the Zoning Com-

missioner could refuse to grant a permit if the building was to be placed or its location would "in any way, menace the public welfare".

In objectiong to the use of the standard "public welfare", the Court of Appeals pointed out that such a term could embrace matters outside the police power and that the police power itself "even as thus defined, vague and vast as it is, has its limitations, and it cannot justify any act which violates the prohibitions, express or implied, of the State or Federal Constitution . . . general welfare . . ." said the Court, "as defined by the lexicographers, would make the constitutions so much waste paper".

Upon the invalidation of Ordinance No. 334, the City Council of Baltimore passed Ordinance No. 522 of 1925, which eliminated the use of the term "public welfare", and provided that the Zoning Commissioner could refuse to grant a permit, if the structure or its use "would menace the public security, health or morals". At page 458, the Court said, when considering whether the new ordinance was also invalid, "These things (public security, health and morals), as we have seen, are proper objects of police power and many of the matters which can legitimately be said to affect any of them, as well as many matters which cannot be properly said to affect them, have been passed upon in previous decisions of this court". The new ordinance was upheld.

Ordinance No. 522 also set out other guides, which in addition to the three standards above mentioned, made it apparent "that the ordinance does not vest an unlimited discretion in the zoning commissioner". And finally the Court said at page 459, "There is ample authority to sustain even broader delegations of power to administrative boards or subordinate officials".

In discussing the entire field of administrative power, the Court made the following extremely important comment:

> "The field has become so vast, and the things to be considered so enlarged in number and so interrelated with one another; that it has been found practically impossible to provide in laws and ordinances specific rules and standards by which every conceivable situation can be measured and determined. The result has been that we have turned more and more to the plan of providing in our laws and ordinances general rules and standards, and leaving to administrative boards and agencies the task of acquiring information, working out details, and applying these rules and standards to specific cases. This is not considered a delegation of legislative authority, though it probably does represent an expansion of administrative power.
>
> "Such ordinances represent no change in principle; they merely indicate that the Courts, faced at least by an apparent necessity, have relaxed to some extent the particularity with which they formerly required the laws and ordinances to set out the rules and standards by which the delegated power was to be limited, and whatever may be said of the wisdom of this relaxation, no doubt can now be entertained as to its sanction by the great weight of authority in this country."

Here again, the Appellees feel impelled to comment that increased complexity of the automobile age and its attendant problems make this language and the general tenor of these zoning cases of particular importance when considered in conjunction with an ordinance purporting to meet the demands of mid-twentieth century urban traffic.

An injunction against the enforcement of Ordinance No. 431 of 1925 was sought by the appellee in *Mayor and City Council v. Bloecher, et al.*, supra. The ordinance was known as the "Meat Ordinance" and its purpose was stated to be the regulation of the meat business so as to more effectively

preserve and protect the public health. The law required that meats condemned by the Inspectors of the Health Department had to be delivered to a rendering plant and destroyed. For failure to do so, the Commissioner of Health could revoke the license of the slaughterhouse.

The ordinance was attacked as giving the Commissioner of Health too much power and discretion. In addition, the standards were alleged to be non-existent or vague. The Court of Appeals said, in upholding the ordinance, "It is now too late to deny the power of the state to regulate any business which if unregulated may menace the public health". Further, the Court said that it did not construe the ordinance to delegate to the meat inspectors an arbitrary discretion, unguided and uncontrolled by any standards, rules or regulations. "They (the inspectors) cannot under any power conferred by the ordinance refuse to pass products which are wholesome and fit for human food, unless they condemn them, and they cannot condemn them for the sole reason that the establishments in which they are produced do not conform to standards, regulations and requirements not fixed by the ordinance."

The Appellate Court continued, "It is true that the section fails to define the word sanitary, but it is evident from the whole enactment and from the particular context, that it is to be given its ordinary and accustomed meaning". "And as thus defined, it means that which pertains to health, with especial reference to cleanliness and freedom from infective and deleterious influences".

It is interesting to note that, in this case, the meats had to be destroyed. The questions of due process certainly entered into this case inasmuch as property was involved. Yet, even though the ordinance required destruction of property without any immediate outside check on the condemned meats, its validity was upheld.

Ordinance No. 786 of 1953, under attack in our own case, has no such harsh effect on property. Certainly, in its application it is much less oppressive than that just considered and upheld.

In the *Portsmouth Stove & Range Co. v. Mayor and City Council of Baltimore* case, supra, the Appellant sought to restrain the City from enforcing Ordinance No. 436 of 1925 which provided that no gas tubing devices shall be offered for sale in Baltimore until registered with the Health Commissioner and that the Commissioner could require certain tests to be conducted by specified non-City agencies. (Example — Johns Hopkins University, United States Bureau of Standards.) The Commissioner could revoke the license of a dealer and revoke registration of a product upon a hearing. The ordinance was challenged as an unlawful delegation of authority.

Rejecting this contention, the Court of Appeals denied that the outside testing was an unlawful delegation of authority and said that the testing was for the information of the Commissioner in making his determinations. So the revocation was the act of the Commissioner and not the non-City agency. But the Court indicated that even if the final determination of the outside agency was the actual mode of revocation that it might not be inclined to call such a procedure an unlawful delegation of power. Citing *St. Louis Iron etc. v. Taylor*, 210 U. S. 281, the Court noted that the determination of an outside testing agency — the American Railway Association — was binding under the statute on the Interstate Commerce Commission and that the Supreme Court had found that this was not an unlawful delegation of power.

The Appellant had also contended in the *Portsmouth* case that the Health Commissioner was given instruments of oppression under the ordinance. But the Court replied:

> "This is only a fear and apparently not well founded. The ordinances are designed, and their purpose is, to protect the health and promote the safety of the people of Baltimore, and as such are within the range of the police power . . . If in the exercise of his discretion, the Commissioner acts arbitrarily or unreasonably exceeds the power conferred by the ordinance, those injured thereby can obtain relief from the courts."

In our case, we have an ordinance which seeks to protect the safety of the citizens using our streets. Certainly, under the language above cited, such a purpose is within the range of the police power.

In the "Milk Cases", *Creaghan v. Mayor and City Council,* supra, and *Deems v. Mayor and City Council,* supra, two ordinances relating to the inspection of milk sold within Baltimore City were attacked as attempts to delegate legislative power to the Commissioner of Health. Both attacks failed and both ordinances were held valid.

In the *Creaghan* case, Ordinance No. 262 was assailed because the Commissioner of Health was given the power to grant or revoke permits. It was contended that this conferred upon him unlimited discretion. The Court quoted liberally from the *Deems* case and then added:

> "It cannot be said that every grant of power to executive or administrative board of officials, involving the exercise of discretion and judgment, must be considered a delegation of legislative authority. While it is necessary that a law, when it comes from the law-making power, should be complete, still there are many matters relating to methods or details, which may be by the Legislature referred to some designated minis-

terial officer or body. All such matters fall within the domain of the right of the Legislature to authorize an administrative board or body to adopt ordinances, rules, by-laws, or regulations in aid of the successful execution of some general statutory provision.

"The ordinance does not attempt to delegate legislative power to the Commissioner of Health but authorizes him to exact compliance with the provisions thereof and with such regulations as he has adopted for their enforcement, and gives him only such discretion as is necessary in the proper execution of a law or regulation to prevent the introduction and sale of impure milk etc. in Baltimore City."

An ordinance authorizing the Board of Health and its inspectors to destroy bad milk was attacked in the *Deems* case. An injunction to restrain the Board of Health from destroying milk its inspectors classified as adulterated was sought and refused. The destruction of the milk was included under the penalty provision of the ordinance and no appeal was provided from the decision of an inspector to destroy the milk.

The Court of Appeals held that on the basis of "the immediate promotion of the public good", the milk could be destroyed. Otherwise, the Court observed, the end sought to be provided by the ordinance — that is, the daily shipment of bad milk into homes — would be defeated. The ordinance was good, said the Court, as long as "proper means and instruments" were used by the inspection officers.

Here again, we have the Court upholding an ordinance which allows the destruction of property without immediate recourse being provided in the ordinance to save the property by appeal. In this respect, the *Deems* case parallels the *Bloecher* case.

In *Mayor and City Council of Baltimore v. Wolman,* supra, Ordinance No. 332 of 1913 was attacked, among other reasons, because it allowed the clerks of the city markets to fix the rents of all stands, stalls, shambles, benches or places in any market of Baltimore City. It was contended that the fixing of rents for the market stalls was a legislative function which could not be delegated. The court rejected this reasoning, saying:

> "We think that the fixing of the rent of the market stalls in the City of Baltimore is an administrative and not a legislative function, and may be delegated to the clerks of the market as provided by the ordinance in question."

In *State v. Hyman,* supra, from which language was quoted in the *Petrushansky* case, the Defendant was indicted under a Sweat Shop Act of 1902 which provided that no room of a tenement or dwelling house could be used for certain employment purposes without a permit from the Bureau of Industrial Statistics which could not grant the permit until after an inspection of the premises. The Chief of the Bureau had the right to revoke the permit at any time that the health of the community or that of the employees might require it. The Defendant had failed to obtain a permit. In affirming the conviction and upholding the statute, the Court said that it was "obvious that the statute was passed in furtherance of the protection of the health of the community."

In *State v. Broadbelt,* supra, the Defendant was indicted under a Maryland law requiring registration of cattle with the State Livestock Sanitary Board. The Board could prohibit the sale and shipment of milk from the premises until such a time as the premises conformed with certain sanitary rules. The statute was upheld as constitutional. The Court said, "the entire act is strictly a police regulation,

enacted for the purpose of preserving the public health. No question as to delegation of powers was raised but the Court said that the act "is entirely free from constitutional objections."

Next we come to a number of out of state cases which have special bearing on our problem. Of paramount importance is the case of *Houck v. Minton,* 212 S. W. 2nd 891. The Charter of Nashville, Tenn. gave to the Traffic Commission of that City "full and exclusive legislative authority to adopt and publish traffic regulations . . ." Then it set up specific instances of what it meant by traffic regulations; one of these examples was regulating speed where the Commission felt that some speed less than 30 M.P.H. was proper. This charter provision was attacked as a delegation of legislative power to a municipal agency and therefore invalid. But the Court held "The power to regulate and control traffic is a power that may be delegated to a municipality by the Legislature, or to some designated agency of such municipality."

At page 895, the Court said:

> "When we come to consider the question of regulating traffic, especially within a congested area, it would be impossible to do so in many instances by a direct ordinance of a city council. In emergencies the public safety cannot wait for legislative action by a slowly-moving legislative council, nor can the latter be expected to declare by ordinance what is a hazard to public travel in changing situations and conditions. It must be left to the sound discretion of some agency of the local government."

In the *Houck* case, it was pointed out that the very words "legislative authority" were used in the charter. But the Court held that such authority was, in fact, administrative. It should also be noted that the City Council provided the

penalties by ordinance for violations of the Traffic Commission's rules and regulations.

In *Shipman v. Johnson,* 80 S. E. 2d 717, 89 Ga. App. 620, an ordinance of the City of Atlanta authorizing the City Traffic Engineer to determine and designate intersections where particular hazards existed and to cause Stop Signs and traffic control signs to be erected, when needed, was attacked as being too vague and indefinite to be enforceable and also as a delegation of legislative power to an administrative officer. The Court upheld the ordinance. The Court said further that the constitutional provisions for separation of legislative, executive and judicial powers applies only to state and not municipal functions.

In *Borum v. Graham,* 4 Cal. App. 2d 331, 40 P. 2d 866, an ordinance authorizing the Chief of Police of Pasadena to mark crosswalks for pedestrians where, in his opinion, there was particular danger, was held valid although attacked as a delegation of legislative powers. The Court held that in the proper enforcement of its ordinances, the city legislature may delegate the power to an officer to determine some fact or state of things upon which the ordinance makes its own action depend.

The following significant language was employed at page 276 by the Court in *Gould et al. v. Western Dairy Products Inc. et al,* 55 P. 2d 274 in which a Burbank ordinance giving the Board of Police Commissioners authority to erect stop signs was upheld against the contention that it was an unlawful delegation of powers:

> "Even a casual observer of governmental growth and development must have observed the ever-increasing multiplicity and complexity of administrative affairs — national, state, municipal — and even the occasional reader of the law must have perceived that from necessity, if for no better grounded reason — it has become

> increasingly imperative that many quasi-legislative and quasi-judicial functions, which in smaller communities and under more primitive conditions were performed by the legislative or judicial branches of the government, are entrusted to departments, boards, commissions and agents. No sound objection can longer be successfully advanced to the growing method of transacting public business. These things must be done in this way or they cannot be done at all, and their doing, in a very real sense, makes for the safety of the republic and is thus sanctioned by the higher law."

Further sensitivity of the courts to the traffic problems of urban areas was evidenced in *City of Cleveland v. Gustafson*, 180 N. E. 59, 124 Ohio St. 607, which held as long ago as 1932 that an ordinance authorizing a safety director to establish safety zones does not represent an invalid delegation of legislative powers. At page 60, the Court sounded the theme that was to be heard over and over again as the automobile age gathered momentum:

> "Increasing population, and an increase in the means and methods of travel, present to our legislative bodies their most complex problems. They occur and recur.
>
> "It must be borne in mind that all of us must surrender something for the sake of government. When the motorist starts, he wants to go. So does the pedestrian. So does the passenger in the streetcar. The City Council must look after the safety and general welfare of all at the same time and under all circumstances. Council cannot legislate with exact nicety, nor is it required so to do in the exercise of its police power. The Almighty Himself would find it a stupendous task to take care of our moving thousands without making some slight discrimination somewhere."

For other cases holding that control over traffic placed in the hands of administrative boards and agents is not a delegation of legislative power, see *Taylor v. Roberts*, 84

Fla. 654, 94 So. 874, *Staley v. Vaughn,* 17 P. 2d 299, 92 Colo. 6, *Veneman v. Jones,* 20 N. E. 644, 118 Ind. 41, *Miller v. Cincinnati Wholesale Grocery Co.,* 29 Ohio N. P., N. S. 43.

On October 12, 1954, Judge Raymond W. Fox filed a written opinion in the Circuit Court for the County of Kalamazoo, Michigan, involving Ordinance No. 442 of 1954 of Kalamazoo, Michigan. The provisions of this ordinance are even broader than those of our own inasmuch as the City Traffic Engineer of Kalamazoo is given, among others, power to establish one-way streets, the power to increase or decrease certain speed regulations and the power to prohibit or restrict parking of vehicles on any street. The case, *Stevens v. City of Kalamazoo and James R. Wichman, City Traffic Engineer,* upheld the validity of the ordinance. Judge Fox gave considerable weight to the fact that registered motor vehicles in the County of Kalamazoo increased since 1946 from 28,000 to 48,000. Inasmuch as the contested Regulation #24, fixing a one-way street, had been approved by the City Commission, as required by law, and since there was no showing "that the same is not made in a manner consistent with prevailing traffic safety practices nor in the best interests of the municipality", Judge Fox upheld the regulation issued under the ordinance. Judge Fox commented:

> "It is impossible for the City Commission or the Legislature of our State to anticipate all of the very many details and contingencies that may arise in the handling of such a complex problem as regulating traffic upon the public highways."

Even in the rather antique case of *Shreveport v. Herndon,* 105 S. 244, 159 La. 113 (1925), which held that certain delegations of power over traffic were invalid, two discerning judges filed dissents. One of them was written:

> "Traffic regulation is becoming a matter of supreme importance in this age; and details need constant changing to keep up with the rapid growth of traffic. If these details must be written into law, any attempt to regulate traffic may be given over at the start; for in the time it takes to pass an ordinance conditions may have already so changed as to make the ordinance no longer practicable; and what was best yesterday may be all wrong today and good again tomorrow."

From the foregoing cases, the Defendants contend that it is obvious that the more recent thinking by our courts has concluded that the regulation of traffic by an administrative agency—when accompanied by proper safeguards—is not an illegal delegation of legislative powers particularly in a congested urban area such as Baltimore. These cases include, of course, the regulation of speed.

We submit, therefore, that proper standards have been provided in Ordinance No. 786 and that the regulation of speed is not a legislative function.

The Director of Traffic Is Appropriate Authority

The Appellants assert in their Bill that the authority to set speed limits in Baltimore City has not been delegated to Henry A. Barnes, Director of Traffic. The Appellees maintain that Section 151A of Article 66½ of the Maryland Code together with the operation of Section 2K of Ordinance No. 786 of 1953 makes it abundantly clear that the Traffic Director of Baltimore is the proper authority.

Section 151A of Article 66½ of the Maryland Code (Chapter 43 of the Acts of the General Assembly of 1955) provides that ". . . the *appropriate authorities* of any incorporated city . . . are authorized and empowered to regulate the speed of vehicles . . .". Note that the bill does not say "Mayor and City Council" or any such equivalent terminology.

Ordinance No. 786 of 1953 gives to the Director of Traffic of Baltimore City, with but three enumerated exceptions, authority to adopt and promulgate rules, regulations, orders and directives relating to, or in connection with "the movement of vehicular and pedestrian traffic in the City of Baltimore." Certainly this language is broad enough to encompass the regulation of speed. True, the City Council did not have the power to regulate speed upon the passage of Ordinance No. 786 but this should not prohibit the language of the ordinance from operating in such a manner as to give full effect to the wording. As *Sutherland on Statutory Construction* says at Volume 2, Sec. 5101:

> "Legislative standards are generally couched in terms which have considerable breadth. Therefore, a statute may be interpreted to include circumstances or situations which were unknown or did not exist at the time of the enactment of the statute."

One of the most common examples of a statute operating together with a prior enactment to accomplish some end is the inclusion of a new prohibited act among others formerly prohibited with the result that the older penal section also provides punitive force for a violation of the new prohibition.

No Interference with the Powers of the Police Commissioner

The Appellants allege that in setting the speed limits Section 6(24) of the Charter and Public Local Laws of Baltimore has been violated. Said section gives to the Mayor and City Council of Baltimore all the power commonly known as the police power; provided "however, that no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner". The Defendants

deny that the regulation of speeds violates this section and refers the attention of this Honorable Court to the case of *GI Veterans Taxicab v. Yellow Cab Co.*, 192 Md. 551. In that case the court found that the powers of the Police Commissioner referred to in the Charter "would seem to have reference to his executive powers".

This case arose when the Mayor and City Council of Baltimore passed an ordinance prohibiting the Police Commissioner from granting permits or exclusive franchises to any person for the purpose of standing vehicles before any hotel or other place. The Board of Police Commissioners of Baltimore City by Chapter 109, Section 286 of the Acts of 1910, was authorized by the legislature to set aside spaces for parking of carriages. By Chapter 559 of the Acts of 1920, these powers were transferred to the Police Commissioner. At the time Chapter 109 was adopted, Baltimore City had no home rule, but in 1918 the City adopted a home rule charter and miscellaneous local laws, including Chapter 109 of the Acts of 1910, continued in effect. The problem was presented, therefore, of whether the Mayor and City Council could by ordinance repeal a section of Chapter 109 of the Acts of 1910. The court held that the Mayor and City Council had such a power under its home rule status. See also *State v. Stewart,* 152 Md. 419.

It is our contention, therefore, that all public local laws and all ordinances granting powers to the Police Commissioner of Baltimore City may be abridged or repealed by the City Council of Baltimore by subsequent enactment. The effect of Section 2-I of Ordinance No. 786 of 1953 was to take away from the Police Commissioner of Baltimore City all powers formerly granted to him over traffic by virtue of past ordinances and public local laws and transferring those powers to the Director of Traffic of Baltimore City. Of course, Section 2-I specifically provides that the

Director of Traffic shall not have the power to make and enforce special regulations with regard to traffic as set forth in Section 87 of Article 38. The Police Commissioner continues to have this power, together with all his executive powers.

Inasmuch as the powers referred to in Section 6(24) of the Charter have been determined to be "executive powers of the Police Commissioner", and, further, inasmuch as Baltimore City by virtue of its home rule status has the power to repeal public local laws, it is respectfully submitted that the transfer of the Police Commissioner's power over certain traffic regulations does not violate Section 6(24) of the Charter of Baltimore City.

II. THE CITY OF BALTIMORE MAY REGULATE THE SPEED OF VEHICLES ON ITS ROADS, STREETS, LANES AND ALLEYS WITHIN ITS CORPORATE LIMITS AND WHICH HAVE NOT BEEN DESIGNATED OR MAINTAINED AS A PART OF THE STATE OR FEDERAL HIGHWAY SYSTEM OR AN EXTENSION THEREOF.

The Court below found as a fact that there were no roads, streets, lanes or alleys within the corporate limits of Baltimore City which were designated or maintained as a part of the State or Federal highway system or an extension thereof (App. 52-53). The Court did so, having full advantage of presence of the witnesses, full opportunity to observe them testifying and to observe their demeanor. Nevertheless, the Appellees submit the following argument to support that finding.

The testimony presented at the hearing of this case proves that there are within the corporate limits of Baltimore City neither State nor Federal highways or systems. The testimony of Mr. Bunting of the State Roads Commission and Mr. Barnes, Director of Traffic of Baltimore City, was that there were no such roads or highways within Baltimore City.

The vital question here presented is "are there any extensions of the Federal or State highway system within the corporate limits of Baltimore City?" If there are, then, under the terms of Section 151A of Article 66½ of the Annotated Code of Maryland there can be no municipal regulation of speed upon such extensions.

The Appellees maintain that there are no extensions of the Federal or State highway systems of Baltimore City. The testimony of Mr. Bunting indicated that he was without knoweldge as to whether there were any such extensions within Baltimore City. All Mr. Bunting could say was that State and Federal numbered highways came up to the boundaries of Baltimore and "took up" at the other side of the City. The testimony showed that the State Roads Commission and the Federal government neither maintained nor designated any of the routes within the City.

Under an agreement between the State Roads Commission, represented by Mr. George Lewis, and the Department of Traffic Engineering of Baltimore City, entered into on June 2, 1955, and confirmed by letter from Henry A. Barnes to George Lewis (App. 23), the City of Baltimore agreed to mark all highways within Baltimore City with State and Federal numerals to assist the traveling public when going through the City, and to inform the State Roads Commission for its records when the Department of Traffic Engineering changed any routes. Barnes further "redesignated" the routes formerly used. Under these circumstances, the Defendants maintain that there is no extension of a Federal or State *system* within Baltimore. Mr. Barnes testified that he could change the placing of these markers if he so desired and has done so on a number of occasions without obtaining permission from any State or Federal official. He also testified he had added new route

numbers in places where formerly a route did not exist (App. 40).

Article 89B of the Annotated Code of Maryland, titled "State Roads", in Section 2, defines the State highway system as "a system of roads which are from time to time owned by the State and which the State Roads Commission by resolution from time to time designated as State roads to be maintained and operated by the Commission". It is our contention that the use of the word "extension" in Section 151A of Article 66½ refers not to any mere physical extension but rather an extension or future addition to the State road systems already in existence.

If the contention of the Appellants were accepted, and it was held that no road within Baltimore City which has a physcal connection with a State or Federal numbered highway could be controlled by the municipality as to the legal speed, then Baltimore City would be without the means of increasing or decreasing the speed on these very vital arteries. Section 176(h) of Article 66½ states that when the State Roads Commission determines that any speed limit set by State law is greater than is reasonable or safe under the conditions found to exist at any place upon the public highway within this State, then "outside the corporate limits of any municipality or upon any State maintained street within the corporate limits of any municipality", the State Roads Commission shall have the power to set a safe, reasonable speed.

It is obvious that the State Roads Commission under the section just cited has no power to change speeds within Baltimore City. According to the Appellants, the municipality does not have the power to change those speeds. In other words, if the interpretation which the Appellants urge upon this Court is accepted, we are powerless to

change speeds on those streets within Baltimore City which are the principal areas of congestion and danger. To accept this interpretation would be to render Section 151A of Article 66½ an absurdity as far as Baltimore City is concerned. The Appellees contend that the word "extension" must be interpreted in such a way as to give full effect to the purpose of the law. Baltimore City is in the unique position of having highways which are neither designated nor maintained by the State or Federal government. Certainly it cannot be said that those highways are an extension of the Federal or State highway *systems* within the proper interpretation of this law. We respectfully submit, therefore, that there are no extensions of these systems within our corporate limits and, consequently, speed regulations can be set on all streets and highways within Baltimore City by the municipality.

The Appellants introduced into evidence a map prepared by the Maryland State Roads Commission which purports to show the "State Highway System and Main Connections" (App. 24). Note that the word "connections" is used and not "extensions." According to the legend on the map, certain types of lines and numeral indications represent U. S. Numbered Highways and State Numbered Highways. An examination of Baltimore City on this map reveals that no lines or numerals indicating U. S. Numbered Highways and State Numbered Highways exist within the corporate limits of Baltimore City.

The map does not purport to indicate extensions of the Federal or State highway *systems*. Some of the markings within Baltimore City represent railroads and not highways. There is no legend description of the other lines drawn within Baltimore City on the map and consequently these lines must be termed as meaningless for the purpose of this case in the absence of any testimony identifying them.

REBUTTAL

In the very recent case of *Givner v. Commissioner of Health and the Mayor & City Council of Baltimore,* 207 Md. 184, filed on May 12, 1955, the Maryland Court, speaking through Judge Henderson, upheld a regulation of the Health Commissioner requiring a bathtub or shower in certain dwellings and dwelling units. This regulation was issued pursuant to Ordinance 384 of 1941, which reads in part:

> "The Commissioner of Health is hereby authorized and empowered to make and adopt such rules and regulations as he may deem proper and necessary for the enforcement of this ordinance for the better protection of the health of the City.
>
> "Any person violating any of the provisions . . . or any lawful order or regulation made and adopted by the Commissioner of Health in pursuance thereof, shall be guilty of a misdemeanor and shall be subject to a fine not exceeding $50.00 and each day's violation will constitute a separate offense."

After pointing out that the Commissioner "has not undertaken to prohibit any occupation or activity, but merely to regulate the manner or means of its existence", the Court said:

> "The fact that the promulgation of regulations involves the exercise of discretion and deliberation of a type that might be described as *legislative in character, is not necessarily fatal,* provided there are adequate standards set up to guide the Commissioner of Health in ascertaining the basic facts upon which his regulations are predicated." (Italics supplied.)

After reviewing the trend of the Maryland cases involving delegation of power, the Court commented that "in the

field of public health, still more flexible standards are permitted. The concept of public health is more definite than that of general welfare, and there is a practical necessity for expert interpretation in its application to concrete situations."

The appellees submit that in the field of traffic regulation, as in the field of public health, there is a similar necessity for the judgment of the expert. Public safety is involved. The complexity and variations are too numerous and too exacting to strike down an ordinance which properly attempts to meet the problems squarely.

In arguing that the powers of the Police Commissioner of Baltimore City are immune from interference by the City, the appellants have relied on two cases in the main, *Baltimore v. Howard,* 20 Md. 335, and *Taxicab Co. v. Mayor & City Council of Baltimore,* 118 Md. 359. Both of these cases were decided *before* the adoption of the Home Rule Amendment to the Maryland Constitution in 1915 and *before* Baltimore City adopted its "home rule charter" in 1918. The appellants attempt to use the case of *G.I. Veterans Taxicab Assn. v. Yellow Cab Co.,* 192 Md. 551, as authority for the proposition that in enacting ordinance 786 of 1953, the City has violated Section 6(24) of the Charter.

But the language referred to earlier stands: the powers of the Police Commissioner found in the Charter section "would seem to have reference to his executive powers".

The appellants make much of the language in the case saying that the court below took the view that the City in enacting the contested ordinance "did not purport to repeal or amend Section 286 (379)." But the Court of Appeals said specifically a few sentences prior to the quotation cited by the appellants that "the Mayor and City Council un-

doubtedly had the power, in 1947, to repeal or amend Section 286 (now section 379) of the Charter and Public Local Laws", at page 566.

Article XI-A of the Maryland Constitution makes it clear that when a charter has been adopted pursuant to that section that the Legislature shall make no more local laws with respect to the City and that when local ordinances conflict with previously enacted Public Local Laws that the ordinance will prevail. For a recent discussion of this point, see *Heubeck v. Mayor & City Council of Baltimore,* 205 Md. 203.

The appellees contend that by virtue of the charter powers found in Section 6, sub-section (29)(d), subsection (39) and sub-section (24) and by virtue of the authorizations contained in Article 66½, Sections 151 and 151A of the Annotated Code of Maryland that the City of Baltimore has specific and general authority to enact the legislation found in Ordinance 786 of 1953.

On several occasions in their brief, the appellants cited cases holding that a city council could not delegate the power to establish one-way streets and no parking regulations. The appellees wish to point out to the Court that no such delegation of powers is at issue in this case inasmuch as the City Council has specifically withheld such authority.

Citing 62 C. J. S., Municipal Corporations, 154a, the appellants quoted language to the effect that "in the absence of a permissive statute, a municipal corporation or its common council or similar body may not delegate powers of a public or governmental character which have not been conferred on it." The appellees maintain that Article 66½, Section 151A, among others, specifically grants to the "appropriate authorities" the power to set speeds. In our

own case, we argue that we have such a permissive statute referred to above.

The appellees call the attention of the Court to the fact that the vast majority of cases cited by the appellants are not of recent vintage. The more recent thinking with regard to the delegation of traffic powers to an agency approves such action. In fact, in several of the cases cited herein, the Maryland Court of Appeals readily distinguishes from the *Baltimore v. Radeke,* 49 Md. 217, case cited by the appellants.

Finally, for the record, the appellees wish to state that they did not argue that Baltimore City could pass any local legislation it pleases as stated on page 8 of the appellants' brief. As stated before, the appellees maintain the City of Baltimore can pass all laws not in conflict with the Constitutions and Public General Laws. We argue that we have the right to repeal Public Local Laws but we assert no right to legislate locally on *all* matters.

CONCLUSION

Appellees respectfully submit that Section 2K and 2-I of Ordinance No. 786 of 1953 of the Mayor and City Council of Baltimore is a valid enactment. We further submit that Administrative Regulation No. 7, issued pursuant to Section 2K and 2-I of Ordinance No. 786 and pursuant to Article 66½, Section 151A of the Annotated Code of Maryland, 1951 edition, as amended, is a valid and proper exercise of the powers of the Traffic Director of Baltimore City. Appellees, therefore, urge that the decree from which the appeal was taken be affirmed and that the request of the Appellants be denied.

Respectfully submitted,

THOMAS N. BIDDISON,
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EDWIN HARLAN,
Deputy City Solicitor,

HUGO A. RICCIUTI,
Assistant City Solicitor,

FRANCIS X. GALLAGHER,
Assistant City Solicitor,

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NORMAN P. RAMSEY,
Deputy Attorney General,

STEDMAN PRESCOTT, JR.,
Assistant Attorney General,
Solicitors for Appellees.

Maryland

OFFICIAL
HIGHWAY MAP

FOR FREE DISTRIBUTION

1955

THEODORE R. McKELDIN, Governor

STATE ROADS COMMISSION

Russell H. McCain, Chairman

Edgar T. Bennett

Bramwell Kelly

Norman M. Pritchett, Chief Engineer

Maryland

OFFICIAL

HIGHWAY MAP

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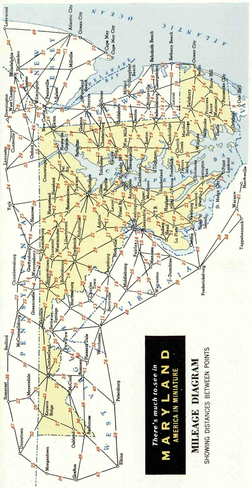
THEODORE R. McKELDIN, Governor

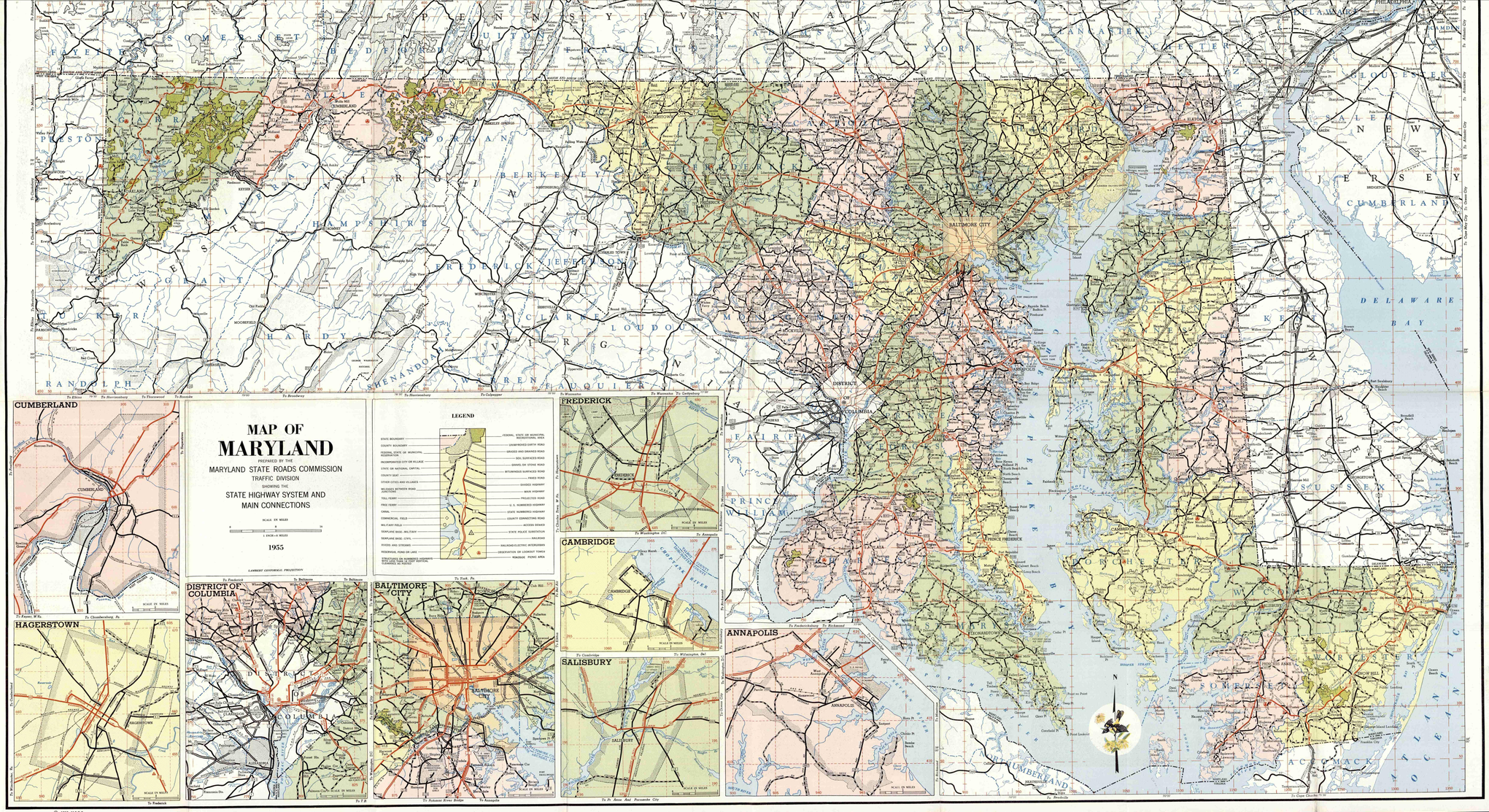
STATE ROADS COMMISSION

Russell H. McCain, Chairman

Edgar T. Bennett — Bramwell Kelly

Norman M. Pritchett, Chief Engineer





MAP OF MARYLAND

PREPARED BY THE

MARYLAND STATE ROADS COMMISSION

TRAFFIC DIVISION

SHOWING THE

STATE HIGHWAY SYSTEM AND MAIN CONNECTIONS

SCALE IN MILES

1 INCH = 8 MILES

1955

LAMBERT CONFORMAL PROJECTION

LEGEND

STATE BOUNDARY — FEDERAL, STATE OR MUNICIPAL RECREATIONAL AREA

COUNTY BOUNDARY — UNIMPROVED EARTH ROAD

FEDERAL, STATE OR MUNICIPAL RESERVATION — GRADED AND DRAINED ROAD

INCORPORATED CITY OR VILLAGE — SOIL SURFACED ROAD

STATE OR NATIONAL CAPITOL — GRAVEL OR STONE ROAD

COUNTY SEAT — BITUMINOUS SURFACED ROAD

OTHER CITIES AND VILLAGES — PAVED ROAD

VILLAGES BETWEEN ROAD JUNCTIONS — DIVIDED HIGHWAY

TOLL FERRY — MAIN HIGHWAY

FREE FERRY — PROJECTED ROAD

CANAL — U. S. NUMBERED HIGHWAY

COMMERCIAL FIELD — STATE NUMBERED HIGHWAY

MILITARY FIELD — COUNTY (OTHERWISE) NUMBERED ROAD

SEAPLANE BASE - MILITARY — ACCESS DENIED

SEAPLANE BASE - CIVIL — STATE POLICE SUBSTATION

RIVERS AND STREAMS — RAILROAD

PERENNIAL POND OR LAKE — RAILROAD-ELECTRIC INTERURBAN

INTERSECTION OR NUMBER OF INTERSECTIONS CLEARANCE AS POSTED — OBSERVATION OR LOOKOUT TOWER

— WINDOW PICNIC AREA

CUMBERLAND

HAGERSTOWN

FREDERICK

CAMBRIDGE

SALISBURY

DISTRICT OF COLUMBIA

BALTIMORE CITY

ANNAPOLIS

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A MESSAGE FROM GOVERNMENT HOUSE

The people of Maryland are happy to send you this 1955 edition of their Official State Highway Map.

Each year Maryland is adding many miles of modern new highways to its already fine system of roads. We are also improving many existing roads and are adding modern traffic interchanges, picnic areas, and other features for your safety and convenience.

Our new Chesapeake Bay Bridge is a marvel of the times. It provides a quick passage across the Chesapeake Bay and an unsurpassed view of that beautiful body of water. Within a few years our projected tunnel under Baltimore Harbor—an outstanding engineering achievement—will be a reality.

The people and the Government of Maryland cordially invite you to make use of these facilities which they have provided for your safety, your comfort and your convenience.

We have done everything possible to make our roads safe and attractive. Please show your appreciation of our concern for your safety by driving carefully and observing our highway safety rules. Please also respect our laws against littering our public highways with trash. Help us to keep Maryland's roads and picnic areas clean and beautiful.

There is much to see in Maryland. It is "America in Miniature—The Heart of History Land." We welcome you and hope you will enjoy seeing and loving Maryland as we do.

Cordially,

THEODORE R. McKELDIN
Governor of Maryland

For details about historic and scenic places of interest, write

MARYLAND DEPARTMENT OF INFORMATION
BOX 706, ANNAPOLIS, MARYLAND

WAYSIDE PICNIC AREAS and THEIR LOCATIONS

ALLEGANY COUNTY	U.S. Route	40	6	Miles	West of Cumberland
ALLEGANY COUNTY	"	"	11	"	East of Cumberland
ALLEGANY COUNTY	"	"	21	"	East of Cumberland
ALLEGANY COUNTY	"	"	23	"	East of Cumberland
ALLEGANY COUNTY	"	"	25	"	East of Cumberland
ANNE ARUNDEL COUNTY	Md. 2		7	"	South of Glen Burnie
ANNE ARUNDEL COUNTY	Balto.-Wash. Expressway		1.5	"	North of Patapsco River
ANNE ARUNDEL COUNTY	Balto.-Wash. Expressway		2.5	"	North of Dorsey Road
ANNE ARUNDEL COUNTY	U.S. Route 301		1.5	"	North of Patapsco River
ANNE ARUNDEL COUNTY	Md. 2				North of Old Severn River Bridge
BALTIMORE COUNTY	U.S. Route	40	1.3	"	West of Balto.-Nat. Co. Line
BALTIMORE COUNTY	"	40	1	"	East of White Marsh
BALTIMORE COUNTY	"	40	2	"	West of Balto. City Line
BALTIMORE COUNTY					North of Parkville
BALTIMORE COUNTY	Balto.-Wash. Expressway		1	"	North of Patapsco River
BALTIMORE COUNTY	Balto.-Wash. Expressway		3	"	North of Patapsco River
CALVERT COUNTY	Md. 2		2		Opposite All Saints' Church, Sunderland
CALVERT COUNTY	Md. 2		7	"	North of Prince Frederick
CAROLINE COUNTY	Md. 404		1.7	"	East of Denton
CAROLINE COUNTY	Md. 404		5.5	"	West of Denton
CARROLL COUNTY	U.S. Route	140	6	"	East of Westminster
CARROLL COUNTY	"	140	7	"	North of Westminster
CARROLL COUNTY	"	140	7	"	South of Westminster
CARROLL COUNTY	Md. 26		1.5	"	East of Hampstead
CARROLL COUNTY	U.S. Route	40	1.5	"	East of Hagerstown
CECIL COUNTY	U.S. Route 213				North of C. & D. Canal at Chesapeake City
CECIL COUNTY	"	"	1		Edge of W. bank of Stoney Run
CECIL COUNTY	Md. 222		4.2	"	South of Port Deposit
CECIL COUNTY	Md. 7		2.7	"	West of Balto. City Line
CECIL COUNTY	Md. 7				South of Elkton
CHARLES COUNTY	U.S. Route 301		2	"	South of La Plata
CHARLES COUNTY	"	301	8	"	South of La Plata
CHARLES COUNTY	"	301	13	"	South of La Plata
CHARLES COUNTY	"	301	15	"	South of La Plata
CHARLES COUNTY	"	301	2	"	North of La Plata
DORCHESTER COUNTY	"	50	2	"	East of Cambridge
DORCHESTER COUNTY	"	50	8.3	"	East of Cambridge
FREDERICK COUNTY	"	40	3	"	East of Frederick
FREDERICK COUNTY	"	40	5.6	"	East of Frederick
FREDERICK COUNTY	"	40	13	"	West of Frederick
FREDERICK COUNTY	"	340	5.8	"	North of Frederick
FREDERICK COUNTY	Md. 26		14	"	East of Libertytown
FREDERICK COUNTY	Md. 85		6	"	Northwest of Buckeystown
FREDERICK COUNTY	Md. 85		4	"	Northwest of Buckeystown
FREDERICK COUNTY	Md. 75				Along Catoctin Creek
GARRETT COUNTY	U.S. Route	219	1	"	North of Oakland
GARRETT COUNTY	"	219	3	"	South of Oakland
GARRETT COUNTY	"	219	10.5	"	North of Oakland
GARRETT COUNTY	"	219	9	"	North of Grantsville
HARFORD COUNTY	"	40	4	"	West of Edgewood Road
HARFORD COUNTY	"	40	2.5	"	East of Aberdeen
HARFORD COUNTY	"	40	1.6	"	East of Aberdeen
HARFORD COUNTY	"	40	1.6	"	East of Aberdeen
HARFORD COUNTY	Md. 22				Bet. Bel Air and Aberdeen
HOWARD COUNTY	U.S. Route	40	5	"	North of Laurel
HOWARD COUNTY	"	40	0.7	"	West of Balto. City Line
HOWARD COUNTY	"	40	1.2	"	East of Ellicott City
HOWARD COUNTY	"	40	12	"	West of Balto. City Line
MONTGOMERY COUNTY	Md. 97		1	"	North of Ft. Totten
MONTGOMERY COUNTY	Md. 97		2.1	"	South of Layhill
MONTGOMERY COUNTY	Md. 121		4	"	North of Clarksburg
MONTGOMERY COUNTY	Md. 28		4.4	"	West of Rockville
PR. GEORGE'S COUNTY	Md. 4		0.1	"	East of D. C. Line
PR. GEORGE'S COUNTY	Md. 4		9.3	"	West of D. C. Line
PR. GEORGE'S COUNTY	Md. 5 Route 301		1	"	Bet. Md. 4 at Upper Marlboro
PR. GEORGE'S COUNTY	"	301	1	"	South of Upper Marlboro
PR. GEORGE'S COUNTY	"	301	6	"	North of Upper Marlboro
QUEEN ANNE'S COUNTY	"	50	8.3	"	East of Chesapeake Bay Bridge
QUEEN ANNE'S COUNTY	"	50	9	"	East of Chesapeake Bay Bridge
ST. MARY'S COUNTY	Md. 5		4	"	North of Leonardtown
SOMERSET COUNTY	U.S. Route	13	2.1	"	Northwest of Fairmount
SOMERSET COUNTY	"	13	2	"	Northwest of Fairmount
TALBOT COUNTY	"	50	1.7	"	North of Easton
TALBOT COUNTY	"	50	3.6	"	North of Easton
TALBOT COUNTY	"	50	9.8	"	South of Easton
WASHINGTON COUNTY	"	40	2	"	West of Hancock
WASHINGTON COUNTY	"	40	6	"	West of Hancock
WASHINGTON COUNTY	"	40	8	"	East of Hagerstown
WASHINGTON COUNTY	"	40	8	"	East of Hagerstown
WICOMICO COUNTY	"	50	0.6	"	Northwest of Salisbury
WICOMICO COUNTY	"	50	5.6	"	Northwest of Salisbury
WORCESTER COUNTY	"	50	2	"	West of Ocean City
WORCESTER COUNTY	"	50	3.6	"	West of Ocean City

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Aberdeen 1035-612
Abingdon 1004-594
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Accokeek 792-304
Adamstown 666-538
Adelina 909-235
Ady 988-658
Aiken 1063-635
Airey 1088-253
Alesia 848-677
Allegany Grove 285-662
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Allens Fresh 817-212
Alpha 821-542
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Alta-Vista 767-428
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Arnold 941-437
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Ashton 796-479
Atholton 836-492
Avenel 805-427
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Baden 866-302
Baldwin 949-606
Baltimore 908-533
Baltimore Corner 1128-448
Barclay 1122-480
Bare Hills 899-562
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Barrellville 281-685
Barstow 910-252
Barton 232-624
Basket Switch 1285-151
Bayard 892-371
Baynesville 923-568
Bay Ridge 954-403
Bayside Beach 958-476
Bayview—Cecil 1092-661
Bayview—Worcester 1268-097
Beallsville 682-489
Beane 764-433
Beantown 833-285
Beauve 907-153
Beaver Creek 619-638
Beaverdam 1217-096
Bedsworth 1137-058
Bel Air 984-620
Bel Alton 804-229
Bellevue 1033-318
Belmont 870-535
Beltsville 827-438
Benedict 892-247
Benevola 610-624
Benfield 907-457
Berlin 1312-185
Berry 811-297
Bertha 963-203
Berwyn Heights 824-423
Bestpitch 1088-214
Bethesda 773-418
Bethlehem 1101-334
Betterton 1065-561
Beverley Beach 941-380
Big Pool 514-654
Big Spring 534-655
Birdsville 916-389
Birdtown 1135-048
Bishop 1309-221
Bishop Head 1070-160
Bishopville 1317-227
Bittinger 174-652
Bivalve 1119-174
Bixler 806-655
Blackhorse 927-653
Bladensburg 820-403
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Boonsboro—Washington 616-610
Borden Shaft 254-659
Bostetter 587-668
Bowens 908-241
Bowie 862-428
Boxiron 1274-107
Boyds 711-492
Bozman 1008-342
Braddock Heights 658-579
Bradley Hills Grove 761-425
Bradshaw 971-578
Brandywine 843-314
Bridgetown 1120-440
Brighton 792-495
Brink 732-501
Brinklow 795-486
Bristol 894-349
Broadfording 574-676
Broad Run 632-568
Brooklyn Park 907-509
Brookville 783-490
Broome Island 930-214
Browning Mill 105-623
Browningsville 731-537
Brownsville 613-564
Brunswick 624-539
Bryans Road 781-290
Bryantown 845-263
Buckeystown 678-546
Bucktown 1077-229
Budds Creek 848-208
Bureau 1126-360
Burkittsville 622-569
Burnt Store 845-250
Burrissville 1064-462
Burrsville 1161-390
Burtonsville 818-466
Bush River 1015-586
Butler 877-619
Butlers 908-370

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Cabin John 755-415
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Calvert 1086-682
Calvert Beach 950-231
Cambridge 1063-270
Campbell 1305-215
Camp Springs 826-354
Capitol Heights 823-382
Carmichael 1046-405
Carney 934-568
Carrollton 823-628
Carville 1083-445
Catonsville 875-524
Cavetown 635-661
Cayots 1125-604
Cearfoss 581-681
Cecilton 1120-574
Cedar Cliff 290-651
Cedar Grove 734-515
Cedartown 1287-137
Cedarville 857-302
Centreville 1065-442
Ceresville 696-590
Chance 1105-125
Chaneyville 903-312
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Chaptico 862-195
Charlestown 1087-636
Charlotte Hall 863-235
Charlton 548-656
Chase 978-557
Cheltenham 850-329
Cherry Hill 1123-668
Chesapeake Beach 933-310
Chesapeake City 1137-620
Chester 1002-417
Chestertown 1065-502
Chesterville 1107-527
Cheverly 825-400
Chevy Chase 775-415
Chevy Chase View 776-432
Chewsville 621-660
Childs 1117-662
Chingville 926-149
Choptank 1100-310
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Church Hill 1088-479
Churchton 932-353
Churchville 1012-630
Clagettsville 743-542
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Clara 1138-163
Clarksburg 721-512
Clarksville 816-500
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Cockeysville 900-600
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Cokesbury 1209-109
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Colesville 799-452
College Green 1077-669
College Park 818-418
Collington 869-414
Collinson Corner 928-394
Colmar Manor 815-401
Colonial Village 880-556
Colora 1054-671
Colton 870-143
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Conaways 887-434
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Dares Beach 938-265
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Darlington 1025-658
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Davidsonville 906-397
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Dawsonville 702-472
Dayton 804-512
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Delight 855-584
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Denton 1133-385
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Fishtown 875-565
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Forest Heights 800-357
Forest Hill 973-638
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Fountain Green 994-624
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Fredericktown 1115-559
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Gambrills 895-450
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Germantown—Worcester 1314-178
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Glenarm 942-591
Glen Burnie 906-485
Glencoe 903-624
Glen Echo 761-412
Glenelg 802-521
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Grasonville 1025-411
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Grayton 743-221
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Hanesville 1042-526
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Harmans 886-482
Harmony 1119-346
Harney 742-685
Harrisonville 848-564
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Harvey 441-683
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Hayden 1090-455
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Helen 880-200
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Huyett 575-663
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Jennings 188-667
Jessup 863-481
Jimtown 689-643
Johnsville 735-618
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Kemptown 736-547
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Kensington 780-434
Kentmore Park 1092-559
Kenwood Park 938-554
Keymar 733-644
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Kiefer 387-623
Kingston 1166-090
Kingstown 1068-501
Kingsville 964-589
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Klej Grange 1245-100
Knoxville 612-544
Kolbes Corner 859-389

L
Lake Roland 899-565
Lakesville 1047-189
Lambson 1114-540
Langford 1043-495
Lanham 839-411
Lantz 672-671
La Plata 807-255
Lappans 592-627
Largo 848-388
Laurel 844-463
Laurel Grove 893-210
Lawsonia 1136-053
Laytonsville 760-502
Leeland 872-379
Leitersburg 625-678
Leonardtown 904-168
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Lewisdale 726-530
Lewistown 683-621
Lexington Park 956-156
Liberty Grove 1048-665
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Libertytown—Worcester 1288-182
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Lineboro 844-687
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Linthicum 897-499
Lisbon 780-547
Little Orleans 409-655
Lloyds 1033-277
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Loch Raven 931-577
Locust Grove 1098-547
Locust Point 1124-633
Lonaconing 242-636
Long Beach 952-229
Longridge 1227-161
Longwoods 1062-375
Louisville 821-587
Love Point 996-437
Loveville 891-191
Lower Marlboro 891-300
Luke 219-604
Lusby 955-211
Lutherville 907-577
Lynch 1065-534
Lyons Creek 897-339

M
Maddox 854-182
Madison 1023-247
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Magnolia 991-572
Malcolm 861-285
Manchester 832-666
Manokin 1156-105
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Mardela Springs 1156-230
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Markers Mill 771-669
Marley 915-481
Marriott Hill 911-379
Marshall Hall 772-310
Marston 772-610
Martinsburg 665-485
Marumsco 1179-066
Marydel 1154-468
Maryland Beach 1358-229
Maryland Line 897-684
Mason Springs 766-274
Massey 1132-540
Matapeake 987-410
Mattapex 985-389

Each city, town, or geographic place shown in the above index can be located on the map by using the two numbers (coordinates) opposite the name. The first number refers to the vertical red lines, the second number to the horizontal red lines. These numbers (coordinates) will apply to any map regardless of scale upon which the State grid system (red lines) has been projected.

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McConchie 782-243
McCoole 243-593
McDaniel 1006-360
McGinnes 1097-507
McHenry 136-636
Meadows 844-358
Mechanicsville 873-221
Melitota 1042-520
Melrose 829-676
Melson 1236-225
Mexico 816-644
Middleburg 741-642
Middle River 958-546
Middletown 646-587
Midland 250-645
Milford 873-552
Miller 255-647
Mill Green 990-667
Millington 1129-521
Millstone 493-674
Millville 1235-153
Mitchellville 873-398
Monie 1139-132
Monkton 908-635
Monrovia 723-561
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Morgantown 808-186
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Moscow 235-628
Motters 707-665
Mountain 978-596
Mountain Lake Park 128-579
Mount Airy 756-562
Mount Harmony 913-315
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Mount Pleasant—Frederick 708-590
Mount Pleasant—Washington 617-620
Mount Rainier 810-403
Mount Sanmar 618-628
Mount Savage 271-683
Mount Vernon 1137-152
Mount Victoria 830-191
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Mount Zion—Caroline 1144-463
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Mutual 929-233
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N
Nanticoke 1114-162
Narrows Park 294-673
Naylor 872-320
Neavitt 1004-326
Necker 944-568
Neelsville 727-504
Newark 1291-156
Newburg 813-198
New Germany 203-662
New London 728-578
Newmans Corner 1093-487
New Market 724-565
New Midway 717-631
Newport 827-214
Newtown—Charles 816-243
Newtown—Kent 1041-537
New Windsor 770-622
Norbeck 778-465
Normans 984-404
Norrisville 931-680
North Beach 933-318
North Beach Park 935-324
North Branch 310-643
North Chevy Chase 779-425
North East 1099-645
North Point 946-527
Norwood 792-470
Nottingham 884-319
Nutwell 921-345

O
Oakland—Caroline 1119-423
Oakland—Garrett 120-582
Oakland—Howard 823-475
Oakland Mills 833-577
Oakleigh 925-571
Oakley 874-165
Oaks 863-242
Oakton 153-695
Oakville 902-203
Oakwood 1031-680
Ocean Beach 1330-140
Ocean City 1350-188
Odenton 882-457
Old Germantown 720-484
Oldtown 347-625
Olney 781-481
Oriole 1142-126
Overlea 935-557
Owings 914-322
Owings Mills 862-576
Oxford 1036-313
Oxon 817-355
Oxon Hill 804-351

P
Pagetts Corner 820-350
Palmers Corner 812-343
Park Hall 963-141
Park Mills 685-534
Parkton 896-658
Parkville 930-561
Parole 932-419
Parran 922-280
Parsonsburg 1238-206
Pasadena 921-464
Patapsco 830-621
Patuxent—Anne Arundel 875-444
Patuxent—Charles 872-257
Pen Mar 658-688
Perry Hall 951-575
Perryman 1025-596
Perryville 1060-630
Petera Corner 1143-499
Phelps Corner 808-354
Picardy 371-621
Pikesville 878-560
Pinehurst 961-468
Pine Orchard 839-525
Pinesburg 558-655
Piney Grove—Allegany 412-684
Piney Grove—Garrett 217-681
Piney Point 940-114
Piscataway 807-316
Pisgah 782-258
Pittsville 1255-209
Pleasant Hill 1109-671
Pleasant Valley 787-655
Plum Point 939-285
Plum Point Beach 938-287
Pocomoke City 1212-091
Point Lookout 895-075
Point of Rocks 647-525
Pomfret 791-271
Pomona 1052-486
Pomonkey 779-283
Pondtown 1108-505
Poolesville 683-478
Popes Creek 802-206
Poplar Springs 772-550
Port Deposit 1049-649
Port Herman 1110-610
Port Republic 935-244
Port Tobacco 795-248
Potomac 741-431
Powellville 1266-183
Pratt 377-679
Preston 1112-322
Price 1095-462
Prince Frederick 919-258
Princess Anne 1175-138
Prospect 996-677
Public Landing 1293-119
Pumphrey 902-505
Purdum 732-528
Putnam 952-632
Pylesville 976-676

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Quaker Neck Landing 1056-473
Quantico 1161-199
Queen Anne 1098-397
Queenstown 1039-423
Quince Orchard 730-467

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Rawlings 270-624
Raynor Heights 896-508
Rayville 884-660
Redgate 915-154
Redhouse 106-547
Redland 659-478
Reese 917-623
Rehobeth 1185-078
Reid 609-685
Reids Grove 1135-257
Reisterstown 848-594
Relay 884-506
Rhodesdale 1133-273
Riderwood 900-573
Ridge 981-105
Ridgely 1117-407
Ridgeville 753-558
Ridgeway 869-523
Ridgway 889-468
Ringgold 640-685
Rising Sun 1064-680
Rison 749-259
Ritchie 841-377
Riverdale 818-412
Riverside 758-201
River Springs 864-150
Riverton 1156-249
Riviera Beach 937-483
Roberts 1107-469
Rockdale 866-553
Rock Hall 1017-475
Rockland 894-570
Rock Point 845-162
Rocks 966-658
Rockville 757-456
Rocky Ridge 710-645
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St. James 586-632
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St. Pauls Church 551-666
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Salisbury 1203-197
Sandgates 912-211
Sandy Bottom 1031-496
Sandy Hook 601-545
Sandy Spring 792-479
Sang Run 115-640
Sassafras 1138-563
Savage 850-475
Scaggsville 828-478
Scarff 956-618
Schenk Corners 1146-486
Seat Pleasant 826-386
Secretary 1101-285
Selbysport 130-683
Seneca 703-454
Seven Oaks 795-427
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Sharpsburg 589-593
Sharptown 1166-260
Shawan 882-604
Shawsville 926-657
Shelltown 1192-057
Shepperd 921-640
Sherwood 994-338
Sherwood Forest 929-435
Shiloh 822-194
Shipley 897-497
Shore Acres 954-447
Silesia 801-331
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Silver Run 787-674
Silver Spring 793-422
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Slacks Corner 814-541
Smallwood 807-615
Smithsburg 639-664
Smithville 1162-344
Snow Hill 1262-128
Solley 926-488
Solomons 956-177
South River 926-390
Sparrows Point 945-505
Spence 1286-124
Spring Gap 317-635
Starkley Corner 1080-470
Starr 1081-418
Stepney 1026-604
Steuarts Corner 923-401
Stevens Corners 1132-509
Stevensville 995-419
Stillpond 1070-546
Stoakley 915-264
Stockton 1257-085
Stoneleigh 912-562
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Sudlersville 1123-495
Suitland 821-370
Sunderland 915-306
Sunnybrook 921-607
Sunshine 783-505
Swallow Falls 118-615
Swanton 171-598
Sweetair 930-612
Sykesville 809-561

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Takoma Park 800-420
Tall Timbers 934-121
Taneytown 750-665
Tannery 813-634
Tanyard 1092-336
Tasker Corners 151-565
Taylors Island 1000-233
Taylorsville 775-592
Taylorville 1325-198
T. B. 834-318
Temple Hills 815-358
Templeville 1150-477
Texas 900-593
Thayerville 143-615
Thistle 866-516
Thompson 1077-258
Thurmont 685-652
Thurston 699-527
Tilghman 990-322
Timonium 906-582
Tippett 819-333
Toddville 1066-171
Tolchester Beach 1015-504
Tomkinsville 831-170
Town Creek 359-658
Town Point—Cecil 1103-604
Town Point—St. Marys 951-178
Townshend 838-303
Towson 912-570
Tracys Landing 915-345
Trappe 1069-301
Travilah 725-450
Tunis Mills 1037-361
Turner 888-213
Twiggtown 334-663
Twilley 1272-228
Tyaskin 1122-181
Tydings on the Bay 967-439
Tyrone 774-650

U
Unicorn 1122-517
Union Bridge 750-632
Union Mills 792-669
Uniontown 769-641
Unionville 747-598
Unity 780-507
University Park 815-415
Upper Crossroads 948-622
Upper Fairmount 1148-102
Upper Marlboro 870-358
Urbana 700-544

V
Vale Summit 263-656
Valley Lee 940-132
Van Bibber 997-588
Venton 1151-134
Vienna 1135-239
Vindex 182-584

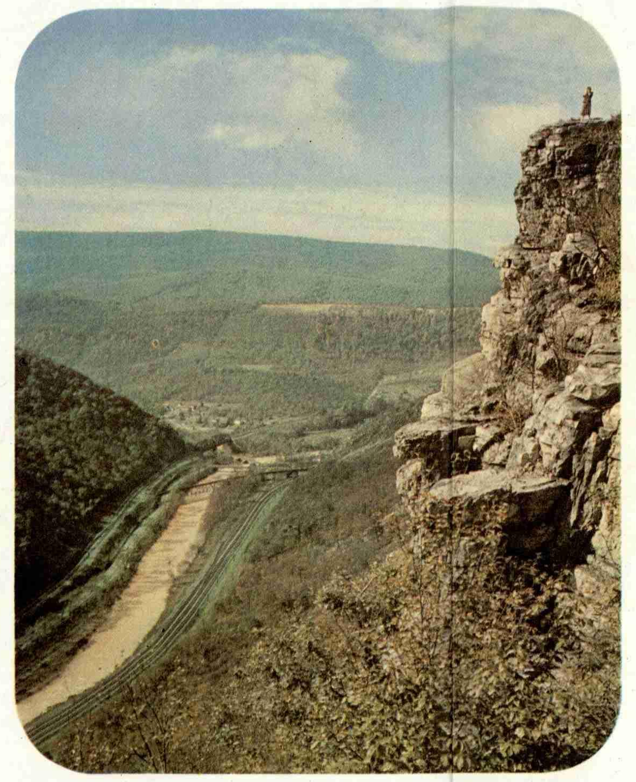
W
Wagners Crossroads 618-635
Waldorf 826-287
Walkersville 701-601
Wallville 941-213
Walston 1228-204
Wango 1244-182
Warfieldsburg 790-616
Warwick 1146-580
Washington Grove 750-476
Waste Gate 1238-189
Waterloo 861-488
Wayside 818-189
Webster 1036-634
Weisburg 896-650
Welbourne 1244-070
Welcome 772-237
Wenona 1101-111
Wesley 1276-141
West Annapolis 942-421
Westernport 223-609
West Friendship 813-535
Westgate 770-407
Westminster 801-634
Westover 1173-110
Wetipquin 1130-185
Weverton 607-546
Whaleysville 1284-221
Wheaton 785-440
Whiteburg 1221-131
Whiteford 984-683
White Hall 904-651
Whitehaven 1147-161
White House 864-644
Whiteleysburg 1160-412
White Marsh 962-564
White Oak 803-439
White Plains 816-276
Whites Ferry 652-482
Whiton 1165-170
Widgeon 1154-157
Willards 1273-208
Williamsburg 1134-303
Williamsport 568-644
Willows 933-290
Wilmers 1070-483
Wilson—Garrett 158-590
Wilson—Washington 562-665
Windyhill 1092-311
Winfield 784-588
Wingate 1063-165
Wittman 1001-350
Wolfe Mill 315-674
Wolfsville 645-635
Woodbine 782-556
Woodensburg 847-608
Woodfield 746-515
Woodland 249-652
Woodlawn—Baltimore 877-542
Woodlawn—Cecil 1060-657
Woodmore 856-396
Woodsboro 711-619
Woodstock 836-543
Woodville 749-574
Woodyard 845-347
Woolford 1034-246
Worton 1037-526
Wye Mills 1062-405
Wynne 973-103

Y
Yellow Springs 670-600

FEDERAL, STATE AND MUNICIPAL RESERVATIONS

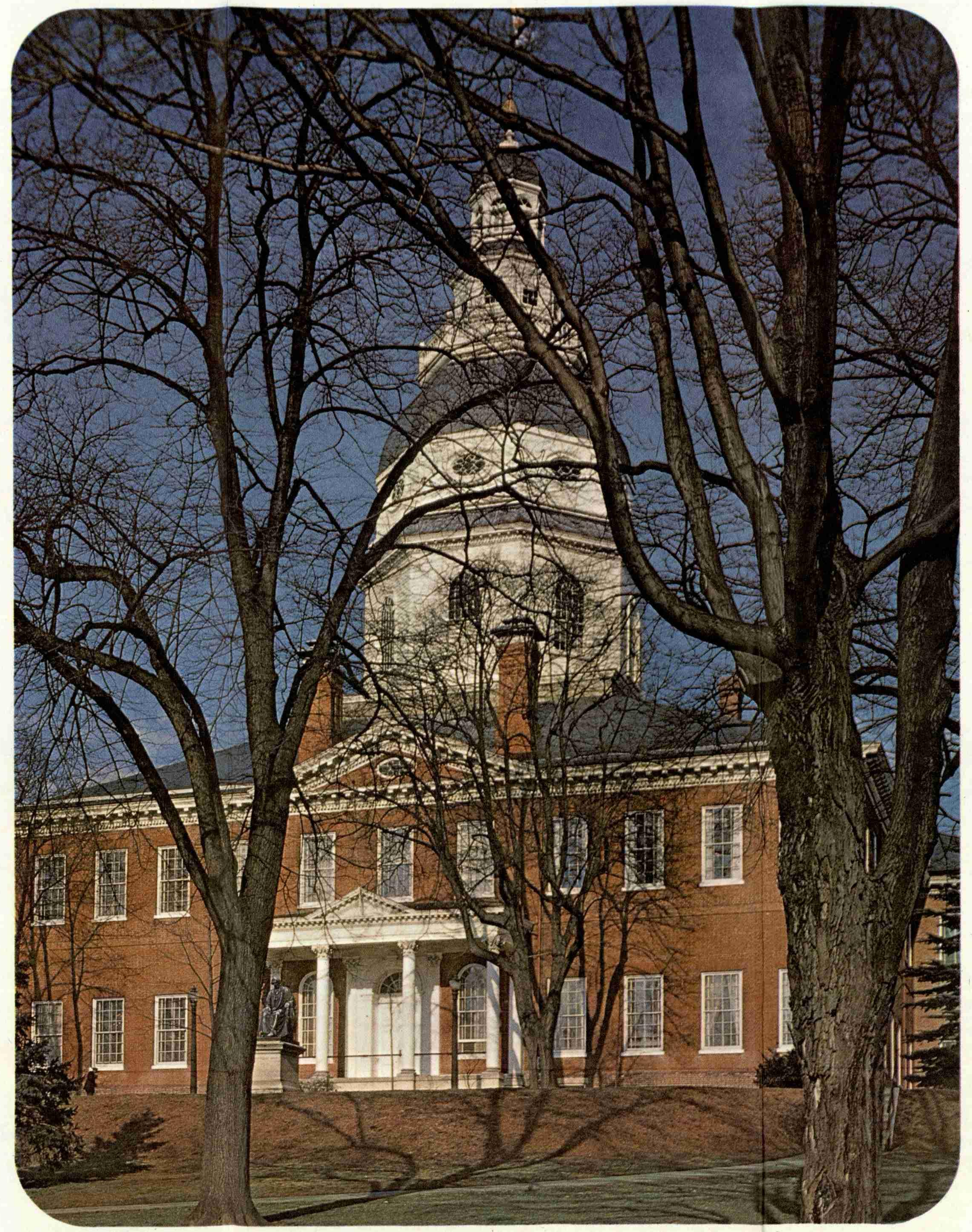
Aberdeen Proving Ground 1035-580
Andrews Air Force Base 836-365
Annapolis Watershed 915-425
Antietam National Battlefield 593-596
Barrett School for Girls 897-482
Billmeyer Game Refuge 400-675
Blackwater Migratory Bird Refuge 1060-215
Broad Creek (B.S.A. Camp) 1009-678
Boy's Village of Maryland 846-329
Camp Detrick 675-585
Catoctin Recreational Demonstration Area 670-660
Cedarville State Forest 850-294
Crownsville State Hospital 913-434
Cunningham Falls State Park 675-645
Deer's Head State Hospital 1203-204
Doncaster State Forest 743-246
Eastern Shore Experimental Forest 1247-194
Eastern Shore Sanatorium 1200-194
Eastern Shore State Hospital 1072-267
Elk Neck State Forest 1110-640
Fort Carroll 936-503
Fort Frederick State Park 518-646
Fort George G. Meade 875-460
Fort Howard 957-498
Fort McHenry 919-485
Fort Ritchie 658-681
Fort Smallwood 948-485
Fort Washington 792-320
Frederick City Municipal Forest 665-625
Friendship International Airport 895-490
Gambrill State Park 660-595
Gathland State Park 619-573
Girdletree Wildlife Demonstration Area 1265-095
Green Ridge State Forest 360-650
Gwynnbrook State Game Farm 862-585
Hagerstown Watershed 648-665
Hampton National Historic Site 917-578
Hanover Municipal Water Works 815-685
Henryton State Hospital 824-554
Idylwild Wildlife Demonstration Area 1155-325
Indian Spring Wildlife Demonstration Area 513-680
Le' Compte Bryant Refuge 1120-230
Loch Raven Reservoir 918-600
Maryland House of Correction 863-477
Maryland State Reformatory for Women 864-473
Maryland State School for the Deaf 684-574
Maryland Training School for Boys 934-579
Millington State Game Refuge 1149-529
Miners Hospital 257-671
Montgomery County Game Farm 734-485
Montrose School for Girls 842-606
Mt. Nebo Game Refuge 190-622
Mt. Wilson State Hospital 866-564
Myrtle Grove Game Farm 776-266
National Agricultural Research Center 833-437
National Institute of Health 771-425
Naval Medical Center 773-425
Naval Ordnance Laboratory 810-440
Naval Radio Receiving Station 842-332
Naval Training Center, Bainbridge 1053-646
Patapsco Reservoir 830-565
Patapsco State Park 860-535
Patuxent Naval Air Test Center 965-162
Patuxent Research Refuge 854-444
Pittsburg Flood Control Area 130-680
Pleasant Valley Recreational Area 169-637
Pocomoke State Forest 1225-140
Potomac State Forest 150-560
Prettyboy Reservoir 870-660
Rocks State Park 963-657
Rosewood State Training School 864-578
Sandy Point State Park 969-436
Savage River State Forest 170-640
Seth Demonstration Forest 1073-335
Springfield State Hospital 811-563
Spring Grove State Hospital 878-521
State Teachers College 911-567
Susquehanna National Wildlife Refuge 1065-605
Swallow Falls State Forest 110-615
Tank Proving Center 1010-644
Thayer Game Refuge 125-600
University of Maryland 816-419
U. S. Army Chemical Center 1000-570
U. S. Army Ordnance Depot 916-496
U.S. Coast Guard Depot 922-498
U.S. Naval Academy 949-418
U.S. Naval Academy Dairy Farm 890-440
U.S.N. Proving Grounds, Indian Head 750-285
U.S.N. Experimental Station 955-420
U.S.N. Mine Test Station 950-183
Victor Cullen State Hospital 671-685
Washington County Game Farm 425-670
Washington Monument State Park 624-608
Washington Orchard Refuge 425-675
Webster Field (Naval) 965-115
Wellington Wildlife Demonstration Area 1195-118
Wicomico State Game Farm 1240-176
Wye Oak State Park 1061-405

Deep Creek Lake, Maryland's Mountain Top Playground

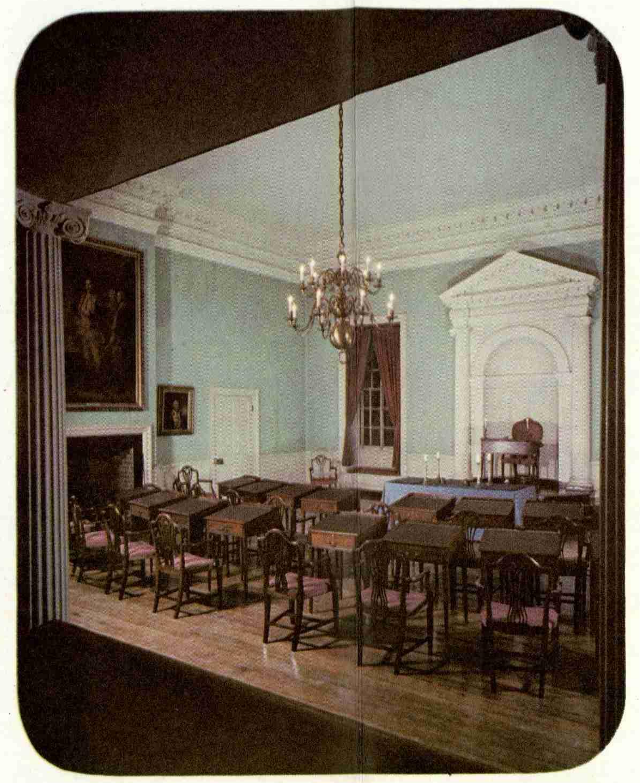


"Gateway to the West"—The Narrows, Cumberland, Maryland

Hundreds of attractive roadside picnic areas invite travelers in Maryland

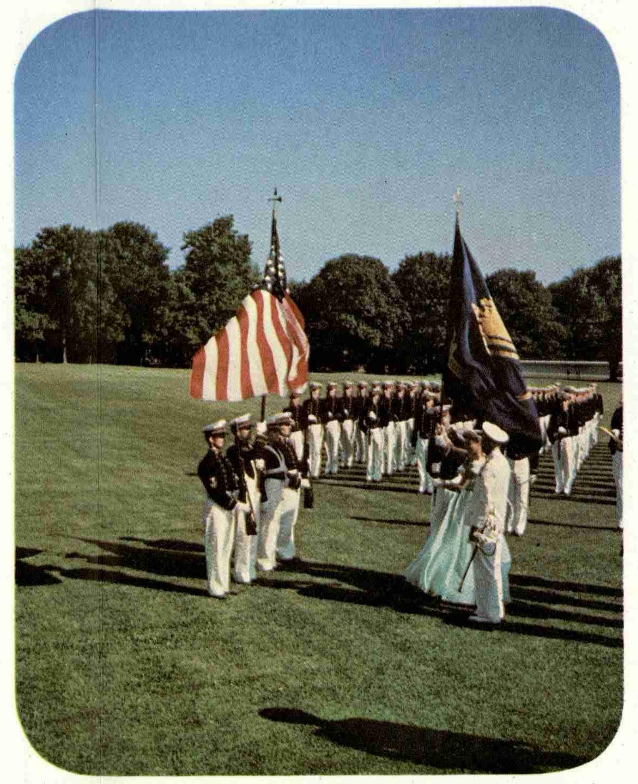


Maryland's Historic State House, built in 1772, is older than the nation. Within its hallowed walls George Washington resigned his commission as Commander-in-Chief of the Continental Forces, and the treaty which ended the Revolutionary War was ratified by Congress. Visitors are welcomed with traditional Maryland hospitality. Open daily, including Saturdays, Sundays and most holidays.



In this magnificent old Senate Chamber of Maryland's Historic State House, George Washington resigned his Commission as Commander in Chief of the Continental Forces, and the treaty which ended the American Revolution was ratified by Congress. Some of the furniture used on both these historic occasions may still be seen by visitors.

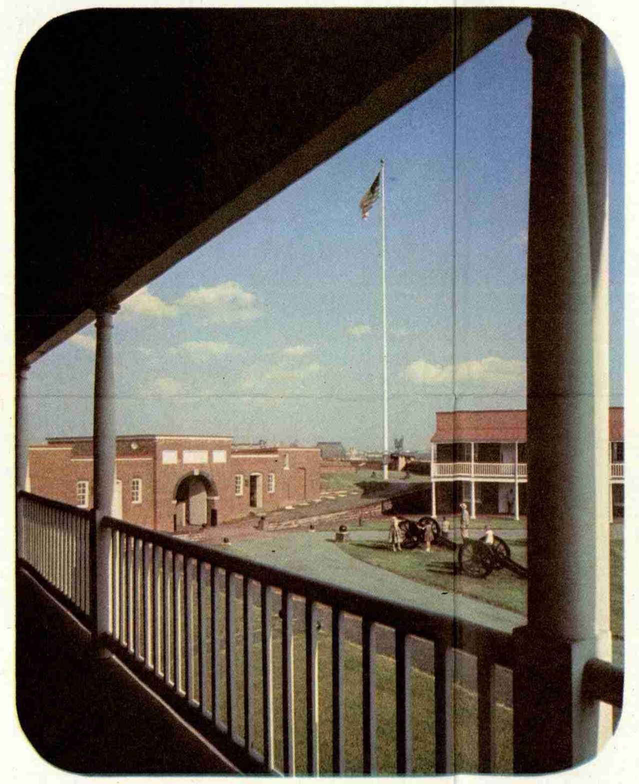
Maryland's Official State Tree—the 400 year old Wye Oak—world's largest white oak tree, in the Nation's smallest State Park



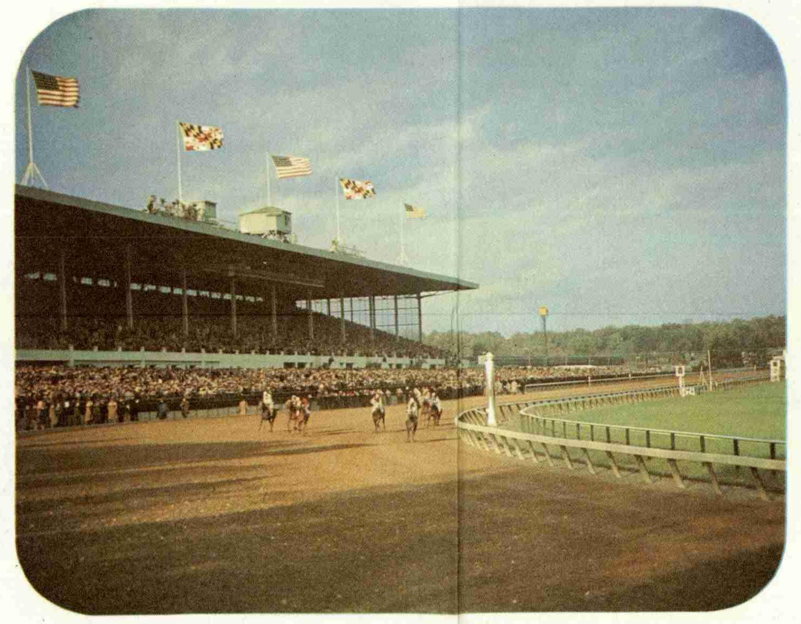
Presentation of the colors—a highlight in one of America's most colorful graduation exercises—The ceremony takes place during June Week at the United States Naval Academy, Annapolis, Maryland

May through September, 1955, Bicentennial Celebration of the establishment of George Washington's first military headquarters in this historic building, 1755, Cumberland, Maryland.

Fort McHenry, Baltimore, birthplace of *"The Star-Spangled Banner"*

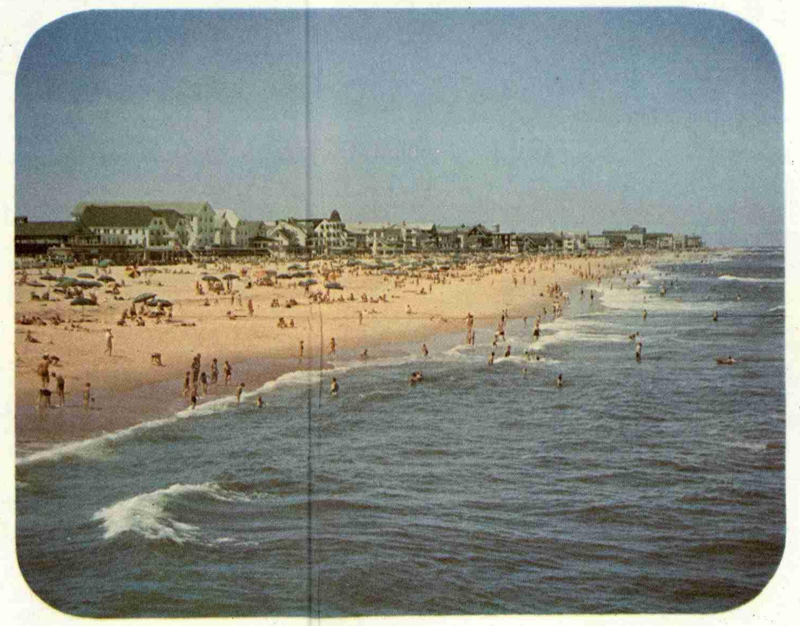


Visited by over three quarters of a million Americans in 1954

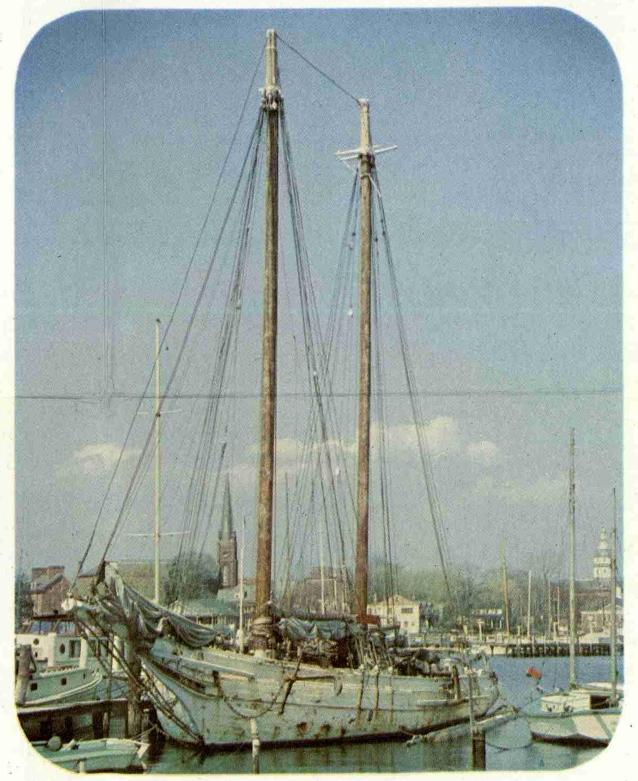


World famous races are features of Maryland's many fine tracks

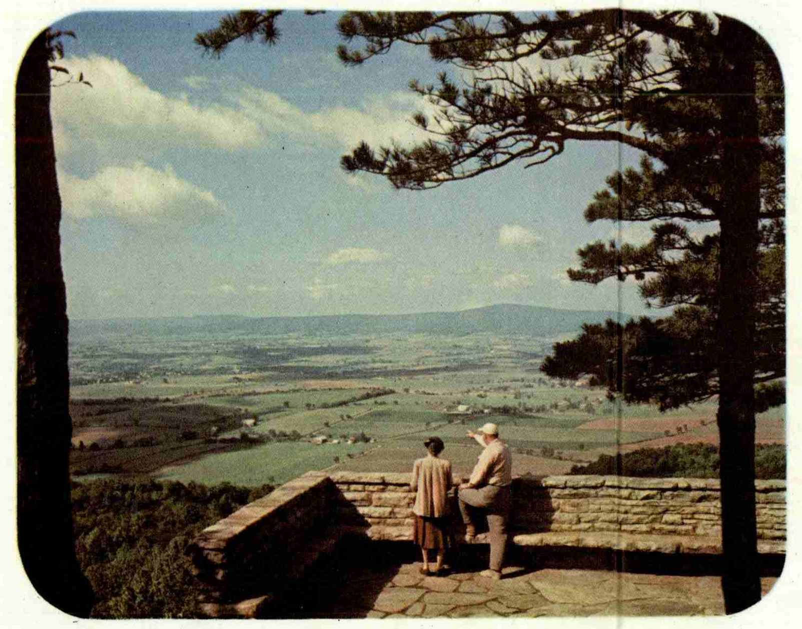
Sailing, sailing on the beautiful Chesapeake Bay



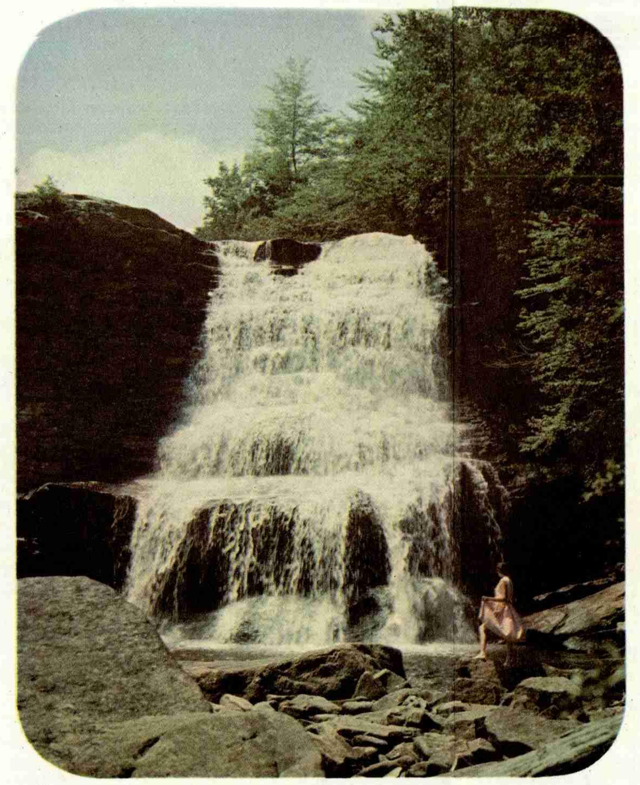
The beach at Ocean City, Maryland, is one of the Nation's finest



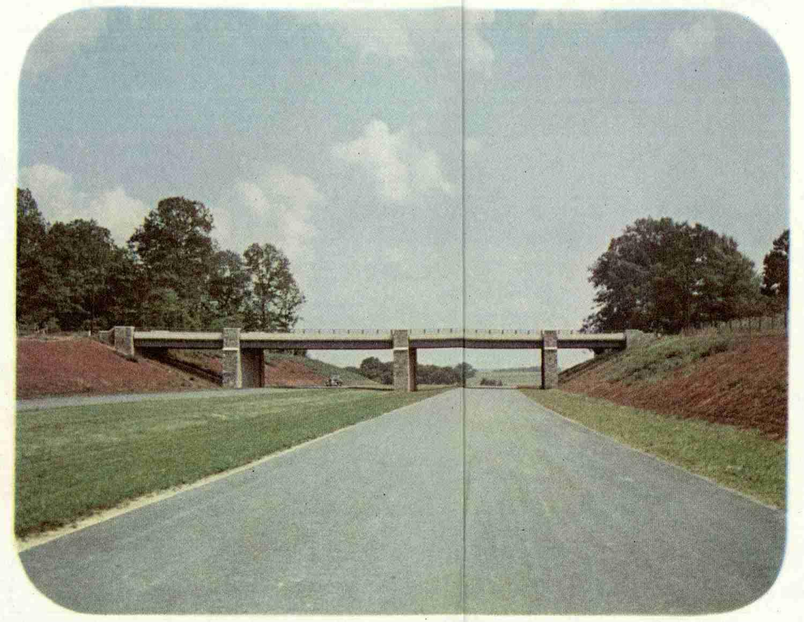
Quaint and colorful harbor at Annapolis, Maryland



Beautiful Middletown Valley, from Gambrill State Park overlook, near Frederick, Maryland



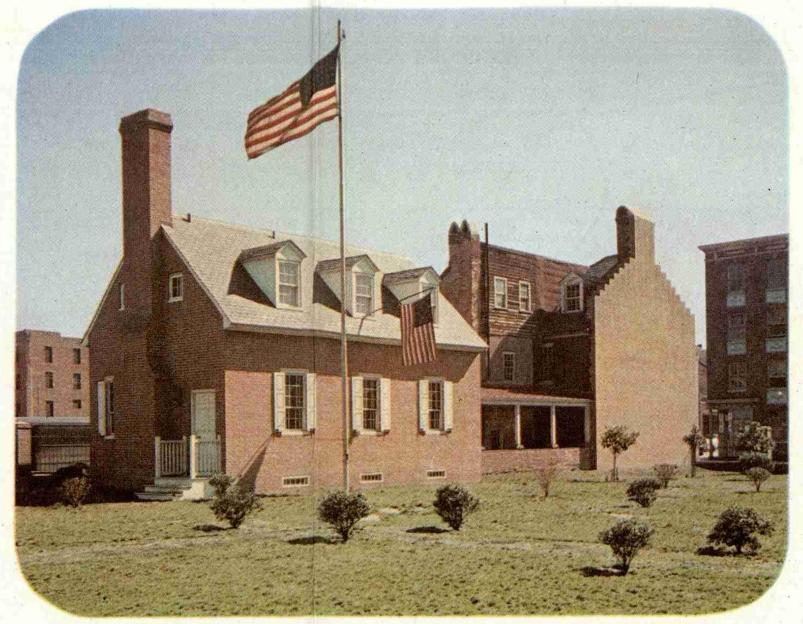
Beautiful and popular Swallow Falls State Park, heart of Western Maryland's scenic beauty



Maryland's highways are beautiful, safe and modern

Maryland's Chesapeake Bay Bridge, longest all-steel over-water bridge in the world

Fine apples are an important Maryland crop



Star-Spangled Banner Flag House, Baltimore, where Mary Pickersgill stitched the flag which flew over Fort McHenry and inspired Francis Scott Key to write *"The Star-Spangled Banner"*

Used as money in Colonial times, tobacco is still an important Maryland crop

File 94675

HYMAN A. PRESSMAN, et al., Appellants,	*	IN THE
	*	COURT OF APPEALS
vs.	*	OF MARYLAND
HENRY A. BARNES, Director of Traffic, and MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation, Appellees.	*	No. 140 October Term, 1955

* *

PETITION FOR RE-ARGUMENT

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Appellants respectfully present their petition for re-argument of the above entitled cause, and, in support thereof, respectfully show:

1. That this Honorable Court's opinion, filed on April 10, 1956, did not rule upon the validity of Section 8 of Ordinance No. 786, which reads as follows:

"Any and all laws, ordinances and regulations and any and all parts of any and all laws, ordinances and regulations in force in the City of Baltimore inconsistent with the provisions of this ordinance or with any rule, regulation, order or directive hereafter promulgated by the Director of Traffic of the City of Baltimore, as hereinbefore provided, are hereby repealed to the extent of any such inconsistency, and any and all laws, ordinances and regulations and any and all parts of any and all laws, ordinances and regulations in force in the City of Baltimore not inconsistent, amended or superseded by the provisions of this ordinance or any rule, regulation, order or directive hereafter promulgated by the Director of Traffic of the City of Baltimore shall remain in full force and effect."

2. That said Section 8 gives an administrative official the power to repeal laws and ordinances by issuing a regulation, whibh is unconstitutional, as argued in the first point of Appellants' Brief, pages 4, 5 and 6.

3. That the Appellants made a formal request to the Lower Court to declare said Section 8 to be invalid by Petition, which is set forth on page 54 of the Appellants' Appendix, but that thereafter, the Lower Court declared the entire Ordinance No. 786

to be consitutional and valid enactments.

4. That, under the present state of the record, Section 8 is declared by the Lower Court to be valid and said declaration is affirmed by this Honorable Court, so that there is an official judicial stamp of approval on a legislative enactment which gives an administrative official the power to repeal laws and ordinances.

5. That the Appellants represent that such a precedent would be regrettable and should be corrected.

6. That this Honorable Court has determined by its ruling that the Appellants were justified in bringing their action to prevent the Director of Traffic from setting speed limits on certain highways, yet the Appellants were ordered to pay their own costs, which amount to considerably more than the Appellees' costs. That the Appellants took the calculated risk of incurring expensive costs if the final decision determined that their complaints were completely without merit so that their action was unjustified. However, the Appellants represent that if their action is substantially justified, they have performed a public service in bringing the action and should not be required to pay any portion of the court costs.

WHEREFORE the Appellants pray that re-argument be granted, and that, upon further consideration, a Decree be ordered to be passed declaring Section 8 of Ordinance No. 786 to be invalid, in addition to the injunction heretofore ordered by this Honorable Court, and that the Appellees be ordered to pay the costs.

Respectfully submitted,

Hyman A. Pressman
Solicitor for Appellants

I HEREBY CERTIFY that on this 23rd day of April, 1956, a copy of the foregoing Petition for Re-argument was delivered to the office of the Solicitors for the Appellees.

Solicitor for Appellants.

THE COURT OF APPEALS — ANNAPOLIS, MARYLAND

Mr. Mallonee

RECEIVED

APR 25 1956

CITY SOLICITOR'S OFFICE

April 24, 1956

Hyman A. Pressman, Esq.
Attorney at Law
337 St. Paul Place
Baltimore 2, Maryland

Dear Mr. Pressman:

This will acknowledge receipt of your petition for re-argument, together with the $5.00 fee required, in the case of Pressman, et al. vs. Henry A. Barnes, etc. et al., No. 140, October Term, 1955.

Copies of this petition have been distributed to the Judges and you will be notified when action is taken thereon.

Very truly yours,

J. L. Young

Chief Deputy

JLY/ojr
cc: Thomas N. Biddison, Esq.,
City Solicitor
C. Ferdinand Sybert, Esq.
Attorney General

Court of Appeals of Maryland

No. 140 October Term, 19 55

Hyman A. Pressman et al

VS.

Henry A. Barnes etc et al

Hyman A. Pressman

Attorneys for Appellants

Thomas N. Biddison
Edwin Harlan
Hugo A. Picciuti
Francis X. Gallagher

Attorneys for Appellees

C. Ferdinand Sybert
Stedman Prescott, Jr.

MARYLAND, Sct:

I Hereby Certify, that on the fifth day of December nineteen hundred and fifty-five I received from the Clerk Circuit Court of Baltimore City Transcript of Record to the Court of Appeals of Maryland in the above entitled cause.

Brief for Appellant due to be filed January 16, 1956

RECEIVED DEC

Clerk of the Court of Appeals of Maryland.

RECEIVED
DEC 6 1955
CITY SOLICITOR'S OFFICE

- I S S U E -

The Plaintiff attacked Baltimore City Ordinance No. 786, of 1953, which provides for the office of Director of Traffic, and the said Director's Administrative Regulation No. 7, regulating and setting speed limits for all streets, roads, lanes and alleys within the corporate limits of Baltimore City, on the grounds that said ordinance and administrative regulation constituted an unauthorized delegation of legislative power. The Plaintiff also alleged that the ordinance was without sufficient standards and, therefore, invalid; that said ordinance contravened the powers of the Police Commissioner of Baltimore City, provided for in the Baltimore City Charter; that the regulation of speed was not and could not be delegated to an administrative official; and that roads and streets which are physically connected with the State or Federal highway systems may not be regulated by local authorities with respect to speed.

HELD: Ordinance No. 786, of 1953, and Administrative Regulation No. 7 are valid and constitutional enactments, and do not constitute an unlawful delegation of legislative power to the Director of Traffic. There are no streets, roads, lanes or alleys within the corporate limits of Baltimore City which can be considered extensions of the State or Federal highway systems under Section 151A of Article 66½ of the Annotated Code of Maryland of 1951, as amended; and said ordinance does not contravene the powers of the Police Commissioner of Baltimore City.

The setting of minimum fines and presumptions as to guilt in the administrative regulation are invalid, but this does not cause the administrative regulation to fall in other respects.

- I S S U E -

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FXG/db 5/12/56

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File No. 94675 -Hyman A. Pressman vs. Henry Barnes - Injunction - Challenging authority of Director of Traffic to set speed limits and provide penalties for violations - conflit - Police powers.

In accordance with the mandate of the Court of Appeals and the decision therewith the Administrative Regulation relating to the speeds on the streets of Baltimore City by the Director of the Department of Traffic Engineering will have to be rewritten and repromulgated so as to exclude those streets in Baltimore City which are a part of the Federal or State highway system or extensions thereof.

HYMAN A. PRESSMAN, et al	*	IN THE
Plaintiffs,	*	CIRCUIT COURT OF
vs.	*	
HENRY A. BARNES, Director of Traffic, and MAYOR AND CITY COUNCIL OF BALTIMORE, a Municipal Corporation,	*	BALTIMORE CITY
	*	Docket 1955 A-892
Defendants.	*	No. A-35141
	*	

* *

PLAINTIFFS' MEMORANDUM

There are four principle reasons why the Plaintiffs are entitled to the relief prayed, as follows:

I. THE DEFENDANT HENRY A. BARNES HAS SEIZED LEGISLATIVE POWERS WHICH CAN NOT BE AND HAVE NOT BEEN LEGALLY DELEGATED TO HIM.

A. THE POWER TO SET GENERAL SPEED LIMITS THROUGHOUT THE CITY AND PENALTIES FOR THEIR VIOLATION IS A LAW-MAKING FUNCTION WHICH CANNOT BE DELEGATED.

B. EVEN IF SUCH POWER COULD BE DELEGATED, IT HAS NOT BEEN LEGALLY DELEGATED.

II. THAT ORDINANCE NO. 768 DOES NOT SUPPLY PROPER STANDARDS FOR THE GUIDANCE OF THE DIRECTOR OF TRAFFIC.

III. THAT THE TRANSFER OF " ALL CONTROL OVER TRAFFIC" FROM THE POLICE COMMISSIONER TO THE DIRECTOR OF TRAFFIC IS IN VIOLATION OF THE CITY CHARTER.

IV. THAT LOCAL AUTHORITIES MAY NOT REGULATE THE SPEED OF VEHICLES ON ROADS OR STREETS WHICH HAVE BEEN DESIGNATED AS A PART OF THE STATE OR FEDERAL HIGHWAY SYSTEM OR AN EXTENSION THEREOF.

I. THE DEFENDANT HENRY A. BARNES HAS SEIZED LEGISLATIVE POWERS WHICH CAN NOT BE AND HAVE NOT BEEN LEGALLY DELEGATED TO HIM.

A. THE POWER TO SET GENERAL SPEED LIMITS THROUGHOUT THE CITY AND PENALTIES FOR THEIR VIOLATION IS A LAW-MAKING FUNCTION WHICH CAN NOT BE DELEGATED.

During oral argument in this case, Defendants declared that the complexity of city government made it necessary to delegate certain functions to administrative officials, especially where it

is impractical to set forth definite rules to guide them. However, the provisions of Administrative Regulation No. 7 are so broad and so general that there was no necessity whatever for a delegation. For example, it provides for a speed limit of fifteen miles per hour in every street in the city having a width of less than 16 feet. There is nothing complex or detailed about this. It is a law-making provision which is purely legislative. The same is true about all other provisions in the regulation. If the law making body of the City, in its wisdom, decides that such general regulations would be beneficial, it can pass an ordinance to that effect, to the extent that it doesn't conflict with the public general laws.

Section 28 of the Baltimore City Charter (1949) provides:

"Every legislative act of the City shall be by ordinance or resolution."

Section 6 of the Charter provides:

"The Mayor and City Council of Baltimore shall have full power and authority to exercise all of the powers heretofore or hereafter granted to it by the Constitution of Maryland or by any Public General or Public Local Laws of the State of Maryland; and in particular, without limitation upon the foregoing, shall have power by ordinance, or such other method as may be provided for in its Charter, subject to the provisions of said Constitution and Public General Laws."

* * * * * * * * * * *

29 (d)

"To regulate the use of streets and public ways by persons, animals and vehicles; to prohibit the use of such streets and public ways by any or all motor vehicles under such circumstances or upon such conditions as it may, from time to time, by ordinance, deem necessary or expedient in the interest of the public. Any such regulation shall not involve any charge of any kind for the use of such street or public way, other than reasonable charges for parking within areas set aside exclusively for that purpose."

* * * * * * * * * * *

(40) "To provide penalties for the violation of any ordinance, rule or regulations established by the City under or in the execution of any power granted by this Section 6; provided that no fine shall exceed $500.00 and no imprisonment shall be for a longer period than 12 months."

Plaintiffs respectfullysubmit that if the above provisions of the Charter mean anything, the municipality can determine speed limits and penalties for their violation in only one way, by the enactment of an ordinance.

Referring to the aforesaid Section 6 of the Charter, the Report of the Charter Revision Commission dated November 14, 1945, on page XV of Flack's Charter (1949), states that the "general grant of powers to the City can be amended only by the Legislature!

During oral argument, Defendants contended that Article XIA of the Maryland Constitution, often referred to as the Home Rule Amendment, gives the City the power to pass any local legislation which it pleases. They even argued that the City did not need the authority granted by the Legislature in 1955 to municipalities to regulate speed (Article 66½, Sec. 151A) within their boundaries, stating that they had that power anyway. This argument is in direct conflict with Section 3 of said Article XIA which provides:

"...All such local laws enacted by the Mayor of Baltimore and City Council of the City of Baltimore or the Council of the Counties as hereinbefore provided, shall be subject to the same rules of interpretation as those now applicable to the Public Local Laws of this State, except that in case of any conflict between said local law and any Public General Law now or hereafter enacted the Public General Law shall control."

Any doubt which might still remain concerning the necessity of making local traffic laws by ordinance is dispelled by Section 309 of Article 66½ of the Annotated Code of Maryland (1951) which says:

"The Magistrates of the Traffic Court shall have exclusive jurisdiction within the City of Baltimore to hear and determine all complaints of violations of the Motor Vehicle Laws of the State,

and shall have exclusive jurisdiction, where jurisdiction, now or may hereafter be given to any Justice of the Peace in Baltimore City to try or commit for trial any person accused of violating the Traffic Ordinances of Baltimore City."

In Dillon on Municipal Corporations, Fifth Edition, it is stated:

"244. Public Powers and Trusts Incapable of Delegation. The principle is a plain one, that the public powers or trusts devolved by law or charter upon the council or governing body, to be exercised by it when and in such manner as it shall judge best, cannot be delegated to others. This principle, its scope and limitations, is best shown by examples of its application to actual cases. Thus, where by charter or statute, local improvements, to be assessed upon the adjacent property owners, are to be constructed in 'such manner as the common council shall prescribe' by ordinance, it is not competent for the council to pass an ordinance delegating or leaving to any officer or committee of the corporation, the power to determine the mode, manner or plan of the improvement. Such an ordinance is void, since powers of this kind must, as above shown, be exercised in strict conformity with the charter or incorporating act."

And in 37 American Jurisprudence, Municipal Corporations, Section 53, it is said:

"Thus when the exercise of discretion is involved, a municipal council cannot delegate the power of enacting police regulations, of determining what public improvements shall be undertaken and the character and extent of such improvements. * * * The members of the council are chosen by the people to represent the municipality and they are charged with a public trust and the faithful performance of their duties; and the public is entitled to the judgment and discretion, in all matters where such elements enter into transactions in behalf of the municipality, of each member of the body upon which authority to act is conferred."

64 C.J.S., Municipal Corporations §1766 states:

"Where the right to regulate parking has been conferred on

the city council, it may delegate administration of its regulations to specified administrative officers, and may even confer power on such officers to regulate parking in timesof emergency. However, power to designate permanent no-parking streets cannot be so delegated since such designation is a legislative act."

In 62 C.J.S., Municipal Corporations, 154 a, it is said:

"As a general rule, in the absence of a permissive statute, a municipal corporation or its common council or similar body may not delegate powers of a public or governmental character which have been conferred on it."

Continuing, in 154 b:

"As a general rule, a municipal governing body may not delegate its discretionary, legislative, or police powers; but it may delegate matters relating to the execution of municipal laws."

Also, in 154 c:

"The general rule against delegation does not forbid the delegation of ministerial, executive, or administrative functions to subordinate officials. While it has been broadly stated that a municipal council cannot delegate its administrative power calling for the exercise ofdiscretion, it has been held that the municipal legislative body may confer on executive officials a measure of discretion in the application of ordinances and the exercise of administrative functions. Municipal governing bodies may fully discharge their official duty and exhaust the municipal discretion by enacting by-laws orordinances to be executed by the proper board of officer, a distinction being made between a delegation of power to make the law, which involves a discretion as to what the law shall be, and conferring an authority or discretion as to its execution to be exercised under, and in pursuance of, the law.

"A municipality may invest administrative officers with reasonable discretion in carrying out the police power, provided such discretion is ministerial in character. Thus, municipal councils may delegate to the mayor or like officer authority to carry out the police regulations ofthe city, and police officers may be granted certain discretionary power in enforcing street regulations. Likewise, a municipal council or similar body may

delegate the power to determine the existence of a fact on which the application of an ordinance depends, may commit to agents the determination of facts necessary to enforce ordinances passed by such body, and may delegate to administrative officers the power to determine when the provisions of an ordinance are being disobeyed. The general rule seems to be that powers which are not imperative may be delegated to some subordinate body or officer."

In the case of TIGHE v. OSBORNE, 149 Md. 349, 131 A. 801, an ordinance giving zoning officials the right to consider such matters and facts as in their judgment may be necessary to determine whether a new building or use will prejudice the public welfare was held to be invalid.

Judge Offutt stated for the Court at page 359:

"More important and difficult is it now to ascertain whether the governing body of the municipality may delegate its powers to another; and if so which powers, and to what extent delegation may be made by the council. It has repeatedly been held that the municipality had no such power of delegation. But it is now the recognized rule that the state may expressly authorize delegation of certain powers by the corporation. In the absence of such express authority the council must itself exercise all discretionary powers; but this does not forbid the delegation of ministerial or administrative functions to subordinate officials."

Further, at page 360:

"That it may delegate to such officials the power and the duty of carrying into effect valid ordinances adopted by it, and provide all the machinery necessary therefor, has long been settled, even though such a delegation involves the exercise of a certain discretion which may be regarded as a part of the police power by such officials in the administration of their duties, where such discretion is guided and restrained by rules and standards sufficient to protect the citizen against any arbitrary or unreasonable exercise thereof. Baltimore v. Gahan, 104 Md. 154. The city is not the original depository of the police power, but it received it from the Legislature and in respect to it is only a delegate, and

the idea that the Mayor and City Council of Baltimore stands in the place of and has all the power that the Legislature could exercise in Baltimore City is negatived by section 2, article 11-A, of the Constitution of Maryland, which provides: 'Such express powers granted to the counties and the powers heretofore granted to the city of Baltimore, as set forth in article 4, section 6, Public Local Laws of Maryland, shall not be enlarged or extended by any charter formed under the provisions of this article, but such powers may be extended, modified, amended or repealed by the General Assembly.' And an examination of that charter fails to disclose a provision which could be construed as authorizing it to delegate or transfer all of the legislative or police powers thus delegated to it relating to any part of its governmental powers to any other agency, and in our opinion it has no such right. For while it may do its ministerial work by agents, and must of necessity clothe them with certain discretionary powers, it cannot divest itself of the trusts, powers and duties imposed uponit by law, by surrendering them entirely to others. Baltimore City v. Gahan, supra; 12 C.J. 864."

Similarly, see SUGAR v. NORTH BALTIMORE M.E. CHURCH, 164 Md. 487, 165 A. 703.

In the subsequent case of TIGHE v. OSBORNE, 150 Md. 452, 133 A. 465, a revised ordinance was held valid because the "public welfare" phrase had been omitted and the zoning commissioner was required to give consideration to:

"(a) The character and use of buildings and structures adjoining or in the vicinity of the property mentioned in the application; (b) The number of persons residing, studying, working in/or otherwise occupying buildings adjoining or in the vicinity of the property mentioned in the application; (c) The location, kind and size of surface and sub-surface structures in the vicinity of the property mentioned in the application, such as water mains, swwers and other utilities; (d) Traffic conditions in so far as they or any of them relate to hazards from fire or disease, or to the public security, health, or morals."

In MAYOR AND CITY COUNCIL OF BALTIMORE v. WOLLMAN, 123 Md. 310, 91 A. 339, it was said in the opinion delivered by Judge Briscoe:

"The rule is plainand well established that legislative or discretionary powers or trusts devolved by law or charter on a council or governing body cannot be delegated to others, but ministerial or administrative functions may be delegated to subordinate officials.

"In 28 Cyc. 277, it is said, the general rule seems to be, that powers which are not imperative may be delegated by the Common Council to some subordinate body or officer. It is now the recognized rule that the State may expressly authorize delegation of certain powers by the corporation. In the absence of such express authority the Council must itself exercise all discretionary powers, but this does not forbid the delegation of ministerial or administrative functions to subordinate officials."

In MUGFORD v. MAYOR AND CITY COUNCIL OF BALTIMORE, 185 Md. 266, 44 A.2d. 745, 747, the Court said through Judge Grason:

"The City has no right under the law to delegate its governing power to any agency. The power of the City is prescribed in its charter, and the City Charter constitutes the measure of power that is possessed by any of its officials. To delegate such power to an independent agency would be a serious violation of the law. To recognize such delegation of power in any City department might lead to the delegation of such power in all departments, and would result in the City government being administered regardless of its charter."

The last case was decided long after the Home Rule Amendment.

In PEOPLE v. GORMAN, 231 N.Y.S. 84, it was stated at page 88:

"The contention on the part of the people that the common council of Binghamton could delegate to the commissioners of public safety the authority to designate certain streets as main arteries of travel, is without foundation, as the law specifically provides that cities and villages of the first class may by ordinance designate certain streets as main arteries of travel, and the common council of the city of Binghamton, being the only local

authority that can pass and adopt an ordinance, it follows that the common council, and that body alone, has power to designate certain streets as main arteries of travel."

Likewise, the case of PEOPLE v. SULLIVAN, 238 N.Y.S. 253, 255, 135 Misc. 705, said,

"Section 92 of Article 6 of the Vehicle and Traffic Law provides that the local authorities in cities are empowered to make, enforce, and maintain such additional reasonable ordinances, rules and regulations with respect to traffic as special local conditions may require, and to prescribe penalties therefor, provided proper notices of such regulations be posted conspicuously upon the streets to which such regulations apply. This court does not interpret this section of the law as giving to the commissioner of public safety any more power than that of administering the law as the legislative body, the common council, has provided in the ordinances duly enacted."

Before leaving this subject, the unlimited, unwarranted and incredible extent of the power delegated to Mr. Barnes by Ordinance No. 786 should be brought to this Honorable Court's attention by referring to Section 8, which provides that any laws, ordinances and regulations in force in the City of Baltimore inconsistent with any rule, regulation, order or directive hereafter promulgated by the Director of Traffic are repealed. Mr. Barnes is thereby given the power to repeal a law or ordinance by issuing a regulation. Plaintiffs' counsel had toread this provision over and over to believe it. Having read it over a number of times, he is still amazed. Such powers are not unusual in certain distant lands, but they are seldom attempted to be delegated in this country.

I. B. EVEN IF SUCH POWER COULD BE DELEGATED, IT HAS NOT BEEN LEGALLY DELEGATED.

First of all, the legislature has not authorized the City Council of Baltimore to delegate its power to make traffic regulations to a subordinate official. As stated in opinions of two Maryland cases quoted on pages 6 and 8 of this memorandum, it is declared to be the recognized rule that express authority from

the state is required before the council may delegate such discretionary powers which are capable of being delegated.

Furthermore, the City Council has not delegated to the Director of Traffic either the power to set speed limits or the penalties for their violation. Section 2I of Ordinance No. 786 transferred "all control over traffic that the Police Commissioner for the City of Baltimore had prior to the time this ordinance becomes effective". The Police Commissioner did not have the power to set the speed limits. Section 2J of said ordinance authorizes the Director of Traffic to install and maintain such traffic signs "as heretofore or hereafter directed by ordinance". Thus, if the city obtained a new power such as the power to set speed limits, the speed limits would be set by ordinance and the Traffic Director could install the necessary signs showing the speed limits. Even without the last named provision, it could not be seriously argued that the City Council intended to transfer to the Director of Traffic all its powers pertaining totraffic both present and future. Moreover, the setting of penalties in Ordinance No. 786 would refute the intention to give the Director of Traffic the power to set penalties, especially when the latter are in conflict with both the ordinance and the state law.

II. THAT ORDINANCE NO. 768 DOES NOT SUPPLY PROPER STANDARDS FOR THE GUIDANCE OF THE DIRECTOR OF TRAFFIC.

Ordinance No. 768 states in Paragraph 1(a) that the office of Director of Traffic is created "in order to provide for the safe and expeditious movement of traffic in the City of Baltimore, and to protect the safety of the citizens using its streets". The ordinance sets no guide or standard whatsoever for the Director to follow. It does not even state that in promulgating his rules, he shall be guided by the general purposes aforementioned. Even if this were stated, however, it would not be a sufficient standard any more than the "general welfare" clause in the Tighe v.Osborne case cited on page 6. Any traffic regulation could be claimed to be for the safe and expeditious movement of vehicular and pedestrian traffic. For example, Mr. Barnes could direct that no pedestrian shall cross from the northeast corner to the southeast corner of any intersection or from the southeast to southwest corners. If his power were challenged, he could say it was for the safe and expeditious movement of traffic.

In CITY OF SHREVEPORT v. HERNDON, 105 So. 244, 159 La. 113, an ordinance giving the commissioner of public safety power to adopt and enforce rules prohibiting parking of vehicles, prohibiting left turns at certain corners, and prohibiting traffic on certain streets, without prescribing a definite rule for guidance was held unconstitutional as vesting arbitrary discretion in him relating to the legislative duty of enacting ordinances, a duty which the commission council itself should perform.

In YICK WO v. HOPKINS, SHERIFF, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220, it was held that the order of the City and County of San Francisco, providing that it should be unlawful for any person to engage in the laundry business within the corporate limits "without having first obtained the consent of the Board of Supervisors, except the same be located in a building constructed of either brick or stone" does not prescribe a rule and condition for the regulation of the use of laundry property, to which all similarly situated may conform; but it confers a naked arbitrary power upon the board

to give or withhold consent." Mr. Justice Matthews said for the Supreme Court at page 225: that if the Supervisors were sued for redress by mandamus, "it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent, without reason and without responsibility."

In MARYLAND THEATRICAL CORPORATION v. BRENNAN, 180 Md. 377, 24 A.2d. 911, an Act giving the Police Commissioner of Baltimore City power to determine the amount of license fee, between $5 and $100, to be paid before giving a public dance was declared to be unconstitutional, because it conferred an unlimited grant of power without setting a guide for him to follow.

In GOLDMAN v. CROWTHER, 147 Md. 282, 128 A. 50, a zoning ordinance was held to be objectionable because of a failure to provide any proper standards or rules by which the exercise of discretion must be guided and limited in so far as it applied to the "use" provisions.

In JACK LEWIS INC. v. BALTIMORE, 164 Md. 146, 164 A. 220, a provision of the zoning ordinance giving the board of zoning appeals the power to make exceptions when there are "practical difficulties or unnecessary hardships" or to "avoid arbitrariness and so that the spirit of the ordinance shall be observed and substantial justice done" was ruled to be invalid, as not furnishing clear and definite guides for such action by the board.

In BALTIMORE v. RADEKE, 49 Md. 217, it was held that a provision in an ordinance which gave the Mayor the power to revoke permits for steam boilers, steam engines and boilers upon six months notice without prescribing "rules by which its impartial execution can be secured or partiality and oppression prevented" was invalid.

At page 281, Judge Miller said for the Court:

"In fact, an Ordinance which clothes a single individual with such power, hardly falls within the domain of law and we are constrained to pronounce it imperative and void."

In COUNTY COMMISSIONERS OF PRINCE GEORGE'S COUNTY v. NORTHWEST CEMETERY CO., 160 Md. 658, 154 A. 452, an Act was held

invalid which conferred upon the County Commissioners an unregulated discretion to allow or to prevent the establishment or maintenance of a cemetery in the county without any restriction of its application, by its terms, to localities where it might have a clearly intended relation to the public health or other legitimate purpose of the police power.

At page 656, Judge Urner's opinion said:

"It is because the omission to prescribe reasonably definite standards for the exercise of such an authority might result in arbitrary discriminations, beyond the proper scope and purposes of the police power, that such enactments are held to be in conflict with the organic law."

Under the ordinance in question, Mr. Barnes could discriminate against the eastern section of the City by prohibiting trucks from travelling in the western half of the city but permitting them to use the eastern half. He could prohibit all southbound movement of vehicles during afternoon hours in favor of people returning home during those hours but in discrimination against those going to work in the afternoon. He could make all sorts of fantastic rules because his powers are too unlimited and too general.

In HAGERSTOWN v. B. & O. RAILROAD CO., 107 Md. 178, 68 A. 490, one of the reasons for holding an ordinance invalid was that the granting of a permit tokeep cattle otherwise than in a covered structure was not regulated or controlled by the provisions of the ordinance, but was committed to the arbitrary will of municipal officers.

In BOSTOCK v. SAMS, 95 Md. 400, 52 A. 665, an ordinance of Baltimore City provided that no permit fora new building shall be granted "unless in the judgment of the said Judges the Appeal Tax Court, or a majority of them, the size, general character and appearance of the building or buildings to be erected, will conform to the general character of the buildings previously erected in the same locality, and will not in any way tend to depreciate the value of surrounding improved or unimproved property".

Holding such an ordinance too vague and undefined inits scope

and too arbitrary in its character, it was held to be invalid.

III. THAT THE TRANSFER OF "ALL CONTROL OVER TRAFFIC" FROM THE POLICE COMMISSIONER TO THE DIRECTOR OF TRAFFIC IS IN VIOLATION OF THE CITY CHARTER.

Section 2/I of Ordinance No. 786 gives the Director of Traffic full power and authority and directs him to:

"Have and exercise all control over traffic that the Police Commissioner for the City of Baltimore had prior to the time this ordinance becomes effective, including the power to establish special 'NO PARKING' spaces; provided, however, that the Director of Traffic of the City of Baltimore shall not have the power to make and enforce special regulations with regard to traffic as set forth in Section 87 of this Article."

This is a direction violation of Section 6(24) of the Charter and Public Local Laws of Baltimore City, 1949 Edition, which provides "that no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner".

The above charter provision is taken almost verbatim from from Chapter 367 of the Acts of 1860 whereunder control of the Baltimore City Police Department was transferred from the City to the State. There have been many changes in the number of police commissioners including the change to one commissioner in 1920, but the above provision remained intact.

In BALTIMORE v. HOWARD, 20 Md. 335, it is related that on June 27, 1861, the exercise of the functions of the Police Commissioners was suspended by the Government of the United States until March 20, 1862, when the Government's police force was withdrawn from the City of Baltimore. It was held that the Police Commissioners were entitled to be paid for this period for the reason that though displaced by a force to which they yielded and could not resist, their powers and rights were still preserved. At page 356, "As a Board of State Officers, possessing the power amongst other powers to make disbursements, they could not be disturbed or their power suspended, except by the Legislature."

Appellants urge that the last sentence quoted should be given great weight as an interpretation of the legislative intention made soon after the law was passed.

In G.I. VETERANS TAXICAB ASSN. v. YELLOW CAB CO., 192 Md. 551, 65 A.2d 173, the court declared an ordinance to be valid which required any taxicab stands in front of hotels designated by the Police Commissioners not to be exclusive but to be open to all taxicabs. It was held not to be in conflict with the provision of the Charter involved herein.

In 65 A.2d, page 176, Judge Henderson said for the Court:

"The chancellor took the view that the Mayor and City Council, in enacting Ordinance 201, did not purport to repeal or amend Section 286 (379). Certainly it did not undertake to abrogate the power of the Police Commissioner to designate taxicabs stands, or to confer that power on a new agency. It did, however, limit the exercise of his power, and we think that was in effect, an amendment, in substance if not in form, of the public local law. The proviso in Section 6(29) of the present charter, that 'no ordinance * * * shall * * * interfere with the powers of the Police Commissioner', would seem to have reference to his executive powers. Compare Taxicab Co. v. City of Baltimore, 118 Md. 359, 369, 84 A. 548. In any event, we think it does not restrict the power of the City to legislate, under the Home Rule Amendment, on the subject matter within the scope of the police power, even though such legislation may add to or subtract from his duties as to local law enforcement."

Plaintiffs submit that the above case is distinguished from the present case by the very wording in the opinion:

"Certainly it did not undertake to abrogate the power of the Police Commissioner to designate taxicab stands, or to confer that power on a new agency".

To the contrary in the pending case, Ordinance No. 786 does undertake to abrogate the power of the Police Commissioner to control traffic, and it does confer that power on a new agency; namely, the Director of Traffic.

Furthermore, the granting to Mr. Barnes of "all control over traffic that the Police Commissioner for the City of Baltimore had prior to the time this ordinance becomes effective" includes the right to place men on the street to direct traffic. While it is true that Mr. Barnes has only placed mechanical directors of traffic on the street, the test is not what has been done but what may be done under the legislative enactment.

Plaintiffs agree that the charter provision refers to executive power and that the City Council may pass ordinances relating to traffic which may incidentally give the Police Commissioner more or less duties and powers. However, Plaintiffs contend that the City may not make a blanket transfer of a segment of his powers to another official. If this could be done, all the remainder of his powers on other matters could also be transferred to other officials, thereby depriving the Police Commissioner of all power and defeating the intent of the Maryland State law.

The case of TAXICAB CO. v. MAYOR AND CITY COUNCIL OF BALTIMORE, 118 Md. 359, 369, 84 A. 548, which is cited in the G.I. Veterans case for comparison, states that the city is limited by the law creating the Board of Police Commissioners and at page 369, says through Judge Thomas:

"It is still the duty of the police department to prevent and remove nuisances in the streets, and to enforce all laws and ordinances of the city, and in the discharge of that duty the Board of Police Commissioners are not subject to the control of the Mayor and City Council of Baltimore."

In 17 Opinions of the Attorney General 297, the Police Commissioner of Baltimore City was advised:

"If you deem it necessary or desirable for promotion of the public safety to erect stop signs at intersections other than those involving a 'main traveled or through highway' as provided in the State law, I would suggest that the Mayor and City Council be requested to pass an ordinance conferring such authority upon the Police Commissioner."

IV. THAT LOCAL AUTHORITIES MAY NOT REGULATE THE SPEED OF VEHICLES ON ROADS OR STREETS WHICH HAVE BEEN DESIGNATED AS A PART OF THE STATE OR FEDERAL HIGHWAY SYSTEM OR AN EXTENSION THEREOF.

Mr. Barnes testified that he intends to raise and, in some cases, lower the speed limits on certain streets which had been identified as being continuations of state and federal highways through Baltimore City. It is true that these highways in the city limits are not maintained by the State or Federal government, but they have been designated in two distinct ways:

(1) The Official Highway Map of the State Roads Commission shows the highways going through the city with designated numbers of the state and federal highway systems, and

(2) Signs have been posted by the State Roads Commission and are even now being posted by Mr. Barnes with designated numbers of the state and federal highway systems.

These roads therefor come within the exception of Chapter 48, Acts of 1955 (Article 66½, Section 151A), which reads as follows:

"Notwithstanding any other provision of this article, the appropriate authorities of any incorporated city, town or village are authorized and empowered to regulate the speed of vehicles on any road, street, lane or alley which is within their respective corporate limits and which has not been designated or maintained as a part of the State or federal highway system or an extension thereof." ~~(1955 xxxxxxxx)~~"

Since the phrase used in the law is "designated or maintained", and not "designated and maintained", it is sufficient to establish that a road has been designated as a part of the state or federal highway system or an extension thereof in order to include it in the exception. Since the uncontradicted evidence shows that the roads and streets in question have been designated on the official state map and on the markers showing route numbers as being part of state or federal routes, the roads and streets can be considered extensions of the state or federal highway systems.

If the statute is considered in the light of the practical situation, it can be determined that the roads in question are parts of the federal highway system itself, rather than extension. For

For example, U.S. Route 40 is part of the federal highway system, according to the evidence. It is well known and the Court can take judicial notice of the fact that the portion of U.S. Route 40 which is outside Baltimore City is maintained by the State, not by the United States, and the portion within Baltimore City is maintained by the City. The statute does not say that it only refers to those parts of the federal highway system which are maintained by the federal government. Therefore, the parts of U. S. Route 40 outside Baltimore City are included as parts of the federal highway system although they are not maintained by the federal government. By the same reasoning, the parts of U.S. Route 40 within Baltimore's corporate limits are included as parts of the federal highway system although they are not maintained by the federal government.

In WELSH v. KUNTZ, 196 Md. 86, 75 A.2d 343, Judge Delaplaine said for the Court of Appeals:

"The cardinal rule of statutory construction is that statutes should always be construed to effectuate the intention of the Legislature. The manifest intention will always prevail over the rules of grammatical construction. On the other hand, a court is generally not at liberty to surmise a legislative intention contrary to the plain language of the statute, or to indulge in the license of inserting or omitting words with the view of making the statute express an intention which is not evidenced in the original form. State Tax Commission v. Potomac Electric Power Co., 182 Md.111, 115, 116, 32 A.2d 382; Smith v. Higinbothom, 187 Md. 115, 125, 126, 48 A.2d 754. Where there is doubt as to the meaning of a statute, the court will resort to the history of the enactment in search of the legislative intention."

Plaintiffs believe that the statute is clear, but if there is any need to search for the legislative intention, the hisbry of the enactment will disclose that Plaintiffs' interpretation is correct.

The 1954 Session of the Legislature passed House Bill No. 45 which was the same as the aforementioned Chapter 43 of the Acts of 1955, except that it did not refer to the "federal highway system

or an extension thereof". Governor McKeldin vetoed this Bill and in his veto message, stated that the "Automobile Club of Maryland, through its general counsel has expressed vigorous opposition to this Bill."

The words "federal highway system or an extension thereof" therefore appears to have been added to satisfy the objections of those who did not want local authorities to interfere with the general state speed laws on main roads, such as the state and federal routes mentioned in the evidence in this case.

In Public Service Commission v. Sun Cab Co., 160 Md. 476, 481, 154 A. 100, the Court said through Judge Sloan:

"But while it is the province of the courts, and not the Legislature, to interpret the law, the courts are not shut off from any discussion of sources of information available to the Legislature in order to ascertain the legislative intent. Bangs v. Fey, 159 Md. 548, 152 A. 508; Lewis' Sutherland Statutory Construction (2nd Ed), secs. 470, 471."

In their oral argument, the Defendants contended that "an extension thereof" was meant to include new roads which may be taken into the highway systems. If that were the legislative intention, the words "or an extension thereof" would not be at all necessary. Any new roads brought into the highway systems would thereupon become parts of the systems and they would be covered by the law pertaining to "a part of the State or Federal highway system".

In the caseof Welsh v. Kuntz, 196 Md. 86, 75 A. 2d 343, the Court, on page 98, said:

''It is a natural presumption that the Legislature does not intend to use words in vain or to leave a part of its enactment without sense or meaning, but intends that every part of it shall be operative. Hence, the Court endeavors to avoid that construction of a statute which, in giving effect to one part of it, will make another part superfluous and useless.'"

Moreover, the Plaintiffs' interpretation of the word "extension" is in accord with, while Defendants' contention is at

variance with, the ordinary meaning of the word as defined in dictionaries and by judicial tribunals.

Webster defines "extension" as "1. Act of extending, or state of being extended; a stretching out; enlargement in breadth or continuation of length; increase; augmentation; expansion."

Ballentine's Law Dictionary defines it as "A lengthening; a prolongation; a continuance; a grant of further time."

Volume 15A of Words and Phrases contains many judicial definitions, including the following:

"'Extension' means a stretching out, an enlargement in breadth, or continuation of length; usually the addition of something of less import than that to which it is attached. Cushing v. Inhabitants of Town of Bluehill, Me., 92 A.2d 330, 335."

"'Extension' as used in the report of viewers, speaking of the extension of a straight and open street, implies that it is to be continued, or, in mathematical language, produced, as in a straight line, to the point indicated for intersection with another street. In re Charlotte St., In Lancaster City, 28 Pa. 286, 288."

"'Extension' means a stretching out, an enlargement in breadth, or continuation of length. Missouri K. & T. R. Co. of Tex. v. Tex. & N. O. R. Co., C. A. Tex. 172 F.2d 768, 768."

"The term 'extension' conveys to the mind an enlargement of the main body; the addition of something of less import than that to which it is attached. New York Cent. & H. R. R. Co. v. Buffalo & W. Electric Ry. Co., 89 N. Y. S. 418, 421, 96 App. Div. 471."

"'To extend a street' means its prolongation and continuance in the direction to which it already points, and does not authorize its deflection in order to reach a given point. Mayor etc. of Monroe v. Ouachila Parish, 17 So. 498, 499, 47 La. Ann. 1061."

"A proposed extension of a railroad company's electric line for about 7 miles the existing system forming a continuous line of about 76 miles, held an 'extension' within the meaning of Railroad Law 1879, 90, now section 170. Western N. Y. & P. Traction Co. v. Erie R. Co., 178 N.Y.S. 491, 498."

"The widening of streets and construction of overpasses and underpasses by city of Mobile in vicinity of tunnel under Mobile river after increase in traffic, due largely to war activity, created considerable congestion at tunnel, constituted proper 'extensions' of and 'appurtenances' to the tunnel. Chamberlain v. Board of Com'rs of City of Mobile, 11 So.2d. 724, 731, 243 Ala. 662."

Since Administrative Regulation No. 7 attempts to set speed limits for "all roads, streets, lanes and alleys within the corporate limits of Baltimore City", without excluding roads and streets which have been designated as a part of the federal highway system and those which have been designated as extensions of the State or federal highway system, it should be declared ultra vires and void. Mr. Barnes should also be enjoined from erecting signs, as he testified he planned to do, which will raise, and in some cases lower, the speed limits under state law.

In addition to the four main points aforementioned, the Defendant Henry A. Barnes has invaded the jurisdiction of the judiciary

by declaring in paragraph (G) of Regulation No. 7 what shall constitute "conclusive evidence of the maximum speed which can be maintained with safety" in the trial of any person charged with the violation of the Regulation. This would create an irrebuttable presumption such as was declared unconstitutional in MAHONEY v. BYERS, 187 Md. 81, 48 A.2d 600.

The Regulation also is self-contradictory in that it refers to the speed limits as being "prima facie" in some parts and "conclusive" in another part. This is far removed from the clarity required in penal laws and regulations.

The activities of the Defendant Henry A. Barnes have constituted a brazen seizure of power, unsupported by law and in contravention of the basic concepts of our form of government. He has not only usurped powers which have not been legally delegated to him but he has undertaken dynastic authority which can not possibly be placed in an administrative officer. The attempt in Section 8 of Ordinance No. 786 to give the Director of Traffic the power to promulgate an order which will repeal any law or ordinance is absolutely unthinkable in a democracy. His disregard for the interests of the taxpayers was demonstrated by his refusal, at first, to postpone the erection of speed signs until the determination of this case in court. He showed no concern for the waste of funds which would result from having to remove signs which had been illegally posted. Mr. Barnes has already gone much too far and the time has come to put a stop to his arrogation of power.

Most respectfully submitted,

Solicitor for Plaintiffs.

MANDATE

Court of Appeals of Maryland

No. 140, OCTOBER TERM, 19 55

Hyman A. Pressman et al

vs.

Henry A. Barnes etc et al

Appeal from the Circuit Court of Baltimore City
Filed: Dec. 5, 1955
Apr. 10, 1956, Decree affirmed in part and reversed in part and case remanded for modification of the decree in accordance with this opinion, each side to pay its own costs.
Opinion filed. Op. Delaplaine, J.
Apr. 24, 1956, Petition for Reargument filed.
May 2, 1956, Petition denied.

Appellant's Cost in the Court of Appeals of Maryland,

Clerk's Cost	$ 20.00		
Brief	$ 349.30		
Appearance Fee . . .	$ 10.00		
Petition. Reargument	$ 5.00	$384.30	

Appellee's Cost in the Court of Appeals of Maryland,

Brief	$ 212.75		
Appearance Fee . . .	$ 10.00		
. . . . .	$	222.75	$607.05

STATE OF MARYLAND, Sct:

I, Maurice Ogle, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this tenth *day of* May *A. D. 19* 56

Clerk of the Court of Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE

THE COURT OF APPEALS — ANNAPOLIS, MARYLAND

May 2, 1956

Hyman A. Pressman, Esq.
Attorney at Law
337 St. Paul Place
Baltimore 2, Maryland

Dear Mr. Pressman:

The Court has considered your petition for reargument in the case of Pressman, et al. vs. Henry A. Barnes, etc. et al., No. 140, October Term, 1955, and said petition was denied this date.

The mandate will be forwarded to the Circuit Court of Baltimore City in the near future.

Very truly yours,

Chief Deputy

JLY/ojr
cc: Office of the City Solicitor,
Att'n: Mr. Ricciuti
Office of the Attorney General

HYMAN A. PRESSMAN, et al., Appellants,

vs.

HENRY A. BARNES, Director of Traffic, and MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation, Defendants.

* IN THE

* COURT OF APPEALS

* OF MARYLAND

* No.____ October Term, 1955

* *

STIPULATION

It is hereby stipulated that the following parts of the record shall be included in the printed record extract as an appendix to the Appellants' brief.

1. Bill of Complaint, with the affidavit deleted.
2. Answer to Bill for Declaratory Decree.
3. Stipulation in lower court.
4. Agreed Exhibit No. 1, which is Ordinance No. 786.
5. Agreed Exhibit No. 2, which is Administrative Regulation No. 7
6. Agreed Exhibit No. 3, which is Section 89 of Article 38 of the Baltimore City Code.
7. Agreed Exhibit No. 4, which is Section 87 of Article 38 of the Baltimore City Code.
8. Plaintiffs' Exhibit No. 5, which is the highway map published by the Maryland State Roads Commission.
9. Petition of Plaintiff praying that Paragraph 8 of Ordinance No. 786 be declared invalid.
10. Memorandum of the Court.
11. Order of the Court.
12. Transcribed testimony of Ernest W. Bunting and Henry A. Barnes.
13. Agreed Exhibit No. 6, letter of June 30, 1955 from Henry A. Barnes to George N. Lewis, Jr.

Solicitor for Appellants

Solicitor for Appellees

8/18/55

COPY

Filed

CITY SOLICITOR'S OFFICE

HYMAN A. PRESSMAN 337 St. Paul Place, Plaintiff,	:	
vs.	:	In the CIRCUIT COURT
HENRY A. BARNES, Director of Traffic, 413 St. Paul Place, and MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation, Defendants.	:	OF BALTIMORE CITY

* * * * *

- STIPULATION -

* * * * *

IT IS HEREBY STIPULATED BETWEEN THE RESPECTIVE PARTIES:

1. That the Complainant, Hyman A. Pressman, is a citizen, motorist and taxpayer of Baltimore City, and is a proper party to this proceeding.

2. That this Honorable Court has jurisdiction.

3. That the Respondent, Henry A. Barnes, has been appointed as Director of Traffic of Baltimore City, pursuant to the provisions of Ordinance No. 786, approved July 14, 1953, and has performed, and will continue to perform, those obligations, duties and controls over traffic imposed upon him in pursuance of said ordinance.

4. That Ordinance No. 786, approved July 14, 1953, filed herein as "Plaintiff's Exhibit No. 1," has been duly enacted, and is hereby admitted in evidence.

5. That, on August 7, 1955, the Respondent, Henry A. Barnes, caused to be issued and published Administrative Regulation No. 7, copy of which Regulation has been filed as "Plaintiff's Exhibit No. 2," and is hereby admitted in evidence.

COPY

CITY SOLICITOR'S OFFICE

6. That the Respondent, Henry A. Barnes, has expended, intends to expend, and will expend, publicfunds in pursuance of said Ordinance No. 786, approved July 14, 1953, for the erection of signs and other devices.

7. That the Respondent, Henry A. Barnes, intends to expend, and will expend, public funds in pursuance of Administrative Regulation No. 7.

Hyman A. Pressman
Plaintiff in Proper Person

Thomas N. Biddison
City Solicitor

Edwin Harlan
Deputy City Solicitor

Hugo A. Ricciuti
Assistant City Solicitor

Francis K. Gallagher
Assistant City Solicitor
Solicitors for Henry A. Barnes, Director of Traffic of Baltimore City

COPY

CITY SOLICITOR'S OFFICE

HYMAN A. PRESSMAN, et al,	:	IN THE
Plaintiffs,	:	CIRCUIT COURT
	:	OF
vs.	:	BALTIMORE CITY
HENRY A. BARNES, Director of Traffic,	:	
	:	Docket 1955 - A-392
and	:	No. A-35141
	:	
MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation,	:	
Defendants.	:	

.. .. ..

O R D E R

This matter having come up for hearing upon BILL and ANSWER and counsel for all parties having been heard, testimony having been taken in open Court and memoranda of law having been submitted, and the Court having duly considered the matter and rendered its written opinion therein, it is this _____ day of , 1955, by the Circuit Court of Baltimore City,

ADJUDGED, ORDERED and DECREED that Baltimore City Ordinance No. 786, enacted in 1953, and Administrative Regulation No. 7 of the Director of Traffic of the City of Baltimore are constitutional and valid enactments, with the exception that the setting of minimum fines and presumptions as to guilt in said Administrative Regulation No. 7 are invalid;

AND BE IT FURTHER ADJUDGED, ORDERED and DECREED, that the Bill for Declaratory Decree be dismissed and costs to be paid by the Plaintiffs.

_____

JUDGE

COPY

CITY SOLICITOR'S OFFICE

HYMAN A. PRESSMAN, et al,	:	IN THE
Plaintiffs,	:	
	:	CIRCUIT COURT
vs.	:	OF
	:	BALTIMORE CITY
HENRY A. BARNES, Director of Traffic,	:	
	:	Docket 1955 - A-392
and	:	No. A-35141
	:	
MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation,	:	
	:	
Defendants.	:	

.. .. ..

O R D E R

This matter having come up for hearing upon BILL and ANSWER and counsel for all parties having been heard, testimony having been taken in open Court and memoranda of law having been submitted, and the Court having duly considered the matter and rendered its written opinion therein, it is this _____ day of , 1955, by the Circuit Court of Baltimore City,

ADJUDGED, ORDERED and DECREED that Baltimore City Ordinance No. 786, enacted in 1953, and Administrative Regulation No. 7 of the Director of Traffic of the City of Baltimore are constitutional and valid enactments, with the exception that the setting of minimum fines and presumptions as to guilt in said Administrative Regulation No. 7 are invalid;

AND BE IT FURTHER ADJUDGED, ORDERED and DECREED, that the Bill for Declaratory Decree be dismissed and costs to be paid by the Plaintiffs.

_____

JUDGE

COPY

CITY SOLICITOR'S OFFICE

HYMAN A. PRESSMAN, et al,	:	IN THE
Plaintiffs,	:	CIRCUIT COURT
	:	OF
vs.	:	BALTIMORE CITY
HENRY A. BARNES, Director of Traffic,	:	
	:	Docket 1955 - A-392
and	:	No. A-35141
	:	
MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation,	:	
	:	
Defendants.	:	

.. .. ..

O R D E R

This matter having come up for hearing upon BILL and ANSWER and counsel for all parties having been heard, testimony having been taken in open Court and memoranda of law having been submitted, and the Court having duly considered the matter and rendered its written opinion therein, it is this _____ day of , 1955, by the Circuit Court of Baltimore City,

ADJUDGED, ORDERED and DECREED that Baltimore City Ordinance No. 786, enacted in 1953, and Administrative Regulation No. 7 of the Director of Traffic of the City of Baltimore are constitutional and valid enactments, with the exception that the setting of minimum fines and presumptions as to guilt in said Administrative Regulation No. 7 are invalid;

AND BE IT FURTHER ADJUDGED, ORDERED and DECREED, that the Bill for Declaratory Decree be dismissed and costs to be paid by the Plaintiffs.

_____

JUDGE

COPY

CITY SOLICITOR'S OFFICE

HYMAN A. PRESSMAN, et al,	:	IN THE
Plaintiffs,	:	
	:	CIRCUIT COURT
	:	
vs.	:	OF
	:	
	:	BALTIMORE CITY
HENRY A. BARNES, Director of Traffic,	:	
	:	Docket 1955 - A-392
and	:	
	:	No. A-35141
	:	
MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation,	:	
	:	
Defendants.	:	
	:	

.. .. ..

O R D E R

This matter having come up for hearing upon BILL and ANSWER and counsel for all parties having been heard, testimony having been taken in open Court and memoranda of law having been submitted, and the Court having duly considered the matter and rendered its written opinion therein, it is this _____ day of , 1955, by the Circuit Court of Baltimore City,

ADJUDGED, ORDERED and DECREED that Baltimore City Ordinance No. 786, enacted in 1953, and Administrative Regulation No. 7 of the Director of Traffic of the City of Baltimore are constitutional and valid enactments, with the exception that the setting of minimum fines and presumptions as to guilt in said Administrative Regulation No. 7 are invalid;

AND BE IT FURTHER ADJUDGED, ORDERED and DECREED, that the Bill for Declaratory Decree be dismissed and costs to be paid by the Plaintiffs.

_____

JUDGE

COPY

CITY SOLICITOR'S OFFICE

HYMAN A. FREEDMAN, et al,	:	IN THE
Plaintiffs,	:	
	:	CIRCUIT COURT
vs.	:	OF
	:	BALTIMORE CITY
HENRY A. BARNES, Director of Traffic,	:	
	:	Docket 1955 - A-392
and	:	No. A-35141
	:	
MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation,	:	
	:	
Defendants.	:	
	:	

.. .. ..

ORDER

This matter having come up for hearing upon BILL and ANSWER and counsel for all parties having been heard, testimony having been taken in open Court and memoranda of law having been submitted, and the Court having duly considered the matter and rendered its written opinion therein, it is this _____ day of , 1955, by the Circuit Court of Baltimore City,

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AND BE IT FURTHER ADJUDGED, ORDERED and DECREED, that the Bill for Declaratory Decree be dismissed and costs to be paid by the Plaintiffs.

_____

JUDGE

COPY

CITY SOLICITOR'S OFFICE

HYMAN A. PRESSMAN, et al,	:	IN THE
Plaintiffs,	:	
	:	CIRCUIT COURT
vs.	:	OF
	:	BALTIMORE CITY
HENRY A. BARNES, Director of Traffic,	:	
	:	Docket 1955 - A-192
and	:	No. A-35141
	:	
MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation,	:	
	:	
Defendants.	:	

.. .. ..

ORDER

This matter having come up for hearing upon BILL and ANSWER and counsel for all parties having been heard, testimony having been taken in open Court and memoranda of law having been submitted, and the Court having duly considered the matter and rendered its written opinion therein, it is this _____ day of , 1955, by the Circuit Court of Baltimore City,

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AND BE IT FURTHER ADJUDGED, ORDERED and DECREED, that the Bill for Declaratory Decree be dismissed and costs to be paid by the Plaintiffs.

_____

JUDGE

COPY

CITY SOLICITOR'S OFFICE

HYMAN A. FREEDMAN, et al,	:	IN THE
Plaintiffs,	:	
	:	CIRCUIT COURT
	:	OF
vs.	:	
	:	BALTIMORE CITY
HENRY A. BARNES, Director of Traffic,	:	
	:	Docket 1955 - A-392
and	:	
	:	No. A-35141
	:	
MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation,	:	
	:	
Defendants.	:	
	:	

.. .. ..

ORDER

This matter having come up for hearing upon BILL and ANSWER and counsel for all parties having been heard, testimony having been taken in open Court and memoranda of law having been submitted, and the Court having duly considered the matter and rendered its written opinion therein, it is this _____ day of , 1955, by the Circuit Court of Baltimore City,

ADJUDGED, ORDERED and DECREED that Baltimore City Ordinance No. 786, enacted in 1953, and Administrative Regulation No. 7 of the Director of Traffic of the City of Baltimore are constitutional and valid enactments, with the exception that the setting of minimum fines and presumptions as to guilt in said Administrative Regulation No. 7 are invalid;

AND BE IT FURTHER ADJUDGED, ORDERED and DECREED, that the Bill for Declaratory Decree be dismissed and costs to be paid by the Plaintiffs.

_____

JUDGE

Vincent Gallagher

RECEIVED
AUG 23 1955
CITY SOLICITOR'S OFFICE

HYMAN A. PRESSMAN,	*	IN THE
Plaintiff,	*	CIRCUIT COURT
vs.	*	
HENRY A. BARNES, Director of Traffic, and MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation,	*	OF BALTIMORE CITY
	*	Docket 1955 A-392
	*	No. A-35141
Defendants.	*	

* *

PETITION TO INTERVENE AS PLAINTIFFS

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petition of Bennett Cook, Wakins I.S. Johns, Leroy L. Johns, Lillian Gordon, Clarence Gordon, Eunice Fisher, Marie N. Pettigren, Francis Richardson, Phillip Dixon, Monroe Montague, Jr., Eva Barnum, G.C. Lambson, Gladys Keys, Herbert Keys, Stella Keys, Elaine B. Tarter, Margaret Baylor, Gray Lloyd, Bettie Sharp Johnson, Charles Johnson, Rufus Johnson, Charles W. Scott, Melbert Moose, Jessie Cole, Florine F. Brooks, David M. Coleman, Lula Rock, Annabelle Showman, Theodore Clay, Edward B. Clay, Albert J. Ruppel, Ada Allen, Lillie Coleman, Annie Pearl Ray, Viola Ames, Levi Miller, Edward Tarter, Donald Wainwright, Essie Coleman, Arthur L. James, Lilly Deceredey, Mary Alice Robinson, Mary E. Norris, Esther H. Herthfeld, by Hyman A. Pressman, their solicitor, respectfully represents unto your Honor:

1. That Paragraph 2 of the Bill of Complaint heretofore filed in this case states that said Bill of Complaint is filed by the Plaintiff "in his own behalf and in behalf of all others similarly interested who might desire to make themselves parties to this proceeding".

2. That your Petitioners are "similarly interested" for the reason that they are citizens, taxpayers and residents of Baltimore City and that they desire to make themselves parties plaintiff to this proceeding.

3. That your Petitioners adopt the allegations contained in the original Bill of Complaint.

WHEREFORE YOUR PETITIONERS PRAY:

a. That this Honorable Court may permit them to intervene in this proceeding as parties plaintiff.

Solicitor for Petitioners

Copy mailed to Thomas N. Biddison, Esq., City Solicitor, Solicitor for Defendants, this 22nd day of August, 1955.

Solicitor for Petitioners

Docket entries

A-392/1955

Hyman A. Pressman	:	Hyman A. Pressman, et al.
	:	
	:	A. 35141
	:	
Thomas N. Biddison Edwin Harlan Hugo A. Ricciuti Francis X. Gallagher	:	Henry A. Barnes, Director of Traffic, and Mayor and City Council of Baltimore, a municipal corporation
C. Ferdinand Sybert Stedman Prescott, Jr.	:	

- - - - - - - - - - - - - -

12" August 1955 Bill of Complaint for Declaratory Decree to declare Regulation and Ordinance invalid and Plaintiff's Exhibits Nos. 1 and 2 (1) fd.

Same Day Subpoena (2) issd. (Summoned)

17" August 1955 Petition of Complainant for preliminary Injunction, Plaintiff's Exhibit No. 3 and Order of Court thereon setting cause for hearing on August 18/1955 (3) fd. (Service of Copy admitted)

18" August 1955 App. of Defendants by their Solrs. Thomas N. Biddison, Edwin Harlan, Hugo A. Ricciuti and Francis X. Gallagher and their Answer to the Bill of Complaint (4) fd.

19" August 1955 Answer of State of Maryland by C. Ferdinand Sybert and Stedman Prescott, Jr. (5) fd.

Same Day Summons Plaintiff's Witness (6) issd. (Non est)

22" August 1955 Petition of Bennett Cook, Wakina I.S. Johns, Leroy L. Johns, Lillian Gordon, Clarence Gordon, Eunice Fisher, Marie N. Pettigren, Francis Richardson, Phillip Dixon, Monroe Montague, Jr., Eva Barnum, G. C. Lambson, Gladys Keys, Herbert Keys, Stella Keys, Elaine B. Tarter, Margaret Baylor, Gray Lloyd, Bettie Sharp Johnson, C harles Johnson, Rufus Johnson, Charles W. Scott, Melbert Moose, Jessie Cole, Florine F. Brooks, David M. Coleman, Lula Rock, Annabelle Showman, Theodore Clay, Edward B. Clay, Albert J. Ruppel. Ada

Allen, Lillie Coleman, Annie Pearl Ray, Viola Ames, Levi Miller, Edward Tarter, Donald Wainwright, Essie Coleman, Arthur L. James, Lilly Deceredey, Mary Alice Robinson, Mary E. Norris, Esther H. Herthfeld for authority to intervene as parties plaintiffs (7) fd.

23" August 1955 Order of Court making petitioners of August 22/1955 parties plaintiff (8) fd.

Same Day Stipulation (9) fd.

23" September 1955 Memorandum of Court (10) fd.

27" September 1955 Petition of Plaintiffs to declare that Paragraph 8 of Baltimore City Ordinance No. 786 is invalid, illegal and unconstitutional (11) fd.

30" September 1955 Order of Court declaring Ordinance No. 786, enacted in 1953, and Administrative Regulation No. 7 of the Director of Traffic of the City of Baltimore are constitutional and valid enactments with the exception that setting of minimun fines and presumptions as to guilt in said Administrative Regulation No. 7 are invalid, and further dismissing Bill of Complaint, plaintiff to pay two-thirds of costs and Defendants to pay one-third of said costs (12) fd.

7" October 1955 Plaintiffs Order for Appeal (13) fd.

27" October 1955 Testimony (14) fd.

28" October 1955 Plaintiffs Exhibits No. 5 (15) fd.

2. December 1955 Agreed Exhibit No. 6 - Defendants Exhibit No. 1 (16)

APPEAL INDEX

8/12/55	Bill of Complaint for a declaratory decree and Exhibits No. 1 and 2	1 - 11
"	Subpoena	12 - 13
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9/23/55	Stipulation	28 - 29
"	Memorandum	30 - 40
9/27/55	Petition of Hyman A. Pressman to declare Ordinance invalid, &c.	41
9/30/55	Order of Court	42
10/ 7/55	Order for Appeal	43
10/27/55	Testimony	
10/28/55	Plaintiff's Exhibit No. 5	44
12/2/55	Agreed Exhibit No. 6 - Defendants Exhibit #1	45

Docket entries

A-392/1955

Hyman A. Pressman	:	Hyman A. Pressman, et al.
	:	
	:	A. 35141
	:	
Thomas N. Biddison Edwin Harlan Hugo A. Ricciuti Francis X. Gallagher	:	Henry A. Barnes, Director of Traffic, and Mayor and City Council of Baltimore, a municipal corporation
C. Ferdinand Sybert Stedman Prescott, Jr.	:	

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Allen, Lillie Coleman, Annie Pearl Ray, Viola Ames, Levi Miller, Edward Tarter, Donald Wainwright, Essie Coleman, Arthur L. James, Lilly Deceredey, Mary Alice Robinson, Mary E. Norris, Esther H. Herthfeld for authority to intervene as parties plaintiffs (7) fd.

23" August 1955 Order of Court making petitioners of August 22/1955 parties plaintiff (8) fd.

Same Day Stipulation (9) fd.

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27" October 1955 Testimony (14) fd.

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10/28/55	Plaintiff's Exhibit No. 5	44

Docket entries

A-392/1955

Hyman A. Pressman	:	Hyman A. Pressman, et al.
	:	
	:	A. 35141
	:	
Thomas N. Biddison Edwin Harlan Hugo A. Ricciuti Francis X. Gallagher	:	Henry A. Barnes, Director of Traffic, and Mayor and City Council of Baltimore, a municipal corporation
C. Ferdinand Sybert Stedman Prescott, Jr.	:	

- - - - - - - - - - - - - -

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Allen, Lillie Coleman, Annie Pearl Ray, Viola Ames, Levi Miller, Edward Tarter, Donald Wainwright, Essie Coleman, Arthur L. James, Lilly Deceredey, Mary Alice Robinson, Mary E. Norris, Esther H. Herthfeld for authority to intervene as parties plaintiffs (7) fd.

23" August 1955 Order of Court making petitioners of August 22/1955 parties plaintiff (8) fd.

Same Day Stipulation (9) fd.

23" September 1955 Memorandum of Court (10) fd.

27" September 1955 Petition of Plaintiffs to declare that Paragraph 8 of Baltimore City Ordinance No. 786 is invalid, illegal and unconstitutional (11) fd.

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10/27/55	Testimony	
10/28/55	Plaintiff's Exhibit No. 5	44

Mrs. Gallagher 10/10/55

RECEIVED
OCT 10 1955
CITY SOLICITOR'S OFFICE

ORDER FOR APPEAL

HYMAN A. PRESSMAN, et al.,

Plaintiffs,

vs.

HENRY A. BARNES,
Director of Traffic, and
MAYOR AND CITY COUNCIL OF
BALTIMORE,
a municipal corporation,
Defendants.

IN THE

CIRCUIT COURT

OF

BALTIMORE CITY

Docket 1955 A-392

No. A-35141

Mr. Clerk:

Please enter an appeal on behalf of the Plaintiffs

from the Order passed on the 30th day of September 19 55
to the Court of Appeals of Maryland.

H. A. S.
Solicitor for Appellants.

Copy mailed to Thomas E. Biddison, Esq., City Solicitor, Solicitor for Appellees, this 7th day of October, 1955.

H. A. S.
Solicitor for Appellants.

October 17, 1955

MAYOR AND CITY COUNCIL OF BALTIMORE

TO

Yale J. Aarons
Court and General Reporter
Room 303 Court House
Baltimore 2, Maryland

FOR: A transcript of the testimony in the Hyman A. Pressman vs. Henry A. Barnes et al, case, in the Circuit Court of Balto. City, before Judge Herman M. Moser, on August 23, 1955.

Copy @.20 Per Page
34 Pages - - - - - - $6.80

RECEIVED PAYMENT

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db

8/18/55

COPY

CITY SOLICITOR'S OFFICE

HYMAN A. PRESSMAN 337 St. Paul Place, Plaintiff, vs. HENRY A. BARNES, Director of Traffic, 413 St. Paul Place, and MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation, Defendants.	:	In the CIRCUIT COURT OF BALTIMORE CITY

* * * * *

- S T I P U L A T I O N -

* * * * *

IT IS HEREBY STIPULATED BETWEEN THE RESPECTIVE PARTIES:

1. That the Complainant, Hyman A. Pressman, is a citizen, motorist and taxpayer of Baltimore City, and is a proper party to this proceeding.

2. That this Honorable Court has jurisdiction.

3. That the Respondent, Henry A. Barnes, has been appointed as Director of Traffic of Baltimore City, pursuant to the provisions of Ordinance No. 786, approved July 14, 1953, and has performed, and will continue to perform, those obligations, duties and controls over traffic imposed upon him in pursuance of said ordinance.

4. That Ordinance No. 786, approved July 14, 1953, filed herein as "Plaintiff's Exhibit No. 1," has been duly enacted, and is hereby admitted in evidence.

5. That, on August 7, 1955, the Respondent, Henry A. Barnes, caused to be issued and published Administrative Regulation No. 7, copy of which Regulation has been filed as "Plaintiff's Exhibit No. 2," and is hereby admitted in evidence.

COPY

CITY SOLICITOR'S OFFICE

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7. That the Respondent, Henry A. Barnes, intends to expend, and will expend, public funds in pursuance of Administrative Regulation No. 7.

Hyman A. Pressman
Plaintiff in Proper Person

Thomas N. Biddison
City Solicitor

Edwin Harlan
Deputy City Solicitor

Hugo A. Ricciuti
Assistant City Solicitor

Francis K. Gallagher
Assistant City Solicitor
Solicitors for Henry A. Barnes, Director of Traffic of Baltimore City

8/18/55

COPY

CITY SOLICITOR'S OFFICE

HYMAN A. PRESSMAN 337 St. Paul Place, Plaintiff, vs. HENRY A. BARNES, Director of Traffic, 413 St. Paul Place, and MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation, Defendants.	:	In the CIRCUIT COURT OF BALTIMORE CITY

* * * * *

- S T I P U L A T I O N -

* * * * *

IT IS HEREBY STIPULATED BETWEEN THE RESPECTIVE PARTIES:

1. That the Complainant, Hyman A. Pressman, is a citizen, motorist and taxpayer of Baltimore City, and is a proper party to this proceeding.

2. That this Honorable Court has jurisdiction.

3. That the Respondent, Henry A. Barnes, has been appointed as Director of Traffic of Baltimore City, pursuant to the provisions of Ordinance No. 786, approved July 14, 1953, and has performed, and will continue to perform, those obligations, duties and controls over traffic imposed upon him in pursuance of said ordinance.

4. That Ordinance No. 786, approved July 14, 1953, filed herein as "Plaintiff's Exhibit No. 1," has been duly enacted, and is hereby admitted in evidence.

5. That, on August 7, 1955, the Respondent, Henry A. Barnes, caused to be issued and published Administrative Regulation No. 7, copy of which Regulation has been filed as "Plaintiff's Exhibit No. 2," and is hereby admitted in evidence.

COPY

CITY SOLICITOR'S OFFICE

6. That the Respondent, Henry A. Barnes, has expended, intends to expend, and will expend, publicfunds in pursuance of said Ordinance No. 786, approved July 14, 1953, for the erection of signs and other devices.

7. That the Respondent, Henry A. Barnes, intends to expend, and will expend, public funds in pursuance of Administrative Regulation No. 7.

Hyman A. Pressman
Plaintiff in Proper Person

Thomas N. Biddison
City Solicitor

Edwin Harlan
Deputy City Solicitor

Hugo A. Ricciuti
Assistant City Solicitor

Francis K. Gallagher
Assistant City Solicitor
Solicitors for Henry A. Barnes, Director of Traffic of Baltimore City

8/18/55

COPY

CITY SOLICITOR'S OFFICE

HYMAN A. PRESSMAN 337 St. Paul Place, Plaintiff,	:	In the
vs.	:	CIRCUIT COURT
HENRY A. BARNES, Director of Traffic, 413 St. Paul Place, and MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation, Defendants.	:	OF BALTIMORE CITY

* * * * *

- S T I P U L A T I O N -

* * * * *

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1. That the Complainant, Hyman A. Pressman, is a citizen, motorist and taxpayer of Baltimore City, and is a proper party to this proceeding.

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COPY

CITY SOLICITOR'S OFFICE

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7. That the Respondent, Henry A. Barnes, intends to expend, and will expend, public funds in pursuance of Administrative Regulation No. 7.

Hyman A. Pressman
Plaintiff in Proper Person

Thomas N. Biddison
City Solicitor

Edwin Harlan
Deputy City Solicitor

Hugo A. Ricciuti
Assistant City Solicitor

Francis K. Gallagher
Assistant City Solicitor
Solicitors for Henry A. Barnes, Director of Traffic of Baltimore City

HYMAN A. PRESSMAN, 337 St. Paul Place, Plaintiff,	*	IN THE
vs.	*	CIRCUIT COURT
HENRY A. BARNES, Director of Traffic, 413 St. Paul Place, and MAYOR ANDCITY COUNCIL OF BALTIMORE, a municipal corporation, Defendants.	*	OF BALTIMORE CITY

* *

PETITION FOR PRELIMINARY INJUNCTION

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Your Petitioner, Hyman A. Pressman, respectfully represents unto your Honor as follows:

1. That the Bill of Complaint filed in this case on the 12th day of August, 1955 prayed for a declaratory decree to establish the invalidity of Administrative Regulation No. 7 issued by the Defendant Henry A. Barnes pertaining to speed limits in Baltimore City, penalties for violations and the conclusiveness of evidence in court and paragraphs 2I and 2K of Baltimore City Ordinance No. 786 which delegate powers pertaining to traffic to the Director of Traffic of Baltimore City. That said Bill of Complaint also prayed for a permanent injunction to restrain the Defendants from expending any public funds for the erection of signs or other devices in pursuance of said Regulation No. 7or paragraphs 2I and 2K of said Ordinance.

2. That since the filing of said Bill of Complaint, to wit, on the 16th day of August, 1955, the Defendant, Henry A Barnes has informed your Petitioner that he has been advised by the City Solicitor's office that he "should proceed with the installation of regulations as specified in the directive", as evidenced by a copy of a letter from said Henry A. Barnes to your Petitioner, which letter is dated August 12, 1955, postmarked August 15, 1955 and received by your Petitioner on August 16, 1955, a copy of which letter is filed herewith marked Plaintiff's Exhibit No. 3 and prayed to be taken as a part hereof.

3. That if the final decree of this Honorable Court should establish that the aforesaid Regulation and Ordinance are invalid,

any signs showing the wrong speed limits or any other invalid signs or devices would have to be removed so that it would be a needless waste of public funds to erect such signs or devices before the determination of the legality thereof.

WHEREFORE YOUR PETITIONER PRAYS

(a) That the Defendants and each of them may, by a preliminary injunction issuing out of this Honorable Court, be restrained from expending any funds for the erection of signs or other devices in pursuance of Administrative Regulation No. 7.

AND as in duty bound, etc.

_____

Plaintiff, in Proper Person

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, That on this_____ day of August, 1955, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared Hyman A. Pressman and made oath in due form of law that the matters and facts contained in the aforegoing Petition are true as therein set forth, to the best of his knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.

_____

Notary Public

PLAINTIFF'S EXHIBIT NO. 8

Henry A. Barnes
Director of Traffic

Thomas D'Alesandro, Jr.
Mayor

DEPARTMENT OF TRAFFIC ENGINEERING
413 St. Paul Place
Baltimore 2, Md.

Plaza 2-2000

August 12, 1955

Mr. Hyman A. Pressman
837 St. Paul Place
Baltimore 2, Md.

Dear Mr. Pressman:

In reply to your letter of August 9, 1955, concerning our Administrative Regulation No. 7, may I advise you that I have discussed this matter with the City Solicitor's office and have been advised by them that I should proceed with the installation of regulations as specified in the directive. Mr. Biddison had a very exhaustive study of this entire matter made prior to the time the order was issued. Therefore, he feels that the regulation is inaccordance with both the legal aspects of the State law, as well as the intent of the legislation.

Since you have indicated that you plan to press a taxpayer's suit to restrain the Director of Traffic from enforcing his regulation, I am taking the liberty of forwarding your communication to Mr. Biddison's office so that they can be prepared to defend the City in this matter.

Very truly yours,

Henry A. Barnes
Director

hab/ecm

cc: Mr. Edwin Harlan
Deputy City Solicitor

ORDERED by the Circuit Court of Baltimore City this_____ day of August, 1955 that the Petition for Preliminary Injunction in this cause be set for hearing on the_____ day of_____, 1955; provided a copy of the Petition and of this Order be served on the Defendants or their solicitor on or before the_____ day of_____, 1955.

_____

COPY

CITY SOLICITOR'S OFFICE

HYMAN A. PRESSMAN 337 St. Paul Place Plaintiff	:	IN THE
	:	CIRCUIT COURT
VS.	:	
HENRY A. BARNES, Director of Traffic 413 St. Paul Place and MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation Defendants	:	OF BALTIMORE CITY

. . . . . .

ANSWER TO BILL FOR DECLARATORY DECREE

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Respondents, Henry A. Barnes, Director of the Department of Traffic Engineering of Baltimore City, and the Mayor and City Council of Baltimore, a municipal corporation, by Thomas N. Biddison, City Solicitor, Edwin Harlan, Deputy City Solicitor, Hugo A. Riccuit and Francis X. Gallagher, Assistant City Solicitors, in response to the Bill for Declaratory Decree, say as follows:

1. The Respondents are without knowledge of all of the facts and contents of the first paragraph of said Bill and, therefore, neither admit nor deny the allegations contained therein.

2. The Respondents are without knowledge of all of the facts and contents of the second paragraph of said Bill and, therefore, neither admit nor deny the allegations contained therein.

3. The Respondents admit the allegations contained in Paragraph 3 of said Bill.

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CITY SOLICITOR'S OFFICE

4. The Respondents admit the allegations contained in Paragraph 4 of said Bill.

5. The Respondents in answer to Paragraph 5, sub-sections (a), (b), (c), (d), (e), (f), (g) and (h) of said Bill deny that the said "Administrative Regulation No. 7" is illegal and ultra vires but on the contrary that said "Administrative Regulation No. 7" is a proper, valid and constitutional enactment adopted pursuant to Article 66½, Section 151 (A) of the Annotated Code of Maryland, 1951 edition, as amended, and Section 2(K) of Article 38 of the Baltimore City Code, 1950 edition, as amended by Ordinance No. 786 of July 14, 1953; and, in further answer to the specific allegations of the aforementioned sub-sections of Paragraph 5 of said Bill, say:

(a) That the Respondent, Henry A. Barnes, in promulgating "Administrative Regulation No. 7" is effectuating the purposes and intent of Ordinance No. 786 approved July 14, 1953, and Section 151 (A) of Article 66½ of the Annotated Code of Maryland, said purpose and intent being the protection and preservation of the public health, safety and general welfare of the citizens of Baltimore.

(b) That the Respondent, Henry A. Barnes, by the promulgation of "Administrative Regulation No. 7" has not exercised any legislative power or function, but, on the contrary, is performing those duties, obligations and functions necessary to effectuate the design and purpose of Ordinance No. 786 and Section 151 (A) of Article 66½ of the Maryland Code.

(c) That the penal provisions provided for in "Administrative Regulation No. 7" are not in any wise or manner in conflict with Ordinance No. 786.

(d) That no conflict exists between Section 8 of "Administrative Regulation No 7" and Section 176 (g) of Article 66½ of the Maryland Code.

(e) That the "Administrative Regulation No. 7" does not in any manner attempt to regulate the speed of vehicles on any road, street, lane or alley within the corporate limits of Baltimore City which has been designated or maintained as a part of the State or Federal highway system or an extension thereof.

(f) That "Administrative Regulation No. 7" is not self-contradictory but, on the contrary, is a concise, succinct and constitutional regulation designed to carry out the purpose and intent of Ordinance No. 786 and Section 151 (A) of Article 66½ of the Code.

(g) That "Administrative Regulation No. 7" is not in any way an exercise of any legislative or judicial function and any and all penal provisions of said "Administrative Regulation No. 7" can only be enforced through judicial process in accordance with due process of law.

(h) That Ordinance No. 786 is a proper, valid and constitutional enactment of the Mayor and City Council of Baltimore designed to provide for the safe and expeditious movement of traffic in the City of Baltimore and to protect the safety of the citizens using its streets.

6. The Respondents in answer to Paragraph 6(a) of said Bill say that Ordinance No. 786 does not attempt to delegate legislative power to the Director of Traffic, but authorizes him to exact compliance with the provisions thereof and with such regulations

as he has adopted or will adopt for their enforcement and gives him only such limited discretion as is necessary in the proper execution of a law or regulation designed to expedite movement of traffic and protection of the citizens in the use of streets in Baltimore City.

The Respondents in answer to Paragraph 6(b) of said Bill say that the Director of Traffic in the promulgation of rules and regulations is guided in the exercise of his limited discretion by what is necessary to provide for the safe and expeditious movement of traffic in Baltimore City and to protect the safety of the citizens using the streets of Baltimore City and that the exercise of said limited discretion for the protection of the public health and safety cannot be prescribed within precise limits.

The Respondents in answer to Paragraph 6(c) say that Ordinance No. 786 does not contravene Section 6(24) of the Charter and Public Local Laws of Baltimore City, and in further answer to said Paragraph 6(c) say that the proviso in Section 6(24) of the Charter of Baltimore City "that no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner" has reference to the executive powers of the Police Commissioner and does not restrict the power of the City to legislate on a matter within the scope of police power.

7. The Respondents in answer to Paragraph 7 of said Bill say that the Director of Traffic, Henry A. Barnes, pursuant to the authority vested in him by Ordinance No. 786 shall expend such sums as are necessary for the proper performance of the duties, obligations and functions imposed by the provisions of said Ordinance No. 786, in order to effectuate the design and purpose of said

COPY

CITY SOLICITOR'S OFFICE

Ordinance, namely, the protection of the public health, safety and general welfare.

8. The Respondents in answer to Paragraph 8 of said Bill deny all allegations contained in said Paragraph 8 and further say that the Director of Traffic, Henry A. Barnes, shall perform all of the duties and obligations imposed upon him by the validly, properly and constitutionally adopted Ordinance No. 786.

9. The Respondents in answer to Paragraph 9 of said Bill deny all allegations in said Paragraph and further say that the Director of Traffic, Henry A. Barnes, in the performance of the duties and obligations imposed upon him by said Ordinance No. 786 has validly and legally spent and has spent public funds to effectuate the design and purpose of said Ordinance, namely, the protection of the public health, safety and general welfare.

WHEREFORE, having fully answered said Bill, your Respondents pray that the same be dismissed with proper costs.

THOMAS N. HIBBISON
City Solicitor

EDWIN HARLAN
Deputy City Solicitor

HUGO A. RICCIUTI
Assistant City Solicitor

FRANCIS X. GALLAGHER
Assistant City Solicitor

HYMAN A. PRESSMAN, 337 St. Paul Place, Plaintiff,	*	IN THE
	*	CIRCUIT COURT
vs.	*	
HENRY A. BARNES, Director of Traffic, 413 St. Paul Place, and MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation, Defendants.	*	OF BALTIMORE CITY

* *

PETITION FOR PRELIMINARY INJUNCTION

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Your Petitioner, Hyman A. Pressman, respectfully represents unto your Honor as follows:

1. That the Bill of Complaint filed in this case on the 12th day of August, 1955 prayed for a declaratory decree to establish the invalidity of Administrative Regulation No. 7 issued by the Defendant Henry A. Barnes pertaining to speed limits in Baltimore City, penalties for violations and the conclusiveness of evidence in court and paragraphs 2I and 2K of Baltimore City Ordinance No. 786 which delegate powers pertaining to traffic to the Director of Traffic of Baltimore City. That said Bill of Complaint also prayed for a permanent injunction to restrain the Defendants from expending any public funds for the erection of signs or other devices in pursuance of said Regulation No. 7or paragraphs 2I and 2K of said Ordinance.

2. That since the filing of said Bill of Complaint, to wit, on the 16th day of August, 1955, the Defendant, Henry A Barnes has informed your Petitioner that he has been advised by the City Solicitor's office that he "should proceed with the installation of regulations as specified in the directive", as evidenced by a copy of a letter from said Henry A. Barnes to your Petitioner, which letter is dated August 12, 1955, postmarked August 15, 1955 and received by your Petitioner on August 16, 1955, a copy of which letter is filed herewith marked Plaintiff's Exhibit No. 3 and prayed to be taken as a part hereof.

3. That if the final decree of this Honorable Court should establish that the aforesaid Regulation and Ordinance are invalid,

any signs showing the wrong speed limits or any other invalid signs or devices would have to be removed so that it would be a needless waste of public funds to erect such signs or devices before the determination of the legality thereof.

WHEREFORE YOUR PETITIONER PRAYS

(a) That the Defendants and each of them may, by a preliminary injunction issuing out of this Honorable Court, be restrained from expending any funds for the erection of signs or other devices in pursuance of Administrative Regulation No. 7.

AND as in duty bound, etc.

_____

Plaintiff, in Proper Person

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, That on this_____ day of August, 1955, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared Hyman A. Pressman and made oath in due form of law that the matters and facts contained in the aforegoing Petition are true as therein set forth, to the best of his knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.

_____

Notary Public

PLAINTIFF'S EXHIBIT NO. 8

Henry A. Barnes
Director of Traffic

Thomas D'Alesandro, Jr.
Mayor

DEPARTMENT OF TRAFFIC ENGINEERING
413 St. Paul Place
Baltimore 2, Md.

Plaza 2-2000

August 12, 1955

Mr. Hyman A. Pressman
337 St. Paul Place
Baltimore 2, Md.

Dear Mr. Pressman:

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Since you have indicated that you plan to press a taxpayer's suit to restrain the Director of Traffic from enforcing his regulation, I am taking the liberty of forwarding your communication to Mr. Biddison's office so that they can be prepared to defend the City in this matter.

Very truly yours,

Henry A. Barnes
Director

hab/ecm

cc: Mr. Edwin Harlan
Deputy City Solicitor

ORDERED by the Circuit Court of Baltimore City this 17th day of August, 1955 that the Petition for Preliminary Injunction in this cause be set for hearing on the 18th day of August, 1955; provided a copy of the Petition and of this Order be served on the Defendants or their solicitor on or before the 17th day of August, 1955.

Herman M. Moser

(11:45 A.M.)

Service of Copy admitted.
this 17th day of August. 1955.

Edwin Harlan
Acting City Solicitor.
Re Mck.

Serve copy on Henry A. Barnes, Director of Traffic, 413 St. Paul Place 8/16/55

HYMAN A. PRESSMAN, 337 St. Paul Place, Plaintiff, * IN THE

vs. * CIRCUIT COURT

HENRY A. BARNES, Director of Traffic, 413 St. Paul Place, and MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation, Defendants. * OF BALTIMORE CITY

* *

BILL OF COMPLAINT

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Your Orator, Hyman A. Pressman, complaining, represents unto your Honor as follows:

1. That your Orator is a citizen, taxpayer, motorist and resident of Baltimore City, in the State of Maryland, and as such is interested in and entitled to insist upon the proper and legal expenditure of the revenues of the Mayor and City Council of Baltimore derived from taxation and from the sale of certificates of indebtedness of the Mayor and City Council of Baltimore.

2. That this Bill of Complaint is filed by your Orator in his own behalf and in behalf of allothers similarly interested who might desire to make themselves parties to this proceeding.

3. That the Defendant Henry A. Barnes has been appointed by the Mayor of the Mayor and City Council of Baltimore, a municipal corporation, to the office of Director of Traffic of said municipal corporation in pursuance of Baltimore City Ordinance No. 786, approved July 14, 1953, a copy of which ordinance is filed herewith, marked Plaintiff's Exhibit No. 1 and prayed to be taken as a part hereof.

4. That on the 7th day of August, 1955, the Defendant Henry A. Barnes issued "Administrative Regulation No. 7", a copy of which regulation is filed herewith, marked Plaintiff's Exhibit No. 2 and prayed to be taken as a part hereof.

5. That the said "Administrative Regulation No. 7" is illegal and ultra vires for the following reasons:

a. That the Defendant Henry A. Barnes, in issuing said regulation, has undertaken to perform the legislative function of

setting speed limits, which power has not been delegated to him, nor can it lawfully be delegated to him.

b. That the Defendant Henry A. Barnes has undertaken to exercise the legislative power of providing the penalties for violations, which power has not been delegated to him, nor can it lawfully be delegated to him.

c. That the penalties set forth in the said regulation are in conflict with the penalties prescribed in the said Ordinance No. 786.

d. That the fine of "not less than $100.00" provided in the said regulation for operating a motor vehicle at a rate of speed greater than 70 miles per hour is in conflict with Section 176(g) of Article 66½ of the Annotated Code of Maryland, 1951 Edition, which establishes the penalty for such violation to be "a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) or to be imprisoned for not less than thirty (30) days nor more than one (1) year, or to both fine and imprisonment, for the first offense".

e. That the said regulation sets the speed limits on all roads, streets, lanes and alleys of Baltimore City including those which have been designated as a part of the State or Federal highway system or an extension thereof, which is in violation of the provisions of Chapter 43 of the Laws of Maryland of 1955, Section 151 A of Article 66½ of the Annotated Code of Maryland, 1951 Edition as amended, which authorizes local authorities to regulate the speed of vehicles within their corporate limits on any road, street, lane or alley "which has not been designated or maintained as a part of the State or Federal highway system or an extension thereof".

f. That the said regulation is self-contradictory in that it refers to the speed limits as being "prima facie" in some parts and "conclusive" in another part of the regulation.

g. That the said regulation invades the judicial as well as the legislative powers by providing what shall constitute

conclusive evidence at the trial of any person charged with the violation of the regulation.

h. That paragraph 2K of said Ordinance No. 786, pursuant to the authority of which the said regulation was promulgated, is invalid, as is hereinafter set forth.

6. That paragraphs 2I and 2K of the said Ordinance No. 786 are invalid for the following reasons:

a. That said paragraph 2K delegates legislative functions to an administrative official.

b. That said ordinance does not supply proper standards for the guidance of the Director of Traffic in adopting and promulgating "rules, regulations, orders and directives relating to, or in connection with the movement of vehicular and pedestrian traffic in the City of Baltimore "as provided in paragraph 2K of said ordinance.

c. That said ordinance violates Section 8(24) of the Charter and Public Local Laws of Baltimore City, 1949 Edition, which provides "that no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner" by ordaining in paragraph 2I of the said ordinance that the Director of Traffic shall "have and exercise all control over traffic that the Police Commissioner for the City of Baltimore had prior to the time this ordinance becomes effective, including the power to establish special 'NO PARKING' spaces" and by giving the said Director of Traffic powers in the said ordinance which conflict, impede, obstruct, hinder and interfere with the powers of the said Police Commissioner.

7. That the Defendant Henry A. Barnes has expended and unless restrained by this Honorable Court intends to expend and will expend many thousands of dollars of the revenues of the Mayor and City Council of Baltimore derived from taxation and from the sale of certificates of indebtedness of the Mayor and City Council of Baltimore in pursuance of said illegal Administrative Regulation No. 7 and said invalid provisions of Ordinance No. 786 for the erection of invalid signs and other devices.

8. That the erection of said invalid signs will inform motorists of speed limits which are not legally correct and thereby cause confusion and unending litigation. That such invalid signs would tend to cause accidents, thereby subjecting the Mayor and City Council of Baltimore to damage suits and causing your Orators and other taxpayers unnecessary loss and special damage.

9. That the expenditure by the Defendants of public funds for illegal purposes as aforesaid would be illegal and ultra vires and would cause your Orator and all other similarly interested to be directly damaged in person or in property and to suffer irreparable loss and special damage.

WHEREFORE YOUR ORATOR PRAYS:

(a) That this Honorable Court may enter a declaratory decree declaring and decreeing that the Administrative Regulation No. 7 issued by the Defendant Henry A. Barnes on the 7th day of August, 1955, is invalid, illegaly and unenforceable.

(b) That this Honorable Court may enter a declaratory decree declaring and decreeing that paragraphs 2 I and 2 K of Baltimore City Ordinance No. 786, approved July 14, 1953, are invalid, illegal and unenforceable.

(c) That the Defendants and each of them may, by a permanent injunction issuing out of this Honorable Court, be restrained from expending any public funds for the erection of signs or other devices in pursuance of Administrative Regulation No. 7 or paragraphs 2 I and 2 K of Baltimore City Ordinance No. 786.

(d) And that your Orator may have such other and further relief as the nature of his cause may require.

AND as in duty bound, etc.

Hyman A. Pressman

Hyman A. Pressman
Plaintiff in Proper Person
337 St. Paul Place
Baltimore 2, Maryland

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, That on this_____ day of August, 1955, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared Hyman A. Pressman and made oath in due form of law that the matters and facts contained in the aforegoing Bill of Complaint are true as therein set forth, to the best of his knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.

_____
Notary Public

City Solicitor

Printed Daily Record 9/26/55

HYMAN A. PRESSMAN, et al Plaintiffs vs HENRY A. BARNES, Director of Traffic, and MAYOR AND CITY COUNCIL OF BALTIMORE, A Municipal Corporation, Defendants	IN THE CIRCUIT COURT OF BALTIMORE CITY Docket 1955 A-392 No. A-35141

MOSER, J.

MEMORANDUM

Baltimore City Ordinance No. 786 was passed by the Baltimore City Council and approved July 14, 1953. By its pertinent provisions it abolished the Traffic Commission of the City of Baltimore and created in lieu thereof the office of Director of Traffic of the City of Baltimore and delegated to and imposed upon the Director of Traffic certain powers andduties. Section 1 (a) of the Ordinance recited that in order to provide for the safe and expeditious movement of traffic in the City of Baltimore and to protect the safety of its citizens using its streets, there was created an office of the Mayor and City Council of Baltimore to be known as the "Director of Traffic of the City of Baltimore".

Section 1 (b) of the Ordinance provided that the Director of Traffic of the City of Baltimore may adopt such rules and regulations as he may deem necessary for the proper transaction of his business.

By Section 2 of the Ordinance it was provided that the Director of Traffic of the City of Baltimore "be and he is hereby granted full power and authority and directed to do any and all of the following".

. . .

D. Make recommendations to the Mayor and the City Council of Baltimore for the improvement of traffic conditions in the City of Baltimore, which cannot be accomplished by the directives, orders, rules or regulations promulgated by the Director of Traffic of the City of Baltimore, as authorized by Sub-paragraph K of Section 2 of this ordinance.

. . .

F. Establish and determine the design, timing, type, size and location of any and all signs, signals, markings, pylons, channels and other devices for guiding, directing or otherwise regulating and controlling vehicular and pedestrian traffic.

G. Designate any intersections as "STOP" intersections or through highways.

H. Approve or disapprove the location of bus stops designated by The Baltimore Transit Company, or its successor, or rescind or modify any prior approval heretofore given.

I. Have and exercise all control over traffic that the Police Commissioner for the City of Baltimore had prior to the time this ordinance becomes effective, including the power to establish special "NO PARKING" spaces; provided, however, that the Director of Traffic of the City of Baltimore shall not have the power to make and enforce special regulations with regard to traffic as set forth in Section 87 of this Article.

J. Install and maintain such traffic signs, signals,markings, pylons, channels and other devices as heretofore or hereafter directed by ordinance or heretofore directed by the Police Commissioner for Baltimore City.

K. Adopt and promulgate rules, regulations, orders and directives relating to, or in connection with, the movement of vehicular and pedestrian traffic in the City of Baltimore.

However, the Director of Traffic of the City of Baltimore shall not have the power to adopt and promulgate rules, regulations, orders or directives in the nature of general parking restrictions or to establish one-way streets; the power to make general parking restrictions or to establish one-way streets is specifically reserved to the Mayor and City Council, to be exercised by them by ordinance.

Said Ordinance No. 786 by Section 7 thereof contained this language:

(a) It shall be unlawful for any person, without lawful authority, to wilfully deface, injure, move or interfere with any sign, standard, post,safety zone, semaphore, tower, automatic signal, or any other traffic device, or any part thereof, erected by the authority of said Director of Traffic of the City of Baltimore, or any directions, lines or marks painted by the authority of said Director of Traffic of the City of Baltimore on any pavement, curb or roadway for the purpose of directing traffic or parking vehicles;

(b) It shall be unlawful for any person to fail, neglect or refuse to comply with any instruction or direction, on any post, standard, sign or other device erected by the authority of said Director of Traffic of the City of Baltimore for the regulation of traffic or parking on public highways;

(c) It shall be unlawful for any person to violate any rule, regulation, order or direction promulgated by said Director of Traffic of the City of Baltimore, as hereinbefore provided; and

(d) Any person violating any of the provisions of this Section 7 shall be guilty of a misdemeaner and, upon conviction thereof in any court of competent jurisdiction, shall be fined for each and every offense not more than One Hundred Dollars ($100.00).

It is contended on behalf of the Defendants that there are three charter powers involved in traffic regulations. These are sub-section (29) (d), sub-section (39), and sub-section (24) of Section 6 of the Baltimore City Charter. They read as follows:

> Section 6:
> The Mayor and City Council of Baltimore shall have full power and authority to exercise all of the powers heretofore or hereafter granted to it by the Constitution of Maryland or by any Public General or Public Local Laws of the State of Maryland; and in particular, without limitation upon the foregoing; shall have power by ordinance, or such other method as may be provided for in its Charter, subject to the provisions of said Constitution and Public General Laws:
>
> (29) (d) To regulate the use of streets and public ways by persons, animals and vehicles; to prohibit the use of such streets and public ways by any or all motor vehicles under such circumstances or upon such conditions as it may, from time to time, by ordinace, deem necessary or expedient in the interest of the public.
>
> (39) To pass any ordinance, not inconsistent with the provisions of this Charter or the laws of the State, which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, as well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City.
>
> (24) To have and exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise said power within said limits; provided, however, that no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner.

Pursuant to the aforegoing powers, the City of Baltimore has from time to time passed a number of ordinances relating to traffic (see Article 38 of the Baltimore City Code, 1950 "Traffic Regulations".)

During the 1955 Session of the General Assembly of Maryland, there were passed Sections 151 and 151 A of Article 66½, Annotated Code of Maryland (1951 Edition, as amended.)

Said Section 151 provides as follows:

> (a) The provisions of this Article shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from -
>
> (1) Regulating the standing or parking of vehicles;
> (2) Regulating traffic by means of peace officers or traffic control devices;
> (3) Regulating or prohibiting processions or assemblages on the highways;
> (4) Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;
> (5) Regulating the speed and weight of vehicles in public parks;
> (6) Designating any intersection as a stop intersection requiring all vehicles to stop at one or more entrances to such intersections.
>
> (b) No ordinance or regulation enacted under subdivisions (4), (5), or (6) of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be appropriate.

Section 151 A reads as follows:

> Section 151 A - Notwithstanding any other provision of this article, the appropriate authorities of any incorporated city, town or village are authorized and empowered to regulate the speed of vehicles on any road, street, lane or alley which is within their respective corporate limits and which has not been designated or maintained as a part of the State or federal highway system or an extension thereof.

Section 151 A of Article 66½ enumerates the regulation of speed of vehicles as an area of regulation granted to the appropriate authorities of any incorporated city, town or village.

Pursuant to Section 2 (k) of Ordinance No. 786, the Traffic Director issued a number of directives known as Administrative Regulations. After the passage of Section 151 A of Article 66½, the Traffic Director issued Administrative Regulation No. 7 dealing with speeds within the corporate limits of Baltimore City. The Plaintiffs contest the validity of Ordinance No. 786 and Administrative Regulation No.7 issued pursuant thereto.

The effective date of Administrative Regulation No. 7 is August 9, 1955. It recites that pursuant to the authority contained in Article 66½, Section 151 A of the Annotated Code of Maryland, 1951 Edition, as amended, and pursuant to the authority contained in Section (2) K of Article 38 of the Baltimore City Code, 1950 Edition, as such section was amended by Ordinance No. 786 approved July 14, 1953, the Director of Traffic thereby establishes a regulation providing for certain legal speeds for all roads, streets, lanes and alleys within the corporate limits of Baltimore City. These speeds are declared to be determined upon the basis of engineering and traffic investigation.

Paragraph (D) of Administrative Regulation No. 7 provides that no person shall operate a vehicle upon any road, street, lane or alley less than sixteen feet wide from curb to curb in excess of fifteen miles an hour, and sets forth that a violation shall be deemed a misdemeanor subject to a fine of not more than $100.00.

Paragraph (E) of Administrative Regulation No. 7 sets forth in substance that on highways greater than sixteen feet in width, no vehicle shall be operated at a rate of speed exceeding twenty-five miles per hour on ordinary highways, or thirty miles an hour on dual lane through highways in the chickly settled or business parts of the city, or thirty miles per hour on ordinary highways, or thirty-five miles per hour on dual highways in the outlying or not thickly settled part of the city except where such highways have been otherwise posted.

Paragraph (F) of said Administrative Regulation No. 7 prohibits speeds greater than fifty miles per hour and on dual lane through highways prohibits speeds greater than fifty-five miles per hour, with violations stated to be a misdemeaner subject to a fine of not less than $10.00 nor more than $100.00.

Other parts of Administrative Regulation No. 7 are similar in character depending upon the subject matter therein provided for.

It is alleged by the plaintiffs that Ordinance No. 786 delegated legislative functions to an Administrative official and fails to provide sufficient standards to guide him.

The Plaintiffs argued also that if such power could be delegated, it has not been legally delegated, and that the transfer of the control of traffic from the Police Commissioner to the Director of Traffic is in violation of the City Charter, and that local authorities may not regulate the speed of vehicles on the roads or streets in question here because it has been alleged they have been designated as a part of the state or federal highways system or an extension thereof.

In Tighe v. Osborne, 150 Md. 452, the Court of Appeals commented upon the field of administrative power and made this statement:

> The field has become so vast, and the things to be considered so enlarged in number and so interrelated with one another, that it has been found practically impossible to provide in laws and ordinances specific rules and standards by which every conceivable situation can be measured and determined. The result has been that we have turned more and more to the plan of providing in our laws and ordinances general rules and standards, and leaving to administrative boards and agencies the task of acquiring information, working out details, and applying these rules and standards to specific cases. This is not considered a delegation of legislative authority, though it probably does represent an expansion of administrative power.
>
> Such ordinances represent no change in principle; they merely indicate that the Courts, faced at least by an apparent necessity, have relaxed to some extent the particularity with which they formerly required the laws and ordinances to set out the rules and standards by which the delegated power was to be limited, and whatever may be said of the wisdom of this relaxation, no doubt can now be entertained as to its sanction by the great weight of authority in this country.

The case of Houck v. Minton, 212 SW 2nd 891, presented for interpretation the Charter of Nashville, Tennessee. That Charter gave to the Traffic Commission of Nashville "full and exclusive legislative authority to adopt and publish traffic regulations. ." It then set up specific instances of what it meant by traffic regulations. One of these instances was regulating speed where the Commission felt that speed less than thirty miles per hour

was proper. This provision of the Charter was attacked as a delegation of legislative power. The Court stated: "The power to regulate and control traffic is a power that may be delegated to a municipality by the Legislature, or to some designated agency of such municipality . . . ."

> "When we come to consider the question of regulating traffic, especially within a congested area, it would be impossible to do so in many instances by a direct ordinance of a city council. In emergencies the public safety cannot wait for legislative action by a slowly-moving legislative council, nor can the latter be expected to declare by ordinance what is a hazard to public travel in changing situations and conditions. It must be left to the sound discretionof some agency of the local government."

It was argued in Houck, supra, that the words "legislative authority" were used in the Charter. The Court held, however, that such authority was nevertheless administrative. The City Council of Nashville provided the penalties by ordinance for violation of the Traffic Commission's rules and regulations.

In Sherman v. Johnson, 80 S.E. 2nd 717; 89 Ga.App. 620, an ordinance of Atlanta authorized the City Traffic Engineer of that city to determine and designate intersections where particular hazards existed and to cause "stop" signs and traffic control signs to be erected when needed. The ordinance was attacked as being too vague and indefinite to be enforceable and as a delegation of legislative power to an administrative officer. The ordinance was sustained.

In Gould, et al, v. Western Dairy Products, Inc., et al, 55 P. 2d 274, a Burbank ordinance gave the Board of Police Commissioners authority to erect stop signs. The legislation was sustained against the contention that it constituted an unlawful delegation of power. In the Gould case, the Court wrote in part:

> Even a casual observer of governmental growth and development must have observed the ever-increasing multiplicity and complexity of administrative affairs - national, state, municipal - and even the occasional reader of the law must have perceived that from necessity, if for no better grounded reason - it has becomec increasingly imperative that many quasi-legislative and quasi-judicial functions, which in smaller communities and under more primitive conditions were performed by

the legislative or judicial branches of the government, are entrusted to departments, boards, commissions and agents. No sound objection can longer be successfully advanced to the growing method of transacting public business. These things must be done in this way or they cannot be done at all, and their doing, in a very real sense, makes for the safety of the republic and is thus sanctioned by the higher law.

In City of Cleveland v. Gustafson, 180 N.E.59, 124 Ohio St.607, an ordinance authorizing a safety director to establish safety zones was held not to represent an unlawful delegation of legislative power. The Court wrote:

.....Increasing population, and an increase in the means and methods of travel, present to our legislative bodies their most complex problems. They occur and recur. . . . . It must be borne in mind that all of us must surrender something for the sake of government. When the motorist starts, he wants to go. So does the pedestrian. So does the passenger in the streetcar. The city council must look after the safety and general welfare of all at the same time and under all circumstances. Council cannot legislate with exact nicety, nor is it required so to do in the exercise of its police power. The Almighty himself would find it a stupendous task to take care of our moving thousands without making some slight discrimination somewhere . . . . . .

Stevens v. City of Kalamazoo and James R. Wichman, City Traffic Engineer was decided October 12, 1954, in the Circuit Court for the County of Kalamazoo, Michigan. In that case, the City Traffic Engineer was given power to establish one-way streets, to increase or decrease certain speed regulations and to prohibit or restrict parking of vehicles. The regulation issued under the ordinance was sustained, the Court stating:

It is impossible for the City Commission or the Legislature of our State to anticipate all of the very many details and contingencies that may arise in the handling of such a complex problem as regulating traffic upon the public highways.

As an aid to the instant case, resort may be had to Sutherland on Statutory Construction, where in Volume 2, Sec. 5101, the following appears:

Legislative standards are generally couched in terms which have considerable breadth. Therefore, a statute may be interpreted to include circumstances or situations which were unknown or did not exist at the time of the enactment of the statute.

Although Administrative Regulation No. 7 of the Director of Traffic sets forth provisions in regard to fines, it is observable that in most instances it paraphrases the "not more than $100.00" language of Ordinace No. 786. However the setting of any minimum find by the Director of Traffic, such as $10. or $1.00, as he attempted to do in Administrative Legislation No. 7, and the fixing of presumptions of guilt, as he attempted to do in this same regulation, may not be done by him and is invalid. This would not cause the Administrative Regulation to fail in its other parts.

With respect to the Plaintiffs' allegations that the Ordinance results in interference with the powers of the Police Commissioner over traffic, it is of interest to examine the case of GI Veterans Taxicab v. Yellow Cab Co., 192 Md. 551, in which case the Court of Appeals found that the powers of the Police Commissioner referred to in the Charter "would seem to have reference to his executive powers." Vide also State v. Stewart, 152 Md. 419.

It will be noted that Section 2 (I) of Ordinance No. 786 specifically provides that the Director of Traffic "shall not have the power to make and enforce special regulations with regard to traffic as set forth in Section 87 of this Article". The Commissioner retains this power, and there is not found to be any violation of law in the Ordinance in regard to this matter as contended for by the plaintiffs.

The Court has examined a number of other decisions cited by respective counsel and in the opinion of this Court the authorities sustain the validity of the Ordinance and the speed provisions of the Administrative Regulation.

The point which gave greatest pause was the language of Section 151 A, hereinbefore referred to, which would in effect permit the appropriate authorities of the City to regulate the speed of vehicles on any road, street, lane or alley within the corporate limits of Baltimore if they have not been designated or maintained as a part

of the State or federal highway system or an extension thereof.

The testimony at the hearing showed that there are within the corporate limits of Baltimore neither State nor federal highways or systems. Mr Bunting of the State Roads Commission and the Defendant, Barnes, both testified there were no such roads or highways within Baltimore City. Mr. Bunting indicated he was without knowledge as to whether there were any such extensions within Baltimore City, and in effect said that State and federal numbered highways came up to the boundaries of the City and "took upQ at the other side of the city. The testimony indicated that the State Roads Commission and the Federal Government neither maintained nor designated any of the routes within the City.Under an agreement with the State Roads Commission and the Department of Traffic Engineering of Baltimore City, the City of Baltimore agreed to mark all highways withinthe City with State and federal numerals to assist the traveling public when going through the City. The Defendants contend that under these circumstances there is no evidence ofa Federal or State road system within the City and the Defendant, Barnes, testified that he could and did change the placing of these markers without State or Federal sanction. Article 89B of the Annotated Code of Maryland in Section 2 defines a state highway system as "a system of roads which are from time to time owned by the State and which the State Roads Commission by resolution from time to time designated as State roads to be maintained and operated by the Commission". If the argument of the Plaintiffs were accepted, then no road within Baltimore City which has a physical connection with a State or Federal marked highway could be controlled by the municipality as to regulating s speed thereon and the municipality would be without power to i n-crease or decrease the speed on its vital arteries. Section 176 (h) of Article 66½ provides that when the State Roads Commission determines that a speed limit set by State law is greater than is reasonable or safe under the conditions found to exist at any

place upon the public highway within the State, then "outside the corporate limits of any municipality or upon any State maintained street within the corporate limits of any municipality", the State Roads Commission shall have the power to set a safe, reasonable speed. It would appear that the State Roads Commission has no power to change speed limits within the City of Baltimore. The Court does not find that the City of Baltimore or its appropriate authorities under the legislation hereinbefore considered are without power to change the speeds on streets within the City. To accept the Plaintiffs' interpretation would be to render nugatory Section 151 A of Article 66½ in so far as Baltimore City is thereby concerned.

The Court finds that Ordinance No. 786 is a constitutional and valid enactment of the Mayor and City Council of Baltimore and thatAdministrative Regulation No. 7 of the Director of Traffic of the City of Baltimore is likewise a valid regulation with respect to speed limits set thereby.

An order consistent with the aforegoing opinion will be signed.

HYMAN A. PRESSMAN, et al. Plaintiffs, vs. HENRY A. BARNES Director of Traffic, and MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation, Defendants.	*	IN THE CIRCUIT COURT OF BALTIMORE CITY Docket 1955 A-892 No. A-35141

* *

PETITION

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petitionof Hyman A. Pressman et al., Plaintiffs, by Hyman A. Pressman, their solicitor, respectfully represents unto your Honor:

1. That the Plaintiffs, on page 9 of their memorandum heretofore filed, complained that Paragraph 8 of Baltimore City Ordinance No. 786 constituted an unlimited, unwarranted and incredible delegation of power in that it gives the Director of Traffic the power to repeal a law or ordinance by issuing a regulation.

2. That your Petitioners desire to make a formal request that said Paragraph 8 of Ordinance No. 786 be declared invalid, illegal and unconstitutional under the "other and further" prayer for relief.

WHEREFORE YOUR PETITIONER PRAYS:

(a) That this Honorable Court may enter a declaratory decree declaring and decreeing that Paragraph 8 of Baltimore City Ordinance No. 786 is invalid, illegal and unconstitutional.

AND as in duty bound, etc.

Hyman A. Pressman
Solicitor for Plaintiffs

Copy mailed to Thomas E. Biddison, Esq., City Solicitor, Solicitor for Defendants, this 27th day of September, 1955.

RECEIVED
SEP 28 1955
CITY SOLICITOR'S OFFICE

Hyman A. Pressman
Solicitor for Plaintiffs

COPY

CITY SOLICITOR'S OFFICE

HYMAN A. PRESSMAN, et al,	:	IN THE
Plaintiffs,	:	CIRCUIT COURT
	:	OF
vs.	:	BALTIMORE CITY
HENRY A. BARNES, Director of Traffic,	:	
	:	Docket 1955 - A-392
and	:	No. A-35141
	:	
MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation,	:	
Defendants.	:	

.. .. ..

ORDER

This matter having come up for hearing upon BILL and ANSWER and counsel for all parties having been heard, testimony having been taken in open Court and memoranda of law having been submitted, and the Court having duly considered the matter and rendered its written opinion therein, it is this 30th day of September, 1955, by the Circuit Court of Baltimore City,

ADJUDGED, ORDERED and DECREED that Baltimore City Ordinance No. 786, enacted in 1953, and Administrative Regulation No. 7 of the Director of Traffic of the City of Baltimore are constitutional and valid enactments, with the exception that the setting of minimum fines and presumptions as to guilt in said Administrative Regulation No. 7 are invalid;

AND BE IT FURTHER ADJUDGED, ORDERED and DECREED, that the Bill for Declaratory Decree be dismissed and TWO THIRDS OF THE costs to be paid by the Plaintiffs, AND ONE THIRD TO BE PAID BY THE DEFENDANTS HMM

HERMAN M MOSER
JUDGE

ADMINISTRATIVE REGULATION NO. 7

Effective Date, Tuesday, August 9, 1955

Pursuant to the authority contained in Article 66½, Section 151A of the Annotated Code of Maryland, 1951 edition as amended, and pursuant to the authority contained in Section (2) K of Article 38 of the Baltimore City Code, 1950 edition as such section was amended by Ordinance No. 786, approved July 14, 1953, the Director of Traffic of the City of Baltimore hereby establishes a regulation providing the following legal speeds for all roads, streets, lanes and alleys within the corporate limits of Baltimore City.

(A) The State traffic laws regulating the speed of vehicles shall be inapplicable upon all roads, streets, lanes or alleys within the City, except as this Administrative Regulation, as authorized by State law and City ordinance, hereby declares and determines upon the basis of engineering and traffic investigation that certain speed regulations shall be applicable upon specified streets or in certain areas.

(B) No person shall operate or drive a vehicle on any road, street, lane or alley at a greater speed than is reasonable and prudent under the then existing conditions.

(C) Where no special hazard exists that requires lower speed for compliance with Paragraph (B) of this section, the following speed shall be lawful, but any speed in excess of said limits shall be prima facie evidence that the speed is

not reasonable or prudent and that it is unlawful.

(D) No person shall operate or drive a vehicle upon any road, street, lane or alley less than 16 feet in width from curb to curb at a speed in excess of fifteen miles per hour.

Penalties - Violation of Paragraphs (B), (D) or (E) of this section shall be deemed to be a misdemeanor and any person, upon conviction, shall be fined not more than $100.00

(E) No vehicle shall be operated upon any road, street, lane or alley, greater than 16 feet in width from curb to curb, of this City (including public parks) at a rate of speed exceeding 25 miles per hour on ordinary highways or 30 miles per hour on dual lane through highways in the thickly settled or business parts of the City, or 30 miles per hour on ordinary highways, or 35 miles per hour on dual lane highways in the outlying or not thickly settled part of the City, except, however, where the roads, streets, lanes or alleys have been otherwise posted.

(F) No motor vehicle shall be operated upon any road, street, lane or alley of this City at a rate of speed greater than 50 miles per hour, or 55 miles per hour on dual lane through highways, under any circumstances or conditions. Violation of Paragraph (F) shall be deemed to be a misdemeanor and any person, upon conviction, shall be fined not less than $10.00 nor more than $100.00.

(G) Upon the trial of any person charged with the violation of this Regulation, proof of said determination of the maximum speed by the Department of Traffic Engineering and the existence of said sign shall constitute conclusive evidence of the maximum speed which can be maintained with safety on such roads, streets, lanes and alleys.

(H) Any person operating any motor vehicle upon any street, road, alley or lane of this City at a rate of speed greater than 70 miles per hour shall be subject, upon conviction, to a fine not less than $100.00.

(I) No person shall drive or operate a vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary.

Peace Officers are hereby authorized to enforce this provision by direction to drivers, and in the event of apparent wilful disobedience to this provision and refusal to comply with direction of an officer in accordance herewith, the continued slow operation by a driver shall be a misdemeanor and, upon conviction thereof, shall be punishable by a fine of $1.00 to $100.00.

(J) The fact that the speed of a vehicle is lower than the foregoing prima facie limits shall not relieve the driver from the duty to decrease speed when approaching and crossing an intersection except through highways, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway or when special

hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition, and speed shall be decreased as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

(K) The prima facie limitations and provisions relative to speed set forth herein shall not apply to authorized emergency vehicles when responding to emergency calls and the drivers thereof sound audible signal by bell, siren, or exhaust whistle.

This provision shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the street, nor shall it protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others.

(L) In accordance with the exception provided in Paragraph (E) herein, when signs are erected giving notice thereof, the prima facie speed limit shall be as set forth in this schedule upon those streets or portions thereof.

To Be Published

Henry A. Barnes
Director of Traffic
Department of Traffic Engineering

Approved For Legal Sufficiency

/s/ Edwin Harlan

Edwin Harlan
Deputy City Solicitor

/s/ Francis X. Gallagher

Francis X. Gallagher
Assistant City Solicitor

Serve copy on City Solicitor of Mayor and City Council of Baltimore, Court House

HYMAN A. PRESSMAN,
337 St. Paul Place,
Plaintiff,

vs.

HENRY A. BARNES, Director of Traffic,
413 St. Paul Place, and
MAYOR AND CITY COUNCIL OF BALTIMORE,
a municipal corporation,
Defendants.

IN THE

CIRCUIT COURT

OF BALTIMORE CITY

* *

BILL OF COMPLAINT

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Your Orator, Hyman A. Pressman, complaining, represents unto your Honor as follows:

1. That your Orator is a citizen, taxpayer, motorist and resident of Baltimore City, in the State of Maryland, and as such is interested in and entitled to insist upon the proper and legal expenditure of the revenues of the Mayor and City Council of Baltimore derived from taxation and from the sale of certificates of indebtedness of the Mayor and City Council of Baltimore.

2. That this Bill of Complaint is filed by your Orator in his own behalf and in behalf of allothers similarly interested who might desire to make themselves parties to this proceeding.

3. That the Defendant Henry A. Barnes has been appointed by the Mayor of the Mayor and City Council of Baltimore, a municipal corporation, to the office of Director of Traffic of said municipal corporation in pursuance of Baltimore City Ordinance No. 786, approved July 14, 1953, a copy of which ordinance is filed herewith, marked Plaintiff's Exhibit No. 1 and prayed to be taken as a part hereof.

4. That on the 7th day of August, 1955, the Defendant Henry A. Barnes issued "Administrative Regulation No. 7", a copy of which regulation is filed herewith, marked Plaintiff's Exhibit No. 2 and prayed to be taken as a part hereof.

5. That the said "Administrative Regulation No. 7" is illegal and ultra vires for the following reasons:

a. That the Defendant Henry A. Barnes, in issuing said regulation, has undertaken to perform the legislative function of

setting speed limits, which power has not been delegated to him, nor can it lawfully be delegated to him.

b. That the Defendant Henry A. Barnes has undertaken to exercise the legislative power of providing the penalties for violations, which power has not been delegated to him, nor can it lawfully be delegated to him.

c. That the penalties set forth in the said regulation are in conflict with the penalties prescribed in the said Ordinance No. 786.

d. That the fine of "not less than $100.00" provided in the said regulation for operating a motor vehicle at a rate of speed greater than 70 miles per hour is in conflict with Section 176(g) of Article 66½ of the Annotated Code of Maryland, 1951 Edition, which establishes the penalty for such violation to be "a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) or to be imprisoned for not less than thirty (30) days nor more than one (1) year, or to both fine and imprisonment, for the first offense".

e. That the said regulation sets the speed limits on all roads, streets, lanes and alleys of Baltimore City including those which have been designated as a part of the State or Federal highway system or an extension thereof, which is in violation of the provisions of Chapter 43 of the Laws of Maryland of 1955, Section 151 A of Article 66½ of the Annotated Code of Maryland, 1951 Edition as amended, which authorizes local authorities to regulate the speed of vehicles within their corporate limits on any road, street, lane or alley "which has not been designated or maintained as a part of the State or Federal highway system or an extension thereof".

f. That the said regulation is self-contradictory in that it refers to the speed limits as being "prima facie" in some parts and "conclusive" in another part of the regulation.

g. That the said regulation invades the judicial as well as the legislative powers by providing what shall constitute

conclusive evidence at the trial of any person charged with the violation of the regulation.

h. That paragraph 2K of said Ordinance No. 786, pursuant to the authority of which the said regulation was promulgated, is invalid, as is hereinafter set forth.

6. That paragraphs 2I and 2K of the said Ordinance No. 786 are invalid for the following reasons:

a. That said paragraph 2K delegates legislative functions to an administrative official.

b. That said ordinance does not supply proper standards for the guidance of the Director of Traffic in adopting and promulgating "rules, regulations, orders and directives relating to, or in connection with the movement of vehicular and pedestrian traffic in the City of Baltimore "as provided in paragraph 2K of said ordinance.

c. That said ordinance violates Section 6(24) of the Charter and Public Local Laws of Baltimore City, 1949 Edition, which provides "that no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner" by ordaining in paragraph 2I of the said ordinance that the Director of Traffic shall "have and exercise all control over traffic that the Police Commissioner for the City of Baltimore had prior to the time this ordinance becomes effective, including the power to establish special 'NO PARKING' spaces" and by giving the said Director of Traffic powers in the said ordinance which conflict, impede, obstruct, hinder and interfere with the powers of the said Police Commissioner.

7. That the Defendant Henry A. Barnes has expended and unless restrained by this Honorable Court intends to expend and will expend many thousands of dollars of the revenues of the Mayor and City Council of Baltimore derived from taxation and from the sale of certificates of indebtedness of the Mayor and City Council of Baltimore in pursuance of said illegal Administrative Regulation No. 7 and said invalid provisions of Ordinance No. 786 for the erection of invalid signs and other devices.

8. That the erection of said invalid signs will inform motorists of speed limits which are not legally correct and thereby cause confusion and unending litigation. That such invalid signs would tend to cause accidents, thereby subjecting the Mayor and City Council of Baltimore to damage suits and causing your Orators and other taxpayers unnecessary loss and special damage.

9. That the expenditure by the Defendants of public funds for illegal purposes as aforesaid would be illegal and ultra vires and would cause your Orator and all other similarly interested to be directly damaged in person or in property and to suffer irreparable loss and special damage.

WHEREFORE YOUR ORATOR PRAYS:

(a) That this Honorable Court may enter a declaratory decree declaring and decreeing that the Administrative Regulation No. 7 issued by the Defendant Henry A. Barnes on the 7th day of August, 1955, is invalid, illegal and unenforceable.

(b) That this Honorable Court may enter a declaratory decree declaring and decreeing that paragraphs 2 I and 2 K of Baltimore City Ordinance No. 786, approved July 14, 1953, are invalid, illegal and unenforceable.

(c) That the Defendants and each of them may, by a permanent injunction issuing out of this Honorable Court, be restrained from expending any public funds for the erection of signs or other devices in pursuance of Administrative Regulation No. 7 or paragraphs 2 I and 2 K of Baltimore City Ordinance No. 786.

(d) And that your Orator may have such other and further relief as the nature of his cause may require.

AND as in duty bound, etc.

Hyman A. Pressman

Hyman A. Pressman
Plaintiff in Proper Person
337 St. Paul Place
Baltimore 2, Maryland

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, That on this_____ day of August, 1955, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared Hyman A. Pressman and made oath in due form of law that the matters and facts contained in the aforegoing Bill of Complaint are true as therein set forth, to the best of his knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.

_____

Notary Public

8/18/55

COPY

CITY SOLICITOR'S OFFICE

HYMAN A. PRESSMAN 337 St. Paul Place, Plaintiff,	:	
vs.	:	In the
HENRY A. BARNES, Director of Traffic, 413 St. Paul Place, and MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation, Defendants.	:	CIRCUIT COURT OF BALTIMORE CITY

* * * * *

- S T I P U L A T I O N -

* * * * *

IT IS HEREBY STIPULATED BETWEEN THE RESPECTIVE PARTIES:

1. That the Complainant, Hyman A. Pressman, is a citizen, motorist and taxpayer of Baltimore City, and is a proper party to this proceeding.

2. That this Honorable Court has jurisdiction.

3. That the Respondent, Henry A. Barnes, has been appointed as Director of Traffic of Baltimore City, pursuant to the provisions of Ordinance No. 786, approved July 14, 1953, and has performed, and will continue to perform, those obligations, duties and controls over traffic imposed upon him in pursuance of said ordinance.

4. That Ordinance No. 786, approved July 14, 1953, filed herein as "Plaintiff's Exhibit No. 1," has been duly enacted, and is hereby admitted in evidence.

5. That, on August 7, 1955, the Respondent, Henry A. Barnes, caused to be issued and published Administrative Regulation No. 7, copy of which Regulation has been filed as "Plaintiff's Exhibit No. 2," and is hereby admitted in evidence.

COPY

CITY SOLICITOR'S OFFICE

6. That the Respondent, Henry A. Barnes, has expended, intends to expend, and will expend, publicfunds in pursuance of said Ordinance No. 786, approved July 14, 1953, for the erection of signs and other devices.

7. That the Respondent, Henry A. Barnes, intends to expend, and will expend, public funds in pursuance of Administrative Regulation No. 7.

Hyman A. Pressman
Plaintiff in Proper Person

Thomas N. Biddison
City Solicitor

Edwin Harlan
Deputy City Solicitor

Hugo A. Ricciuti
Assistant City Solicitor

Francis E. Gallagher
Assistant City Solicitor
Solicitors for Henry A. Barnes, Director of Traffic of Baltimore City

COPY

CITY SOLICITOR'S OFFICE

HYMAN A. PRESSMAN 337 St. Paul Place Plaintiff	:	IN THE
VS.	:	CIRCUIT COURT
HENRY A. BARNES, Director of Traffic 413 St. Paul Place and MAYOR AND CITY COUNCIL OF BALTIMORE, a municipal corporation Defendants	:	OF BALTIMORE CITY

. . . . . .

ANSWER TO BILL FOR DECLARATORY DECREE

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Respondents, Henry A. Barnes, Director of the Department of Traffic Engineering of Baltimore City, and the Mayor and City Council of Baltimore, a municipal corporation, by Thomas N. Biddison, City Solicitor, Edwin Harlan, Deputy City Solicitor, Hugo A. Riccuit and Francis X. Gallagher, Assistant City Solicitors, in response to the Bill for Declaratory Decree, say as follows:

1. The Respondents are without knowledge of all of the facts and contents of the first paragraph of said Bill and, therefore, neither admit nor deny the allegations contained therein.

2. The Respondents are without knowledge of all of the facts and contents of the second paragraph of said Bill and, therefore, neither admit nor deny the allegations contained therein.

3. The Respondents admit the allegations contained in Paragraph 3 of said Bill.

COPY

CITY SOLICITOR'S OFFICE

4. The Respondents admit the allegations contained in Paragraph 4 of said Bill.

5. The Respondents in answer to Paragraph 5, sub-sections (a), (b), (c), (d), (e), (f), (g) and (h) of said Bill deny that the said "Administrative Regulation No. 7" is illegal and ultra vires but on the contrary that said "Administrative Regulation No. 7" is a proper, valid and constitutional enactment adopted pursuant to Article 66½, Section 151 (A) of the Annotated Code of Maryland, 1951 edition, as amended, and Section 2(K) of Article 38 of the Baltimore City Code, 1950 edition, as amended by Ordinance No. 786 of July 14, 1953; and, in further answer to the specific allegations of the aforementioned sub-sections of Paragraph 5 of said Bill, say:

(a) That the Respondent, Henry A. Barnes, in promulgating "Administrative Regulation No. 7" is effectuating the purposes and intent of Ordinance No. 786 approved July 14, 1953, and Section 151 (A) of Article 66½ of the Annotated Code of Maryland, said purpose and intent being the protection and preservation of the public health, safety and general welfare of the citizens of Baltimore.

(b) That the Respondent, Henry A. Barnes, by the promulgation of "Administrative Regulation No. 7" has not exercised any legislative power or function, but, on the contrary, is performing those duties, obligations and functions necessary to effectuate the design and purpose of Ordinance No. 786 and Section 151 (A) of Article 66½ of the Maryland Code.

(c) That the penal provisions provided for in "Administrative Regulation No. 7" are not in any wise or manner in conflict with Ordinance No. 786.

(d) That no conflict exists between Section 8 of "Administrative Regulation No 7" and Section 176 (g) of Article 66½ of the Maryland Code.

(e) That the "Administrative Regulation No. 7" does not in any manner attempt to regulate the speed of vehicles on any road, street, lane or alley within the corporate limits of Baltimore City which has been designated or maintained as a part of the State or Federal highway system or an extension thereof.

(f) That "Administrative Regulation No. 7" is not self-contradictory but, on the contrary, is a concise, succinct and constitutional regulation designed to carry out the purpose and intent of Ordinance No. 786 and Section 151 (A) of Article 66½ of the Code.

(g) That "Administrative Regulation No. 7" is not in any way an exercise of any legislative or judicial function and any and all penal provisions of said "Administrative Regulation No. 7" can only be enforced through judicial process in accordance with due process of law.

(h) That Ordinance No. 786 is a proper, valid and constitutional enactment of the Mayor and City Council of Baltimore designed to provide for the safe and expeditious movement of traffic in the City of Baltimore and to protect the safety of the citizens using its streets.

6. The Respondents in answer to Paragraph 6(a) of said Bill say that Ordinance No. 786 does not attempt to delegate legislative power to the Director of Traffic, but authorizes him to exact compliance with the provisions thereof and with such regulations

as he has adopted or will adopt for their enforcement and gives him only such limited discretion as is necessary in the proper execution of a law or regulation designed to expedite movement of traffic and protection of the citizens in the use of streets in Baltimore City.

The Respondents in answer to Paragraph 6(b) of said Bill say that the Director of Traffic in the promulgation of rules and regulations is guided in the exercise of his limited discretion by what is necessary to provide for the safe and expeditious movement of traffic in Baltimore City and to protect the safety of the citizens using the streets of Baltimore City and that the exercise of said limited discretion for the protection of the public health and safety cannot be prescribed within precise limits.

The Respondents in answer to Paragraph 6(c) say that Ordinance No. 786 does not contravene Section 6(24) of the Charter and Public Local Laws of Baltimore City, and in further answer to said Paragraph 6(c) say that the proviso in Section 6(24) of the Charter of Baltimore City "that no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner" has reference to the executive powers of the Police Commissioner and does not restrict the power of the City to legislate on a matter within the scope of police power.

7. The Respondents in answer to Paragraph 7 of said Bill say that the Director of Traffic, Henry A. Barnes, pursuant to the authority vested in him by Ordinance No. 786 shall expend such sums as are necessary for the proper performance of the duties, obligations and functions imposed by the provisions of said Ordinance No. 786, in order to effectuate the design and purpose of said

COPY

CITY SOLICITOR'S OFFICE

Ordinance, namely, the protection of the public health, safety and general welfare.

8. The Respondents in answer to Paragraph 8 of said Bill deny all allegations contained in said Paragraph 8 and further say that the Director of Traffic, Henry A. Barnes, shall perform all of the duties and obligations imposed upon him by the validly, properly and constitutionally adopted Ordinance No. 786.

9. The Respondents in answer to Paragraph 9 of said Bill deny all allegations in said Paragraph and further say that the Director of Traffic, Henry A. Barnes, in the performance of the duties and obligations imposed upon him by said Ordinance No. 786 has validly and legally spent and will spend public funds to effectuate the design and purpose of said Ordinance, namely, the protection of the public health, safety and general welfare.

WHEREFORE, having fully answered said Bill, your Respondents pray that the same be dismissed with proper costs.

THOMAS N. BIDDISON
City Solicitor

EDWIN HARLAN
Deputy City Solicitor

HUGO A. RICCIUTI
Assistant City Solicitor

FRANCIS X. GALLAGHER
Assistant City Solicitor

EQUITY SUBPOENA

The State of Maryland

To Henry A. Barnes, Director of Traffic,
413 St. Paul Place
and
Mayor and City Council of Baltimore,
a municipal corporation

COPY

of Baltimore City, Greeting:

WE COMMAND AND ENJOIN YOU, That all excuses set aside, you do within the time limited by law, beginning on the first Monday of September next, cause an appearance to be entered for you and your answer to be filed to the complaint of

Hyman A. Pressman, 337 St. Paul Place

against you exhibited in the Circuit Court of Baltimore City.

HEREOF fail not, as you will answer the contrary at your peril.

WITNESS, the Honorable EMORY H. NILES, Chief Judge of the Supreme Bench of Baltimore City, the 4th day of July, 19 55
Issued the 12th day of August, in the year 19 55

Henry J. Pigfenger Clerk

MEMORANDUM: You are required to file your answer or other defense in the Clerk's Office, room 410, in the Court House, Baltimore City, within fifteen days after return day, named in the above subpoena. Personal attendance in Court on the day named is not necessary, but unless you answer or make other defense within the time named, complainant (s) may obtain a decree pro confesso against you, which upon proper proof may be converted into a final decree for the relief demanded.
(General Equity Rule 11)

CIRCUIT COURT

A-392
55

19 Docket No. .....

HYMAN A. PRESSMAN

COPY

vs.

HENRY A. BARNES, ETC, ETAL

Subpoena To Answer Bill Of Complaint

No. A-35141

(2)

Filed ..... day of ....., 19 .....

Hyman A. Pressman

Solicitor.

337 St. Paul Place

Address.

EQUITY SUBPOENA

The State of Maryland

To Henry A. Barnes, Director of Traffic,
413 St. Paul Place
and
Mayor and City Council of Baltimore,
a municipal corporation

COPY

of Baltimore City, Greeting:

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(General Equity Rule 11)

CIRCUIT COURT

A-392 55

19 Docket No. .....

HYMAN A. FRESSMAN

COPY

vs.

HENRY A. BARNES, ETC, ETAL

Subpoena To Answer Bill Of Complaint

No. A-35141

(2)

Filed ..... day of ....., 19 .....

Hyman A. Pressman

Solicitor.

337 St. Paul Place

Address.

COPY

CITY SOLICITOR'S OFFICE

File No. 94675

May 14, 1956

Hyman A. Pressman
337 St. Paul Place
Baltimore 2, Maryland

RE: Pressman et al vs. Barnes et al.

Dear Mr. Pressman:

I am in receipt of the Mandate of the Court of Appeals of Maryland in the above entitled case, and, in accordance with the decree, which stipulates that each side is to pay its own costs, I am writing to inform you that the Mayor and City Council of Baltimore has already mailed a check in the amount of $212.75 to The Daily Record office to cover the cost of the Appellees' brief. If it is satisfactory to you, I will forward an additional $10.00, representing our appearance fee, to the Clerk of the Court of Appeals, which should close out this matter as far as the Mayor and City Council is concerned. I will leave it up to you to dispose of your own costs.

Very truly yours,

FRANCIS X. GALLAGHER
Assistant City Solicitor

FXG/db

COPY

CITY SOLICITOR'S OFFICE

March 13, 1956

Mr. Henry A. Barnes
Director of Traffic
413 St. Paul Place
Baltimore 2, Maryland

Dear Hank:

I am enclosing herewith the correspondence which you gave me on March 8th in connection with the Pressman vs. Barnes appeal.

Very truly yours,

FRANCIS X. GALLAGHER
Assistant City Solicitor

FXG/db

Enclosure

COPY

CITY SOLICITOR'S OFFICE

March 13, 1956

Edw. Oswald, Jr., Esq.
Hagerstown, Maryland

Dear Mr. Oswald:

I have your letter of February 24, 1956, addressed to Mr. Edwin Harlan, Deputy City Solicitor, concerning the proposed traffic set-up for Hagerstown, Maryland.

Inasmuch as we are now awaiting the decision of the Court of Appeals in the case of Pressman vs. Barnes, I think it would be advisable to withhold any comment until we have that opinion. I will contact you just as soon as I have something definite.

Very truly yours,

FRANCIS X. GALLAGHER
Assistant City Solicitor

FXG/db

Mrs. Gallagher

GEO. N. OSWALD EDWARD OSWALD, JR.

OSWALD & OSWALD
ATTORNEYS AT LAW
HAGERSTOWN, MARYLAND

February 24th, 1956.

Mr. Edwin Harlan, Deputy City Solicitor,
Court House,
Baltimore 2, Maryland.

Dear Mr. Harlan:-

At your request, Mr. Gallagher sent to me a copy of the brief in the case of Pressman vs. Barnes and the Mayor and Council of Baltimore and also a copy of the paper which you gave before The Barristers' Club regarding the delegation of power. The brief is an exceedingly good one and should bear much weight with our Court of Appeals. I will await the decision with a great deal of interest. The paper which you prepared for The Barristers' Club is splendid indeed, and I regret that I was not one of those who were privileged to hear it.

I am holding in abeyance all matters regarding the establishment of a Traffic Commission for the City of Hagerstown, to which the Mayor and Council would desire to delegate all powers regarding traffic. When I discussed the matter with you by phone, you suggested that an amendment to our City Charter might be necessary before such a Commission could be established, and that in any event, it would be well to await the final decision in the Pressman case.

As I advised you briefly by phone, the control of traffic and incidental parking is not mentioned in our City Charter, and accordingly, the City has been handling the situation within the exercise of its police power as indicated in Sections 151 and 151A of Article 66½ of the Code of Public General Laws.

I am enclosing herewith a copy of the Charter of the City of Hagerstown from which it will appear that in Section 6, the Council is empowered to establish, subject to other provisions of the charter, such departments within the government of the City as may be deemed necessary and desirable.

In Section 82 of the Charter, there is created and continued the Board of Public Works which was formerly known as the Board of Street Commissioners. Originally this board had charge and supervision of the streets. Then, later, the Police Department was placed under its supervision and control, and last, but not least, when the City acquired a municipal light

plant, the same was placed under the control and management of this board. When the new charter was adopted in the year 1949, the three primary functions of the Board of Public Works were gathered together and placed in Section 82, and the Board now possesses and is charged with the exercise of any and all powers of the City "incident to the full control, operation, management, maintenance, repairs and improvements" of the streets, electric light plant, etc. Vehicular traffic and parking is not expressly mentioned but under a liberal construction of this section, it might be included in the powers so delegated. I might add also that Section 97 of the charter provides that the orders of the Mayor and Council to any commission or board are mandatory.

I would not expect you and your associates to make an absolute finding regarding the problem which now confronts me, but since I know that you have given the matter very great study, I thought that you might be in a position to give me your views as to whether or not the Charter of the City of Hagerstown should be amended to expressly authorize the appointment of a Traffic Commission, if the decision in the Pressman case is favorable. It may be that you would not desire to venture an opinion, but should you do so, it would be very helpful in the event that the Mayor and Council decide to follow through on the Traffic Commission idea.

Thanking you very much for the courtesies already shown me in this matter, I am,

Very truly yours,

Edw. Oswald, Jr.

EOJr/K
Enc.

RECEIVED
FEB 9 1956
CITY SOLICITOR'S OFFICE

HYMAN A. PRESSMAN
ATTORNEY AT LAW
337 ST. PAUL PLACE
BALTIMORE 2, MD.
PLAZA 2-4647

Mr. Mallaughlen

February 8, 1956

Thomas N. Biddison, Esq.
City Solicitor
Court House
Baltimore 2, Maryland

Re: Pressman v. Barnes
Court of Appeals No. 140

Dear Mr. Biddison:

May I suggest that we request argument in the above case to be advanced?

Thanking you in anticipation of your kind co-operation, I am

Very truly yours,

Hyman A. Pressman

HYMAN A. PRESSMAN

HAP/gap

COPY

CITY SOLICITOR'S OFFICE

February 9, 1956

Mr. Hyman A. Pressman
337 St. Paul Place
Baltimore - 2, Maryland

Dear Mr. Pressman:

With reference to your suggestion that we request argument in the Pressman vs. Barnes Case be advanced, please be advised that Mr. Gallagher, who will argue this case in the Court of Appeals, is currently engaged full time in the matter of the Grand Inquest of the Legislature into the Transit Strike.

In view of this I do not feel it timely or appropriate to join in a request which would place this case out of its regular sequence.

Very truly yours,

THOMAS N. BIDDISON
City Solicitor

TNB/rrs

COPY

CITY SOLICITOR'S OFFICE

February 9, 1956

Mr. Henry A. Barnes
Director of Traffic
413 St. Paul Place
Baltimore 2, Maryland

Dear Hank:

I enclose herewith for your perusal a copy of our Court of Appeals Brief in the case of Pressman et al vs. Barnes.

Very truly yours,

FRANCIS X. GALLAGHER
Assistant City Solicitor

FXG/db

Enclosure

COPY

CITY SOLICITOR'S OFFICE

February 9, 1956

Norman P. Ramsey, Esq.
Deputy Attorney General
Mathieson Building
Baltimore 2, Maryland

Dear Norm:

I enclose herewith five copies of the Court of Appeals Brief in the case of Pressman et al vs. Barnes.

At your request, I included the Attorney General's staff on the Appellees' Brief. I trust it meets with your approval.

Very truly yours,

FRANCIS X. GALLAGHER
Assistant City Solicitor

FXG/db

Enclosures - 5

Ed. Oswald Jr

City Atty & Legislature

Professional Arts

Bldg

COPY

CITY SOLICITOR'S OFFICE

February 9, 1956

Ed. Oswald, Jr., Esq.
City Attorney of Hagerstown
Professional Arts Bldg.
Hagerstown, Md.

Dear Mr. Oswald:

Mr. Edwin Harlan, Deputy City Solicitor, has requested that I forward you a copy of the Brief of the Mayor and City Council of Baltimore in the case of Pressman et al vs. Mayor and City Council of Baltimore. I am also enclosing a copy of a paper which Mr. Harlan read, which I am sure you will find most helpful to you.

Very truly yours,

FRANCIS X. GALLAGHER
Assistant City Solicitor

FXG/db

Enclosures

COPY

CITY SOLICITOR'S OFFICE

November 22, 1955

Edward O. Erickson, Esq.
Department of Law
304 Municipal Building
Akron 8, Ohio

Dear Mr. Erickson:

Your letter of November 16, 1955, to Mr. Thomas N. Biddison, City Solicitor, has been referred to me for reply. I am enclosing herewith a copy of Amended Administrative Regulation No. 7 together with a copy of the decision of Judge Moser which concerned this Regulation.

An appeal has been taken from the decision of Judge Moser, and the matter will propably not be determined for several months. I believe, however, that most of the pertinent cases are cited in Judge Moser's opinion.

I understand that the City of Memphis, Tenn, is in the process of passing an ordinance granting to its Police Commissioner the power to regulate speeds. Although there has been no litigation involving this matter, it may prove to be helpful to you to obtain a copy of this Ordinance.

If I can be of any further assistance to you, please do not hesitate to write me.

Very truly yours,

FRANCIS X. GALLAGHER
Assistant City Solicitor

FXG/db
Enclosures

Shellenberger 11/21/55

City of Akron, Ohio

RECEIVED
NOV 21 1955
CITY SOLICITOR'S OFFICE

DEPARTMENT OF LAW
304 MUNICIPAL BUILDING
AKRON 8, OHIO
JEFFERSON 5-7111

EDWARD O. ERICKSON
DIRECTOR OF LAW
JOHN M. KELLY
RICHARD O. GANTZ
MARY CACIOPPO
PAUL J. LOMBARDI
RUFUS L. THOMPSON
RICHARD V. ZURZ
ASSISTANT DIRECTORS OF LAW

94675

November 16, 1955

Mr. Thomas N. Biddison
City Solicitor
Municipal Building
Baltimore, Maryland

Dear Mr. Biddison:

I noted in the October issue of the Municipal Law Journal that your city is involved in litigation concerning the power of the City Council to delegate authority for regulation of traffic.

Since we in Akron are considering the adoption of such legislation, it would be most helpful if you could forward a copy of your ordinance together with such other information as you might deem pertinent.

Your courtesy in this matter will be deeply appreciated.

Sincerely yours,

Edward Erickson

Edward O. Erickson
Director of Law

eoe
s

OFFICE OF
FRANK B. GIANOTTI, JR.
CITY ATTORNEY
COMMERCE TITLE BLDG.

FRANK T. TOBEY
MAYOR

COMMISSION GOVERNMENT

MEMPHIS, TENN.

October 31, 1955

Mr. Francis X. Gallagher, Assistant
City Solicitor
Court House
Baltimore 2, Maryland

Dear Mr. Gallagher:

In response to your letter of October 24th please find enclosed herewith copy of Ordinance the City of Memphis recently adopted authorizing the Commissioner of Fire and Police to publish speed limits, up or down, from a standard speed limit of 30 miles an hour in certain areas.

This ordinance was authorized by legislative act of the State of Tennessee for the year 1955, same being Chapter 329.

Trusting this is the desired information, I am

Very truly yours,

Frank B. Gianotti, Jr.
City Attorney

FBG:ds
Encl
CC: Commissioner Claude Armour

COPY

CITY SOLICITOR'S OFFICE

File No. 94675

October 31, 1955

Hyman A. Pressman, Esq.
337 St. Paul Place
Baltimore 2, Maryland

RE: Pressman vs. Barnes

Dear Mr. Pressman:

Enclosed please find the Stipulation which you submitted to me for my signature in the above case. As I told you in our telephone conversation of today, the City would like to add Agreed Exhibit No. 6, a letter of June 30, 1955, from Henry A. Barnes to George N. Lewis, Jr.. I have added it as No. 13 to the Stipulation.

I am also enclosing a copy of that letter for your files. Thank you very much.

Very truly yours,

FRANCIS X. GALLAGHER
Assistant City Solicitor

FXG/db

Enclosures

No. 398

ORDINANCE

AN ORDINANCE TO AMEND SECTION 1683 OF THE MEMPHIS MUNICIPAL CODE OF 1949, SO AS TO PROVIDE FOR THE REGULATION OF THE SPEED OF CERTAIN VEHICLES.

SECTION I. BE IT ORDAINED BY THE MAYOR AND BOARD OF COMMISSIONERS OF THE CITY OF MEMPHIS, That Section 1683 of the Memphis Municipal Code of 1949 be and the same is hereby amended by striking said section and substituting the following new Section 1683:

A vehicle for purposes of this ordinance shall be defined to include all vehicles other than trucks designed for carrying freight and merchandise of one (1) ton capacity or in excess thereof.

No vehicle shall be driven on the streets of this city at a speed greater than thirty (30) miles per hour; provided, however, that the Commissioner of Fire and Police shall have the authority, after determining on the basis of an engineering and traffic investigation, that the above speed is greater or less than is reasonable and safe, to designate certain street areas where greater speed may be permitted or lesser speed required. This designation shall be made by signs placed on said street areas clearly indicating the authorized speed. A record of said designation shall be kept in the office of the said Commissioner of Fire and Police.

SECTION II. BE IT FURTHER ORDAINED, that this ordinance take effect from and after its passage, the public welfare requiring it.

WALTER CHANDLER, Mayor.

Attest:

C. W. CRUTCHFIELD, Comptroller.

Order No. 11011.

October 17, 1955—50c. 534

OFFICE OF
C. W. CRUTCHFIELD
COMPTROLLER

COMMISSION GOVERNMENT
MEMPHIS, TENN.

October 28, 1955

Mr. Francis X. Gallagher
Department of Law
Courthouse
Baltimore 2, Maryland

Dear Sir:

Your letter requesting copy of ordinance permitting the Commissioner of Fire & Police to designate certain areas where speed may be increased or decreased, has been referred to this office for attention.

In compliance, the attached ordinance was passed by the City Commission on October 25, 1955, but public notice of the special limits has not been released as yet.

We trust this will be of benefit to you and if there is additional information you desire please do not hesitate to call upon us.

Yours very truly,

C. W. CRUTCHFIELD, Comptroller

CWC:o
encl.

HYMAN A. PRESSMAN
ATTORNEY AT LAW
337 ST. PAUL PLACE
BALTIMORE 2, MD.
PLAZA 2-4647

October 25, 1955

Francis X. Gallagher, Esq.
Assistant City Solicitor
Court House
Baltimore 2, Maryland

Re: Pressman v. Barnes

Dear Mr. Gallagher:

Enclosed is a stipulation which I propose that we sign pertaining to the printed record extract. If it is satisfactory, please sign and return to me. If you have any suggestions for amendment, kindly advise.

With best regards, I am,

Very truly yours,

HYMAN A. PRESSMAN

HAP/gap

COPY

CITY SOLICITOR'S OFFICE

October 13, 1955

Mr. Henry J. Ripperger
Clerk of the Circuit Court of Baltimore City
Court House
Baltimore 2, Maryland

Dear Mr. Ripperger:

I enclose herewith the check of the Mayor and City Council of Baltimore to cover one-third of the costs less appearance fee in the case of Pressman vs. Barnes, Docket 1955, A-292, No. A-35141.

Very truly yours,

FRANCIS X. GALLAGHER
Assistant City Solicitor

FXG/db

Enclosure

DEPARTMENT OF LAW

COURT HOUSE

BALTIMORE 2, MARYLAND

THOMAS N. BIDDISON
CITY SOLICITOR

October 5, 1955

The Daily Record
11-15 E. Saratoga Street
Baltimore 3, Maryland

Gentlemen:

Would you kindly send me five (5) copies of The Daily Record of September 26, 1955?

Very truly yours,

Francis X. Gallagher

FRANCIS X. GALLAGHER
Assistant City Solicitor

FXG/db

Dear Sir.

We are only able to send three papers. Our supply is exhausted.

The Daily Record

COPY

CITY SOLICITOR'S OFFICE

October 5, 1955

Hon. David Morris
710 Kalamazoo Building
Kalamazoo, Mich.

Dear Mr. Morris:

I am enclosing herewith a copy of the Opinion of the Supreme Bench of Baltimore City in connection with the suit challenging the Baltimore City Ordinance creating a Traffic Director and giving him certain powers. I call to your particular attention the fact that the judge made use of your own case in his Opinion.

Although the matter appears to be going to the Maryland Court of Appeals, I feel that we have an excellent chance of succeeding, and I want to thank you for your generosity and aid on such short notice.

Very truly yours,

FRANCIS X. GALLAGHER
Assistant City Solicitor

FXG/db

Enclosure

COPY

CITY SOLICITOR'S OFFICE

September 27, 1955

Hyman A. Pressman, Esq.
337 St. Paul Place
Baltimore 2, Maryland

RE: Hyman A. Pressman, et al, Vs. Henry A. Barnes and Mayor and City Council of Baltimore.

Dear Mr. Pressman:

I am enclosing, herewith, a copy of an Order which I propose to submit to the Judge for signature.

Please advise as to whether or not the form of this Order meets with your approval.

Very truly yours,

HUGO A. RICCIUTI,
Assistant City Solicitor.

HAR:dmv

enclosure

NIMLO

NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS

INFORMATION RESEARCH COOPERATION

726 JACKSON PLACE, N. W. • WASHINGTON 6, D. C. • TELEPHONE DISTRICT 7-1381

PRESIDENT	FIRST VICE-PRESIDENT	SECOND VICE-PRESIDENT	THIRD VICE-PRESIDENT	TREASURER	GENERAL COUNSEL
HENRY B. CURTIS CITY ATTORNEY NEW ORLEANS, LOUISIANA	DION R. HOLM CITY ATTORNEY SAN FRANCISCO, CALIFORNIA	BARNETT I. SHUR CORPORATION COUNSEL PORTLAND, MAINE	JOHN J. MORTIMER CORPORATION COUNSEL CHICAGO, ILLINOIS	NIEMOND F. KELLER CITY SOLICITOR WAYNESBORO, PA.	CHARLES S. RHYNE 726 JACKSON PLACE, N. W. WASHINGTON 6, D. C.

September 9, 1955

Mr. Francis X. Gallagher
Assistant City Solicitor
Court House
Baltimore 2, Maryland

Dear Mr. Gallagher:

Thank you for your letter of September 6, 1955, enclosing the material on delegation of authority to Traffic Director. I am happy to note that this material was very helpful to you.

I have read your memorandum of the Mayor and City Council with a great deal of interest and find it very well drawn and I am certain it will prove to be a valuable addition to our loan files. I will see that this memorandum receives the attention it deserves in a forthcoming issue of the Municipal Law Journal.

Again thanking you, I remain

Sincerely,

Charlie

Charles S. Rhyne
General Counsel

CSR/by

TRUSTEES

JOE W. ANDERSON, City Attorney, Chattanooga, Tennessee
WALTER J. MATTISON, City Attorney, Milwaukee, Wisconsin
HERMAN C. WILSON, City Attorney, Greensboro, North Carolina
DAVID M. PROCTOR, City Counselor, Kansas City, Missouri
ALEXANDER G. BROWN, City Attorney, Portland, Oregon
PETER CAMPBELL BROWN, Corporation Counsel, New York City, N. Y.
THOMAS N. BIDDISON, City Solicitor, Baltimore, Maryland
JAMES MESSER, JR., City Attorney, Tallahassee, Florida
FRED G. STICKEL, III, Counsel, Cedar Grove, New Jersey
DALE H. FILLMORE, Corporation Counsel, Dearborn, Michigan
A. C. VAN SOELEN, Corporation Counsel, Seattle, Washington

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Region 3—PAUL T. DWYER, Corporation Counsel, Detroit, Michigan (Illinois, Indiana, Michigan, Ohio, Wisconsin)

Region 4—J. E. DRINARD, City Attorney, Richmond, Virginia (Kentucky, North Carolina, South Carolina, Tennessee, Virginia)

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Region 9—ROGER ARNEBERGH, City Attorney, Los Angeles, California (California, Nevada, Oregon, Washington)

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Texas: Will Sears, City Attorney of Houston
Utah: Paul Thatcher, Corporation Counsel of Ogden
Vermont: James T. Haugh, City Attorney of Rutland
Virginia: Randolph G. Whittle, City Attorney of Roanoke
Washington: Clarence M. Boyle, Corporation Counsel of Tacoma
West Virginia: Lyell B. Clay, City Solicitor of Charleston
Wisconsin: Thomas P. Corbett, City Attorney of Racine
Wyoming: Allen H. Stewart, City Attorney of Casper

COPY

CITY SOLICITOR'S OFFICE

File No. 94675

September 6, 1955

Hon. David Morris
710 Kalamazoo Building
Kalamazoo, Mich.

Dear Mr. Morris:

I want to thank you for your generosity in making available to me on such short notice the copy of the opinion of Judge Fox together with your extremely valuable memorandum and traffic ordinance. These materials proved of great help to the City in the presentation of its case. When we have a decision from the court, I will forward it to you for your information.

I am enclosing herewith the materials which you sent.

Very truly yours,

FRANCIS X. GALLAGHER
Assistant City Solicitor

FXG/db

Enclosures

COPY

CITY SOLICITOR'S OFFICE

File No. 94675

September 6, 1955

Charles S. Rhyne, Esq.
NIMLO
726 Jackson Place, N. W.
Washington 6, D. C.

Dear Mr. Rhyne:

I am enclosing herewith the material you so generously provided me with for use in connection with our contested traffic regulations ordinance, which was very helpful.

No decision has been announced yet concerning the case, but I am enclosing herewith a copy of the memorandum of the Mayor and City Council which you may find of some assistance as far as it deals with the delegation of powers to an administrative agency and to traffic regulations in general.

Thank you once again for your kindness.

Very truly yours,

FRANCIS X. GALLAGHER
Assistant City Solicitor

FXG/db

Enclosures

David Morris, City Attorney
710 Kalamazoo Building

City of Kalamazoo
Michigan

August 25, 1955

Mr. Francis X. Gallagher
Assistant City Solicitor
Court House
Baltimore 2, Md.

Dear Mr. Gallagher,

We hasten to respond to your letter of August 24, 1955 regarding orders of a traffic engineer. Our recent traffic code, Ord. 442, is being transmitted under separate cover by our City Clerk and your attention is particularly directed to Section 83 thereof.

Enclosed you will find a copy of our Circuit Court's opinion and also a copy of an article which I have submitted in NIMLO's current contest. I'm not very proud of the latter, but send it because it contains a summary of the reasoning we used successfully and also a list of citations to cases which might prove somewhat helpful.

If you find your issue closely related to ours and you wish to have our briefs to study, please advise. As I am running low on copies of both enclosures, I'd appreciate the return of the enclosures, but not until they have ceased to serve any useful purpose.

Good luck,

Yours very truly,

David Morris

COPY

CITY SOLICITOR'S OFFICE

August 24, 1955

Honorable David Morris
City Attorney
Kalamazoo, Michigan

Dear Mr. Morris:

We are in the midst of a court battle over our Traffic Engineer ordinance. Briefs are due in next Tuesday.

I understand from NIMLO that you have just waged a successful campaign defending your own ordinance. I would be greatly indebted to you if you would provide me with a copy of Ordinance No. 442 and a copy of the opinion of the Circuit Court of Kalamazoo County issued October 12, 1954.

Thanking you in advance, I am

Sincerely yours,

FRANCIS X. GALLAGHER
Assistant City Solicitor

NIMLO

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August 23, 1955

Mr. Francis X. Gallagher
Assistant City Solicitor
217 Court House
Baltimore 2, Maryland

710 Kalamazoo Bldg

Dear Mr. Gallagher:

David Morris, City Attorney of Kalamazoo, Michigan, has sent us the enclosure as an entry in the NIMLO Municipal Law Review Award Contest.

I hope this article will further assist you in your present study.

Sincerely,

Charles S. Rhyne

Charles S. Rhyne
General Counsel

CSR/by

Enclosure

TRUSTEES

JOE W. ANDERSON, City Attorney, Chattanooga, Tennessee
WALTER J. MATTISON, City Attorney, Milwaukee, Wisconsin
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Washington: Clarence M. Boyle, Corporation Counsel of Tacoma
West Virginia: Lyell B. Clay, City Solicitor of Charleston
Wisconsin: Thomas P. Corbett, City Attorney of Racine
Wyoming: Allen H. Stewart, City Attorney of Casper

COPY

CITY SOLICITOR'S OFFICE

August 16, 1955

Charles S. Rhyne, Esq.
NIMLO
730 Jackson Place, N. W.
Washington 6, D. C.

Dear Mr. Rhyne:

Once again I am calling upon you for assistance in an important matter. The Mayor and City Council of Baltimore passed an Ordinance in 1953 giving to its Traffic Director power to issue rules and regulations relating to the movement of vehicular and pedestrian traffic. This Ordinance has been attacked as unconstitutional because of a lack of sufficient standards with which to guide the Traffic Director and also as an undue delegation of legislative power to an administrative agency.

I would appreciate it if you would be able to provide me with the names of any cases or opinions relating to this area, inasmuch as we are anxious to have an early hearing of the matter. Any comments you may have would be most welcome.

Very truly yours,

FRANCIS X. GALLAGHER
Assistant City Solicitor

FXG/db

HENRY A. BARNES
DIRECTOR OF TRAFFIC

PLAZA 2-2000

THOMAS D'ALESANDRO, JR.
MAYOR

DEPARTMENT OF TRAFFIC ENGINEERING

413 ST. PAUL PLACE
BALTIMORE 2, MD.

RECEIVED
AUG 16 1955
CITY SOLICITOR'S OFFICE

August 12, 1955

Mr. Hyman A. Pressman
337 St. Paul Place
Baltimore 2, Md.

Dear Mr. Pressman:

In reply to your letter of August 9, 1955, concerning our Administrative Regulation No. 7, may I advise you that I have discussed this matter with the City Solicitor's office and have been advised by them that I should proceed with the installation of regulations as specified in the directive. Mr. Biddison had a very exhaustive study of this entire matter made prior to the time the order was issued. Therefore, he feels that the regulation is in accordance with both the legal aspects of the State law, as well as the intent of the legislation.

Since you have indicated that you plan to press a taxpayer's suit to restrain the Director of Traffic from enforcing his regulation, I am taking the liberty of forwarding your communication to Mr. Biddison's office so that they can be prepared to defend the City in this matter.

Very truly yours,

Henry A. Barnes
Director

hab/ecm

RECEIVED
AUG 10 1955
CITY SOLICITOR'S OFFICE

HENRY A. BARNES
DIRECTOR OF TRAFFIC

PLAZA 2-2000

THOMAS D'ALESANDRO, JR.
MAYOR

DEPARTMENT OF TRAFFIC ENGINEERING
413 ST. PAUL PLACE
BALTIMORE 2, MD.

August 10, 1955

Mr. Edwin Harlan
Deputy City Solicitor
Room 509 Court House
Baltimore 2, Md.

Dear Mr. Harlan:

Enclosed herewith is Mr. Hyman A. Pressman's letter of August 9th, relative to Administrative Regulation No. 7. I am also attaching four additional copies of this letter.

With kindest regards, I remain.

Very truly yours,

Henry A. Barnes
Director

hab/ecm

HYMAN A. PRESSMAN
ATTORNEY AT LAW
337 ST. PAUL PLACE
BALTIMORE 2, MD.
PLAZA 2-4647

TRAFFIC ENGINEERING
RECEIVED
AUG 10 1955
CITY OF BALTIMORE

August 9, 1955

Mr. Henry A. Barnes
Director of Traffic
Department of Traffic Engineering
413 St. Paul Place
Baltimore 2, Maryland

Dear Mr. Barnes:

Having read your Administrative Regulation No. 7 pertaining to the regulation of traffic in Baltimore City, I am of the opinion that you have transcended your powers in many respects, including the following:

1. You have undertaken the legislative function of setting the speed limits.

2. You Have undertaken the legislative function of providing the penalties for violations of law.

3. You have set penalties which are in conflict with the ordinance creating your office.

4. Your regulation sets the speed limits on all roads and streets in Baltimore City including those which have been designated as a part of the State or Federal highway system or extensions thereof, in conflict with the 1955 statute which excepts the local regulation of such designated highways or extensions.

5. Your regulation is self-contradictory in that it refers to the speed limits as prima facie in some parts and as conclusive in another part.

For these and other reasons, I have decided to file a taxpayer's suit to enjoin your enforcement of Regulation No. 7.

HYMAN A. PRESSMAN
ATTORNEY AT LAW
337 ST. PAUL PLACE
BALTIMORE 2, MD.
PLAZA 2-4647

This, therefore, is to request that you desist from spending any public funds in pursuance of the regulation, such as erecting signs, etc. until after the determination of this controversy in court. I assure you that I shall co-operate fully toward obtaining a prompt decision.

Very truly yours,

HYMAN A. PRESSMAN

HAP/gap

COPY

HYMAN A. PRESSMAN
Attorney At Law
337 St. Paul Place
Baltimore 2, Md.

Plaza 2-4647

August 9, 1955

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Director of Traffic
Department of Traffic Engineering
413 St. Paul Place
Baltimore 2, Maryland

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Very truly yours,

/s/ Hyman A. Pressman

HAP/gap

C O P Y

HYMAN A. PRESSMAN
Attorney At Law
337 St. Paul Place
Baltimore 2, Md.

Plaza 2-4647

August 9, 1955

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Director of Traffic
Department of Traffic Engineering
413 St. Paul Place
Baltimore 2, Maryland

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HAP/gap

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HYMAN A. PRESSMAN
Attorney At Law
337 St. Paul Place
Baltimore 2, Md.

Plaza 2-4647

August 9, 1955

Mr. Henry A. Barnes
Director of Traffic
Department of Traffic Engineering
413 St. Paul Place
Baltimore 2, Maryland

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/s/ Hyman A. Pressman

HAP/gap

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HYMAN A. PRESSMAN
Attorney At Law
337 St. Paul Place
Baltimore 2, Md.

Plaza 2-4647

August 9, 1955

Mr. Henry A. Barnes
Director of Traffic
Department of Traffic Engineering
413 St. Paul Place
Baltimore 2, Maryland

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Very truly yours,

/s/ Hyman A. Pressman

HAP/gap

HENRY A. BARNES
DIRECTOR OF TRAFFIC

PLAZA 2-2000

THOMAS D'ALESANDRO, JR.
MAYOR

DEPARTMENT OF TRAFFIC ENGINEERING
413 ST. PAUL PLACE
BALTIMORE 2, MD.

August 10, 1955

Mr. Francis X. Gallagher
Assistant City Solicitor
5th Floor Court House
Baltimore 2, Md.

Dear Mr. Gallaher:

For your information, I am herewith enclosing a copy of Mr. Hyman Pressman's letter of August 9th, relative to Administrative Regulation No. 7.

With kindest regards, I remain.

Very truly yours,

Henry A. Barnes
Director

hab/ecm

COPY

HYMAN A. PRESSMAN
Attorney At Law
337 St. Paul Place
Baltimore 2, Md.

Plaza 2-4647

August 9, 1955

Mr. Henry A. Barnes
Director of Traffic
Department of Traffic Engineering
413 St. Paul Place
Baltimore 2, Maryland

Dear Mr. Barnes:

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Very truly yours,

/s/ Hyman A. Pressman

HAP/gap

MARYLAND STATE ROADS COMMISSION
Traffic Division

August 10, 1955.

Mr. Hyman A. Pressman,
Attorney at Law
337 St. Paul Place
Baltimore 2, Maryland.

Dear Mr. Pressman:

In conformity with our telephone conversation of even date, I am enclosing a copy of the 1955 Official Highway Map of Maryland.

The Baltimore City insert on the map indicates in red the principal extensions of State highways through Baltimore City. The streets shown are not maintained by the State Roads Commission; this also applies to all other roads, streets and alleys in Baltimore City.

The marking of routes, both Federal and State as extensions of the State highway system through municipalities, is a long established service provided for the touring public.

Trusting this satisfactorily answers your inquiry.

Very truly yours,

Geo. N. Lewis, Jr.,
Director

d

C
O
P
Y

COPY

STATE ROADS COMMISSION
Baltimore, Md.

June 23, 1955

Mr. Harold L. Holbrook
Room 717, Second National Bank Building
New Haven, Connecticut

Dear Mr. Holbrook:

I am indeed sorry that you had such an unfortunate experience in Baltimore when changing from the Baltimore-Washington Parkway to U.S. #40 East, as outlined in your letter of June 21st. This Commission, however, is not responsible for the signing of any routes in Baltimore City - that is the responsibility of the city authorities.

I am therefore, sending your letter to Mr. Henry A. Barnes, Traffic Director of Baltimore City, for his information and action.

I do hope that your trip through Maryland was pleasant, even though you had an unpleasant incident in Baltimore City.

Very truly yours,

P. A. Morrison
Director of Highway Maintenance

PAM/blg

cc: Mr. Henry A. Barnes

C O P Y

NIMLO

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INFORMATION RESEARCH COOPERATION

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SAN FRANCISCO, CALIFORNIA

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PORTLAND, MAINE

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CORPORATION COUNSEL
CHICAGO, ILLINOIS

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CITY SOLICITOR
WAYNESBORO, PA.

GENERAL COUNSEL
CHARLES S. RHYNE
726 JACKSON PLACE, N. W.
WASHINGTON 6, D. C.

August 19, 1955

Mr. Francis X. Gallagher
Assistant City Solicitor
217 Court House
Baltimore 2, Maryland

Dear Mr. Gallagher:

In immediate response to your letter of August 16, 1955, I set forth herein all authorities on the question of authority to delegate to a Traffic Director power to issue rules and regulations relating to the movement of vehicular and pedestrian traffic having come to our attention:

Delegation Held Valid

Borum v. Graham, 4 Cal.App.2d 331, 40 P.2d 866 (District Court of Appeals, Second District, 1935). Ordinance authorizing Police Chief to mark crosswalks for pedestrians held not invalid as delegation of legislative power to Police Chief since function of Chief was administrative, not legislative. In proper enforcement of its ordinance, city legislature may delegate the power to an officer to determine some fact or state of things upon which the ordinance makes its own action depend.

Citing In re McLain, 190 Cal. 376, 212 P. 620

The question of insufficient standards was not raised in Borum but it might be noted that the ordinance in question simply provided that the Chief of Police, subject to the approval of the City Manager, was authorized to make crosswalks equal in width to the adjacent sidewalks, by appropriate devices, marks, or white lines on the surface of the roadway at all intersections where in his opinion there was particular danger to pedestrians crossing the roadway.

Shipman v. Johnson, 80 S.E.2d 717, 89 Ga.App. 620, error

TRUSTEES

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Region 6—EDWARD F. FOGARTY, City Attorney, Omaha, Nebraska (Kansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota)

Region 7—GEORGE E. MURPHY, City Attorney, Beaumont, Texas (Arizona, New Mexico, Oklahoma, Texas)

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New Jersey: Norman Heine, City Counsel of Camden
North Carolina: Claude V. Jones, City Attorney of Durham
North Dakota: Charles L. Foster, City Attorney of Bismarck
Ohio: Herbert S. Beane, City Attorney of Dayton
Oklahoma: Chester A. Brewer, City Attorney of Bartlesville
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Pennsylvania: Daniel H. Huyett, III, City Solicitor of Reading
Rhode Island: Richard F. Canning, City Solicitor of Cranston
South Carolina: W. H. Arnold, City Attorney of Greenville
South Dakota: F. W. Noll, City Attorney of Aberdeen
Tennessee: Frank B. Gianotti, Jr., City Attorney of Memphis
Texas: Will Sears, City Attorney of Houston
Utah: Paul Thatcher, Corporation Counsel of Ogden
Vermont: James T. Haugh, City Attorney of Rutland
Virginia: Randolph G. Whittle, City Attorney of Roanoke
Washington: Clarence M. Boyle, Corporation Counsel of Tacoma
West Virginia: Lyell B. Clay, City Solicitor of Charleston
Wisconsin: Thomas P. Corbett, City Attorney of Racine
Wyoming: Allen H. Stewart, City Attorney of Casper

transferred 78 S.E. 515, 210 Ga. 174 (1954). Constitutional provision for separation of legislative, executive and judicial powers applies only to state and not to municipal functions and hence is not violated by city ordinance authorizing city Traffic Engineer to determine and designate particularly hazardous intersections and cause stop signs and traffic control signs to be erected where needed. Const. Art. I, Sec. 1, Par. 23.

Taylor v. Roberts, 84 Fla. 654, 94 So. 874 (1922) The organization and government of municipalities, particularly with regard to regulations and control of traffic on streets, necessarily contemplates power and discretion being vested in the police officer in carrying into effect the ordinances of the city and if the rules and regulations adopted by the police officer under authority vested in him by the ordinances are within the express general purpose of the ordinance, tend to make them effective, they are not subject to the criticism that they are an unlawful delegation of authority.

Citing State v. Atlantic Coast Line R. Company, 56 Fla. 617, 47 South. 969; State ex rel. Niles v. Smith, 62 Fla. 93, 57 South. 426.

City of Cleveland v. Gustafson, 180 N.E. 59, 124 OhioSt. 607, 79 A.L.R. 1325 (Ohio Supreme Court, 1932). The delegation of power to a police officer to designate safety zones does not render the ordinance unconstitutional.

Staley v. Vaughn, 17 P.2d 299, 92 Colo. 6. Ordinance authorizing specified officer to designate through-traffic streets upheld as a delegation of administrative power.

Beneman v. Jones, 20 N.E. 644, 118 Ind. 41. Police officers may be authorized to require drivers to obey their directions in regards to the places which vehicles may occupy.

Miller v. Cincinnati Wholesale Grocery Company, 29 OhioN.P., N.S., 43. Specified officers may be empowered by ordinance to adopt and install traffic control signs and devices where violations of such signs and devices are prohibited by ordinance.

Delegation Held Invalid

People v. Dalton, 131 N.Y.Sup2d 355, 205 Misc. 689. (New York Police Court, 1954). Ordinance of village of first class authorizing police department to designate and regulate school crossing was an unauthorized delegation to the police department, and therefore the ordinance was invalid. Vehicle and Traffic Law, Section 86, Subdivision 1,88, Subdivision 6.

People v. Gorman, 231 N.Y.Sup. 85, 133 Misc. 161. City Council cannot delegate to an official the authority to designate arterial streets, but must designate them by ordinance.

Pressman cited -
See 238N4S253 - also cited

2 dissents

Shreveport v. Herndon, 105 S. 244, 159 La. 113. City cannot confer on officials unlimited discretion in prescribing the rules for the regulation of vehicles on the streets. - Pressman citied

At page 88 of the 1954 Municipal Law Journal, we report that in Stevens v. City of Kalamazoo, et al. (October, 1954) the Circuit Court for the County of Kalamazoo, Michigan, held that the City of Kalamazoo Traffic Code authorizing the Traffic Engineer "with consent of the City Commission by motion" to designate one-way streets is a valid exercise of the police power. Our copy of this unreported decision has been out of our loan file for some time now but it is my thought that you might write Mr. David Morris, City Attorney, 710 Kalamazoo Building in Kalamazoo for the decision, briefs, and his valuable comments.

I am enclosing herewith recent opinions by the Richmond and Philadelphia Law Departments which might further assist you.

Sincerely,

Charles S. Rhyne

Charles S. Rhyne
General Counsel

CSR/by

Enclosures

This material is sent you as a loan from the permanent library collection of:

(Requested by
Mr. Francis X. Gallagher
Assistant City Solicitor
Baltimore, Md.

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INFORMAL OPINION NO. 172.

Philadelphia, December 2, 1954.

TO EXECUTIVE DIRECTOR, URBAN TRAFFIC AND TRANSPORTATION BOARD, ROBERT B. MITCHELL.

The inquiry was whether the City may prevent the use of certain streets by motor buses operated by the PTC, and if so, which department may exercise such power.

The right of the City to designate the streets which may, and those which may not be used by utilities for transportation purposes for hire is clear under the Motor Vehicle Code of May 1, 1929, P.L. 905, Art. XI, § 1103, as amended, 72 P.S. § 663. This right has been upheld judicially in Selzer v. City of Pottsville, 73 Pa. Superior Ct. 573 (1920).

The opinion concludes that Council has the power to determine, under Section 5-500(d) of the Charter, which streets may be used and which may not, and may delegate such authority to the Department of Streets. (Opinion by Deputy City Solicitor Murray L. Schwartz.)

- - - - - - - - - - - - -

No. 1149 June 25, 1952

To: Mr. Richard R. Foster, Director of Public Safety

Subject: Traffic regulations and signs; yield right of way; Director of Public Safety

* * * * * * * * * * *

Without discussing delegation of authority or insufficient standards, the City Attorney of Richmond, Virginia, concluded that:

* * * * * * * * * * *

Conclusion: The Director of Public Safety has authority to promulgate regulations establishing rights of way of vehicles at certain intersections within the City of Richmond and to order the erection of signs designed to give effect thereto.

COPY

DEPARTMENT OF TRAFFIC ENGINEERING
413 St. Paul Place
Baltimore 2, Md.

June 30, 1955

Mr. George N. Lewis, Jr., Director
State Roads Commission
307 Tower Building
Baltimore 2, Md.

Dear Mr. Lewis:

In accordance with the understanding reached in my office on June 2, 1955, I wish to advise you that I am not presently making any changes in the route designations in Baltimore City, formerly posted by the State Roads Commission. For the record, I am redesignating them using the same numbers and routes formerly used. When this Department makes any changes in the existing system, I will advise you so that you may mark your maps accordingly.

As soon as Mr. Booth has completed his study showing the need for route markers, the plan of his recommendations will be submitted to you so that you will have it available as a matter of record in case inquiries should be routed to you.

Very truly yours,

/s/ Henry A. Barnes

Henry A. Barnes
Director

hab/ecm

cc: Mr. Russell H. McCain, Chairman
State Roads Commission
108 E. Lexington St.
Baltimore 3, Md.

Mr. F. X. Gallagher
Asst. City Solicitor
Room 509 Court House
Baltimore 2, Md.

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Room 509 Court House
Baltimore 2, Md.

Ricciati's Notes

G. I Veterans Topical vs Yellow Cab
192 Md. 5-5-1

- In this case - The Board of Police Commissioners of Balto City by Chapter 109 of Act of 1910 was authorized to set aside spaces for parking of hackney carriages - By Chap 559 Act of 1920 these powers were transferred to Police Commissioner - at time Chap 109 was adopted city had no home rule - In 1918 city adopted a charter and miscellaneous local laws including Chap 109 and continued it in effect

Under Secs 3 and 4 of Art XI A it was provided that after the adoption of a charter the M.C.C. should have power to repeal and amend local laws, subject to the Constitution and General Laws of the State and that no local law should be enacted by the General Assembly on any subject covered by the express powers granted, Notwithstanding these provisions various changes were made by the Gen. Assembly in the sections of Chap. 109 of Act of 1910 which were neither repealed or amended by the M.C.C. Commissioners to 1947. —

In 1948 M.C.C. passed Ordinance prohibiting Police Comm. of Balto City from granting permits or applications for the purpose of standing vehicles before any

Piccioli's Notes

public or other place - Court Held Ordinance valid and that Md C. C. had power to repeal Act of 1910 Sec. 2 & 6
Court also held that Sec 6 (29) dealing with powers that no Ordinance shall interfere with Power of Police Comm. has reference to his Executive powers -

Therefore City Council under Ord No 786 undoubtedly has a right to repeal any ~~General~~ Public local laws giving authority to Police Commissioners (if there are any) and has right to take away and transfer from Police Commissioners all control over traffic given by the City Council that is the effect of Sec 2 I of Ord No 786

See also State vs Stewart
150 Md 419

Parking Regulation of Police Comm. under Chap 426 of Acts of 1924 held invalid under Home Rule Amendment "The Subject matter is exclusively local to Balto. City and the mere form which the enactment has taken, that of an amendment to a

Public General law is not controlling.
The enforcement of the local laws of Balto City is committed to the Police Commissioner in the discretion of the police power enjoied by the City, and the mere fact that the designation of its chief police officer is made by the Gov. of the State rather than by the City authorities does not change the character of the law providing for the regulation of the traffic upon the streets and highways of the City, so as to make it a general rather than a local law."

M & C. Council could delegate authority to control traffic either to Police Commission - or Traffic Director - Saw fit in Ord 786. to take authority away from Police Comm. & give it to Traffic Director.

Arguments - (1)

(1) Trace power of M & C. C. from Legislature to regulate traffic in Balto. City.

(a) Sec 151 of Art 66 1/2
Sec 151A of Art. 66 1/2
Effect grant of authority to control traffic including speed

(2) Delegation from City to Traffic Director.

(a) Delegation of discretionary powers not Legislative (cite housing & health cases)

(b) City can delegate part of police power -
Ordinance 786 Sets out standard namely -
(1) Effect on movement of traffic
(2) Protection of pedestrians in use of streets
Cite power of Health Comm. to establish regulations -

Arguments (2)

Issuance of Adm. Reg No. 7
is proper exercise of power
delegated to Bamo by Ord
No. 786 and 151 A of 66 1/2

Ord 786 establishes maximum fees
for regulations issued pursuant
to it. Fees set by Bamo
merely restate fees validly
imposed for violation of
Regs issued under Ord 786
Sec 7 - Namely $100

Ordinances can set fees different
than those under State statute
where ordinance is issued pursuant
to express grant of authority
See Rosberg v State 111 Md 394 ✓

Sec 8 of Adm. Reg No. 7. Sets
fine of not less than $100 -
This means also no more than
$100 because of limitation of
Ord. No. 786.

Argument (3).

That Adm. No 7. does not Set limits of speed on Streets in Balto. City which have been designated or maintained as a part of the State or Federal Highway System or an extension thereof

There are no Streets designated or maintained as part or extension of Highway System -

If it can be argued that any Supposed extension of any State Road which passes thru Balto. City cannot be controlled as to its speed, then Sec 151A defeats its own purpose. Many of the Streets connecting with State Roads are the most travelled and congested in the City of Balto. These Streets are not maintained now by the State and to say to the City that these Streets which require the most control by the City cannot be controlled by it would seem unreasonable - The roads referred to are those in rural areas maintained by same the State and among them small municipalities, to avoid speed traps -

Aug. 4 -

Any other argument would result in utter confusion for Balto. City and render Sec 151 A of a doubtful nullity. See Sec 176 H of 66 1/2 - State Roads has no authority to control speed in City except Roads controlled by State.

Also ask effort for State who designates, & maintains and of any one now designated & maintained within City —

Admit Road Map for limited purpose only - not to prove designated State Highway but only to show point to Physical connection between State Highway & City Streets.

Purely to show where State Highway enters and leaves City line.

Reg. 5

Sec 5 of ~~Ord~~ Reg No 7. Simply says that in the trial of a case if a sign states the speed limit then it is ~~conclusively~~ concluded that the sign represents the maximum speed

~~Sec 6~~

Penalties provided in Sec ~~B~~ of Admn Reg No. 7 are the same as those provided for in ~~Sec. 7 of Admn Reg No. 7~~ Ordinance No. 786 - which imposes a limit of $100 for violation of an Sec. of Ord No. 786 or any regulations issued pursuant to Ord No. 786,

Sec 151 of Act 66 1/2

(Powers of Local Authorities)

(a) The provisions of this Article shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from —

(1) Regulating the standing or parking of vehicles

(2) Regulating traffic by means of police officers or traffic control devices.

(3) Regulating or prohibiting processions or assemblages on the highways.

(4) Designating particular highways as one way highways and requiring that all vehicles thereon be moved in one specific direction

(5) Regulating the speed and weight of vehicles in public parks.

(6) Designating any intersection as a stop intersection requiring all vehicles to stop at one or more entrances to such intersection.

(b) No ordinance or regulation enacted under Subdivision (4) (5) or (6) of this Section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

Laws Involved.

Article 66 1/2 Sections 151 and 151A - Md Code

Md Code
Article 89B Sec 2 (Definitions) State Road System
Also Sec 176H of 89B

Article 38 - Traffic Reg. City Code.

Ordinance 1678 (1950-1951) — Establishing Traffic Commission and codifying regulations

Ordinance 786 - 1953 July - repealing Sec 1 to 9 of Article 38 - Establishing office of Director of Traffic

Also Ord 823 of 1926

Sec 57 of Art. 38
"The Police Comm is hereby authorized and empowered to make and enforce Special Reg. with regard to the traffic at certain hours when the safety or convenience of the Public will best be subserved thereby".

Ord No. 786 - July 14, 1953

Repeals Sec 1 to 9 of Article 38 of Code abolishing Traffic Commission and establishing Office of Director of Traffic.

Sec I (a) Purpose - To provide for the safe and expeditious movement of traffic in City and to protect the safety of the citizen using its streets

(b) Director of Traffic shall adopt rules & regulations - Shall keep records etc.

(c) Perform duties imposed by M.C.C. Employ help etc.

(d) Right to hire Specialists

II a - Collect data

b - Conduct analysis of accidents etc

c - Submit annual report to Mayor

d - Make recommendations in fields of traffic regulations over which he has no control

e - Hold hearings necessary in connection with the exercise of his power

f. Determine design of traffic devices.

g. Designate any intersection as "Stop" intersections or thru highways

Ord 786 Cont.

h- Locate Bus stops

I. Exercise all power & control over traffic formerly had by Police Comm. including Special "No Parking" Has no power to make Special Regs as set forth in Sec 7 of Art. 3 &

J. Install & maintain traffic Signals

K. Adopt rules etc in connection with the movement of vehicular & pedestrian traffic —

{ No power over one way streets
No power over general parking restrictions
These reserved to City Council.

III All design & drawings prepared by Agency of City concerning future construction which may affect traffic must be approved to Director

IV (a) Transfer employees of Commission to Office of Traffic Director
(b) Classification by City Service Comm
(c) Rights of employees preserved
(d) Employees Retirement System.

V Transfer of unexpended funds from Comm. to Office of T. Director

Ord 786 Cont-

VI Traffic Director employees - one employed under Sec 142 to 154 of Charter

VII (a) Unlawful to defame traffic devices installed by Director

(b) Unlawful to fail to comply with instructions on traffic devices

(c) Unlawful to violate any rule or regulation of Director

(d) Any violation of Sec VII fine of not more than $100

VIII This Ord. 786 amends all inconsistent Ords. or regulations Also all rules pursuant to Ord 786 ~~insofar~~ if not inconsistent they remain in full force & effect

IX Severability Provision

Delegation of Powers.

Since adoption of Sec 15 A of Article 6 6½ which gives express authority to City to control speed - It is not necessary to show proper exercise of police power under Sec 6 (24) (Police Power) or Sec 6 (29 a) of the City Charter

Sec K of Ord. No. 786 obviously gives to Mr. Barnes all of the authority over the control of traffic that the M & C. C possesses, relating to movement of traffic, including special grant as to Speed in 15 A & 66½

Conflict exists between City & State -

Henbeck vs City of Ballo
107 Atl 2nd 99

Cited Rosberg case and held

Conflict exists when an ordinance prohibits something permitted by the Legislature or permits something prohibited by the Legislature

Rosberg vs State
111 Md. 394
Held "That a City Ordinance punishing an offense imposed heavier penalties than the State law punishing the same offense did not render the Ordinance invalid as inconsistent with such State law".

Sec. 530 - Charter & Public Local laws -
Duty of Police Commissioner to enforce all laws, and ordinances of the Mayor & City Council of Balto not inconsistent with the provisions of this sub-division of this Article, -

Sec 6 (29) a
Mayor & C. C shall have full power To regulate the use of streets & public ways by persons animals and vehicles -

6 (24) Police power - No ordinance or act of municipal officers shall conflict impede hinder or obstruct or interfere with the power of police Comm

Ostrushanky v State

182 Md 164

Held. Balto. health Ordinance delegating to Commissioner of health power of enforcement is not void as an unlawful delegation of arbitrary discretion as to enforcement since it is presumed that commissioner will perform his duty, and if commissioner does not treat all alike he is subject to indictment for nonfeasance or misfeasance.

Balto health ordinance designed to compel maintenance of premises in clean condition, and delegating enforcement to commissioner of health is not void for failure to define standards under which commissioner should act, so long as ordinance applies to all alike in its enforcement

Sec. 8.

(1) - The Repeal is being made by the City Council itself - in the Ordinance - The condition only one laid down when the repeal take place

(2) Says City prohibited by 151 A & 66 1/2 —

~~Sec~~ Map does not Show red line one Same as line coming to City boundary — Ct. found as fact not designated. Bunting —

Barnes can change the route at any time —

~~No testimony~~

Federal Roads on Federal Reservation

(3) Violates Sec 6 (24) Police Power Section — Can't interfere with Power of Police Commiss

N. J. Case =
Hudson — Ct. said City could repeal local laws — or authority of Police Commiss

Police Comm. only had authority given to him by City Council —

Police Comm. has additional power under Public Local Laws one where Council has no authority

Bowman case

(4) Setting speed limits is purely legislative —

Recent out of state cases say Council does not have time to examine and take care of ~~the~~ changing traffic emergencies —

Traffic Control is

---

no ~~decision~~ distinction between necessity of bath tubs and need for traffic control & protection of life & limb

---

Tighe vs Osborn

passed under welfare section - Ct. found welfare too broad & changed to health

~~Under Romans Harry~~

~~City Council Court~~

~~City~~

No points made below
of any conflict with
Public Moral Law -

Question of Standards -

Difficult to establish
any standards in this
field of expertise

Sec 2 of Article XI
General Assembly after adoption of Charter shall provide for a Grant of effects Powers - Art 4 Sec 6 Public Local Laws of Md as to Balto City -
Effects Grant cannot be enlarged or extended by Charter - but such powers may be extended, modified amended or repealed by the General Assembly.

Sec 3 - After adoption of Charter the City of Balto subject to the constitution and Public General Laws shall have full power to enact local laws of said City including the power to repeal or amend local laws of said City enacted by the General Assembly upon all matters covered by the effects powers granted.

Sec 3 also - All local laws enacted by the City shall be subject to the same rules of interpretation as those now applicable to the Public Local Laws of this State, except that in case of any conflict between said local law and any public general law now or hereafter enacted the public General law shall control.

See Article 1 Sec 13 of Code - Where the public General law and the public local law of any City are in conflict the public local law shall prevail -
See Herman case -

Sec 4 Art 11 14

After adoption of Charter no private local law shall be enacted by the General Assembly for said City on any subject covered by express powers granted

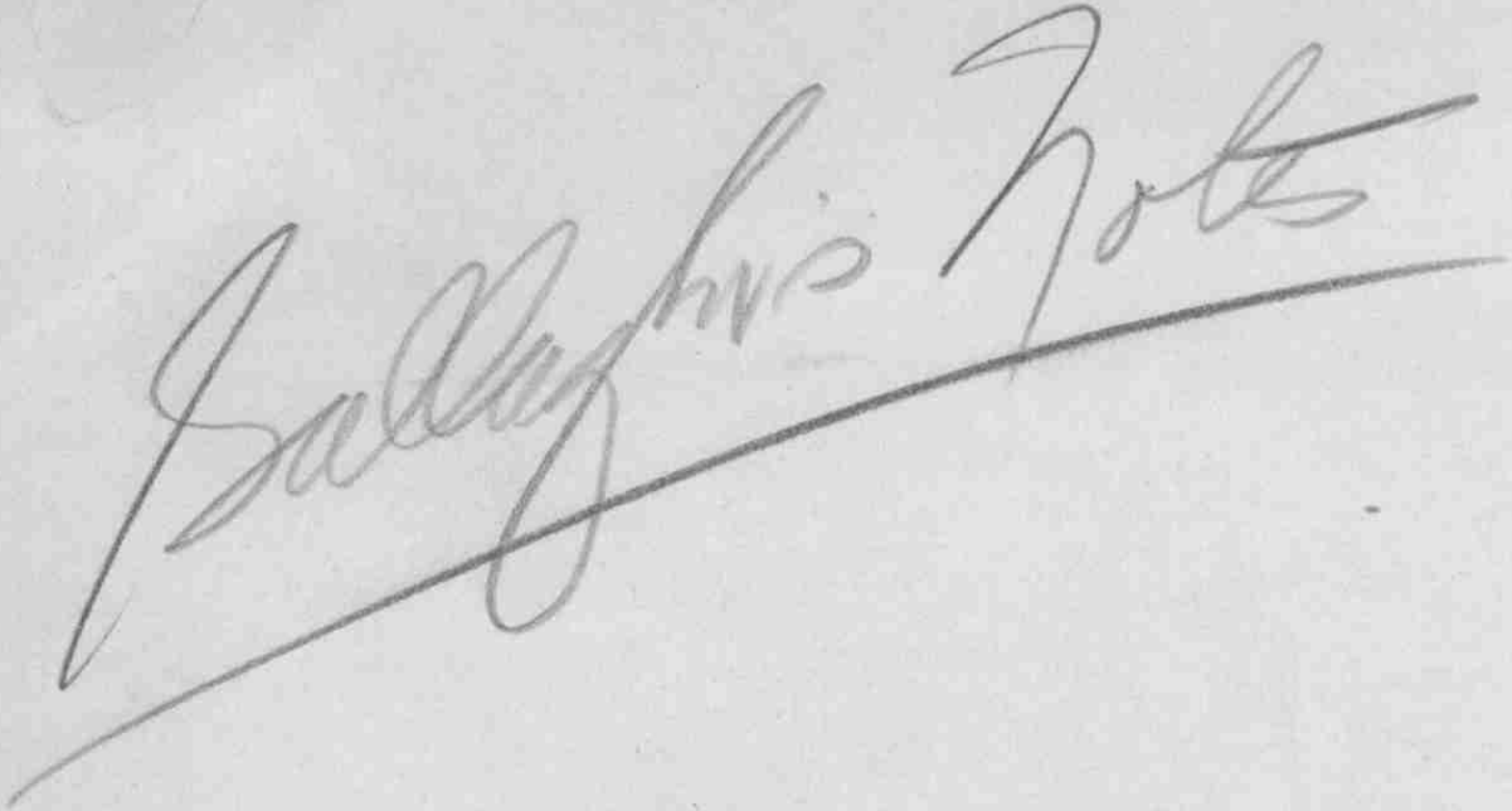
Ordinance No. 786 Approved July 14, 1953
Administrative Reg. No 7. " Aug 9, 1955

Article 38 Sec. 87
Police Comm. has power to enforce special regulations with regard to traffic at certain hours.

Sec 150 of Art 66 1/2 - Says Art. 66 1/2 shall not prohibit local authorities with respect to streets and highways under their jurisdiction from
(1) Regulating the standing or parking of vehicles
(2) Regulating traffic by means of peace officers
(3) Regulating & prohibiting processions
(4) Designating one way streets
(5) Regulating speed and weight of vehicles on parks
(6) Designating stop intersections

Article XI A added to Constitution by Act of 1914. Chap 416 ratified November 1915.

Sec 1 of Art XI A - The said Charter from and after the 30th day from the date of such election shall become the law of said City or County, subject only to the Constitution and Public General Laws of this State, and any Public Local Laws inconsistent with the powers of said charter and any former Charter of said the City of Balto. shall be thereby repealed.



see 98/596 - nh
152/244 - dl

Delegation of Powers

~~186 Md 330 Anne Arundel County Comm~~
~~v Ward~~

Petrushansky v State 182/164/3 A2d 696

Copy language

187 Md 296 49 A2d 799

Heath v M+CC

191 Md 301 60 A2d 737

Howlett 107 A2d 99

Hulbert

62 A2d 874

60 A2d 754

8/123 mulch

183/7
11
304
184/649 mo

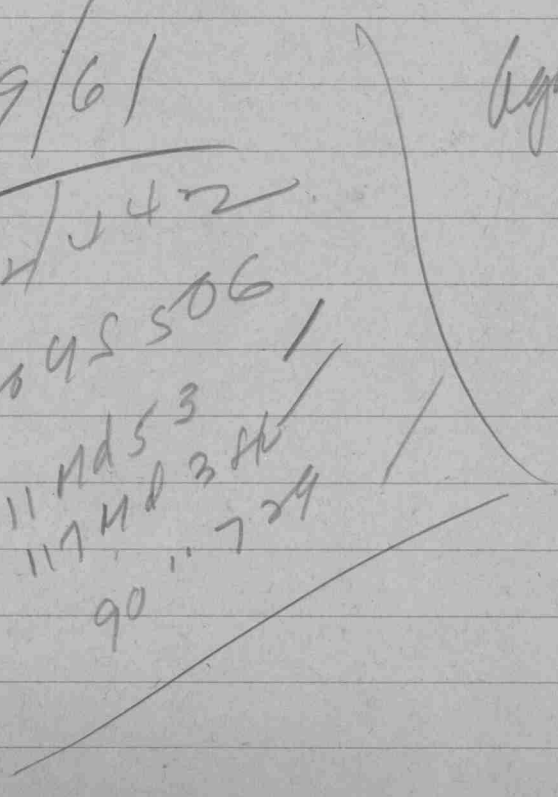
Deer 80/164

150/452

Tyler Osborne

149/61
134/342
22 45 506
111 Hd 53
117 Hd 3H
90 . . 729

Agent
49/230
107/178
74/262
134/617



61 | 259
123 | 310

speed control - is it a legislative function

201/388 no

201/540 —

202/577 - no hh

204/84 ~

194/189

192/55 -

65 Bankr 173

8 BLR 1528 - no help

6 ~~Geo~~ of 1927

6 ~~Geo~~ of 1945

152/424
101/315

System extension

State Road 89 B

---

60 ALR 501

Con Law 262 1/4, 45 f
Mun Corp - 51

City of Chicago v Morrisette 332 Ill 414
163 NE 369

Extension 35 CJS 289

Plaintiff's Exhibits

X X

P #1 - Ord 386
P #2 Ad Reg #7
~~Sec 3~~ #31 #4
~~Art 3~~ - Sec 17 + 89 of BC Code
#5 - Map of SRC

Ernest W. Bunting.

Asst. Engineer Traffic Div. - S.R.C.

13½

Route 40

Throughway - 40 -

1.

"take up"

11/45

Penman - Argument

1 - delegation - power is improper

a) not legally delegate

POWERS

speed limit is clearly a legislative function

City Charter

Paragraph 28

Sec 6 - by ordinance

subsection 40 - penalties (ordinance)

99 (

66 1/2 sec 309 - "of the state"

"the ordinance of Battle City"

McQuillen

37 Am Jur Sec 53 Municipal Corp.

62 CJS - Mun Corp Sec 154

"permissive statute"

37 Am Jur Sec 114 Municipal Corp

McQ Sec 1040 - Mun Corp

" " 1041 "

Tighe v Osborne

2 MLR 184 - Oppenheimer

Wollman 123/110

185/226 - get name.

Out of State

23 NYS People v Brown

238 NYS 253

GS - Murder 1926 Sec

no parking

No Standard

184 S 356

180 Md 337 5 to 500 Police Com

147 Md 282 -

162 Md 368

Heath v M + CC

Jack Lewis v Baltimore

149Md - Bloch

49 - Rehke 217

160Md - County Comm. of PG County

not per with powers of police Com

Sec 530 Charter Public Leal Laws

Sec 203 Charter " " " " "

is speed a nuisance

80Md 335

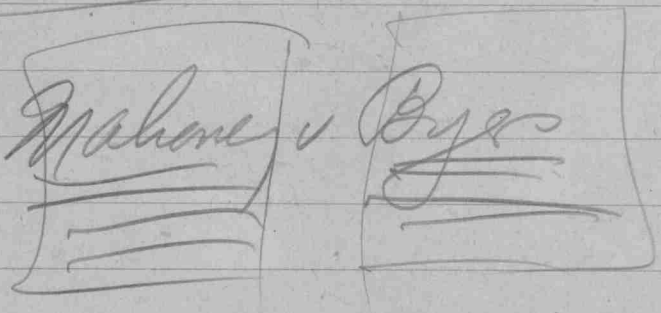
118Md 359

OK Tenison

1954 Bill – vetoed

small municipalities of the State

revenue fight



#4

Brown v Graham

put marks in places where in his opinion there is particular danger to pedestrians

ordinance

Pasadena

Shephards

20 SE 2d 721
226 Pac 2d 356 - wholly
125 Pac 2d 46 " "
484 " "
124 Pac 2d 30 " "
108 " 950 " "
102 42 " "
95 P 42 " "
55 275

Gould et al v Western Dairy Products Inc et al.
Cal 55 Pac 2d 274
Burbank ordinance gave Board of Police Commission authority to put stop sign

Quote from 20 4th 364, 27 L Ed 367
51 LE 532

attacked as unlawful delegation
rejected

Sawer Justice

Even a casual observer of governmental growth and development must have observed the ever-increasing multiplicity and complexity of administrative affairs - national, state - municipal - and even the occasional reader of the law must have perceived that for many, if not no better grounded reason - it has become increasingly imperative that many quasi legislative and quasi judicial functions, which in small communities and under more primitive conditions were performed by the legislative & judicial branches of the govt, be entrusted to executive boards, commissions and agents. No sound objection can longer be successfully urged to the growing method of transacting public business. These things must be done in the way & they can best be done at all, and they do, in a very real sense, make for the safety of the public and is thus pertinent to the highest law.

p 276

88 SE 2d 771 (1954)

Shipman v. Johnson 84 Ga App 620
88 SE 2d 717

Ordinance of the City of Atlanta, authorizing the City Traffic Engineer to determine and designate intersections where pedestrians be required and cause stop signs and traffic control signals to be erected, when needed, is not too vague and indefinite to be enforceable nor does it attempt to delegate to a non-legislative employee of the city certain legislative, executive and judicial powers.

See 17 P2d 999 - similar
180 NE 59
79 ACR 1325
94 So 874

HONESTY - Cleveland

safety limits established safety zones

p60 "Increasing population, and progress in the means and methods of travel present to our legislative bodies their most complex problems. They occur and recur."

It must be borne in mind that all of us must surrender something for the sake of sport. When the motorist starts, he wants to go. So does the pedestrian. So does the passenger in the street car. The city council must look after the safety and general welfare of all at the same time and under all circumstance. Council cannot legislate with exact nicety, nor is it required so to do in the exercise of its discretion. The fallibility human of would find it a stupendous task to take care of ten thousand intelligent thinking men of slight determination minds.

946874

Taylor Robert

Newspaper no guide & all-knowledge

(dissent in Shreveport Case (1925)

Traffic regulation is becoming a matter of supreme importance in the age; and detail need constant changing to keep up with the rapid growth of traffic. If these detail must be written into law, any attempt to regulate traffic may be given up at the start; for in the time it take to pass an ordinance conditions may have already so changed as to make the ordinance no longer practicable, and what was best yesterday may be all wrong today and

Dividegan tomorrow

Freeman Jones 32 SW 644

Alderman gave marshall dept or police officer discretion

Hearn - Jones

---

212 SW 2nd 871 Houck v Nutter

p 894 "The power to regulate and control traffic is a power that may be delegated to a municipality by the legislature, or to some designated agency of such municipality"

State ex rel Nashville Electric Service Traffic Commn "full & plenary authority to adopt & publish traffic regulations" speed below 30 mph

p 895 "When we come to consider the question of regulating traffic especially w/ a congested area it should be impossible to do so by manipulations by a chief of police or a city council. In emergencies the public safety should not wait for legislative action by a slow-moving legislative council, nor can

to define

the latter to be applied by reference
what is a legal & public standard in
changing situations and condition - It
must be left to the sound discretion of
the agency of the local govt."

In this case, penalties used set by City
Council

---

210 Pac 198 EX PARTE WOODRUFF
(1949) OKLA

Penalties

→ 41 F 2d 241 - not too clear as to penalty.
355 W 2d 1061
Armstrong v Whitten (1930) Texas
Sanitary Com of Texas - Art 6 graduated tiers

→ Tuttle v Wood - Texas
Statute relating to pub comment
11. it is equally true that the competent for the
legislature to authorize a commission or board
created for that purpose to prescribe duties

V. ascertain condition upon which an existing law may operate in imposing a penalty and in effectuating the purpose designed in enacting the law

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49 A.C.R. 1009

Signature of Paves Reynolds
Reynold Pate

MUNICIPAL LAW SERVICE LETTER

News and Comments on Local Government Law

Vol. 5, No. 9 • Section of Municipal Law • American Bar Association • November, 1955

Home Rule — Provision by Charter for Nomination to Office by Non-partisan Primary

The Supreme Court of Ohio has recently reaffirmed that a home rule charter municipality has authority to determine the method of nomination of its "purely local officers." It did this in rejecting an attack upon Cleveland charter provisions for non-partisan primary nomination for seats on the city council and other elective offices. Under the charter provisions the two candidates receiving the most votes are nominated except that if one candidate receives a majority of the votes cast he alone is nominated at the primary. Provision is made for write-ins at the election. This was found compatible with a constitutional provision, which ordains that elections for other than state and county officers shall be held on the first Tuesday after the first Monday in November in the odd numbered years. (Ohio Const. Art. XVII, §1.) State ex rel. Gamble v. Duffy, 164 Ohio St. 231 (1955). It will be seen that the operation of the charter provisions might produce but one nominee and, thus, the primary would control subject only to the write-in feature.

Housing — Gwinn Amendment — Supreme Court Refuses to Review Wisconsin Decision

On November 7, 1955, the Supreme Court of the United States denied certiorari in the case of Housing Authority of City of Milwaukee v. Lawson, 270 Wis. 269, 70 N.W. 2d 605 (1955). The Wisconsin court, it will be recalled, had decided that a local housing authority resolution in keeping with the Gwinn Amendment (Federal prohibition of occupancy of a unit constructed under the U. S. Housing Act of 1937, as amended by a person who is a member of an organization on the Attorney General's subversive list) was unconstitutional and void as an unwarranted restriction upon freedom of speech and assembly. (The resolution required signing of a non-membership affidavit.) See the draft report on Housing Law and Regulations, by Morris Miller, which appeared in the November 1955 Committee Report Supplement for a full discussion of the Wisconsin decision.

It is disappointing that the Supreme Court did not accept jurisdiction, since there has been extensive litigation, which leaves us with need of clarification and guidance.

Municipal Delegation to Administrative Officials of Traffic Regulation Power

In a recent case, Raskin Hotel Co. v. City of Cincinnati, 126 N.E. 2d 922 (1954), an Ohio court granted an injunction prohibiting enforcement of a parking regulation which interfered with the hotel operations of the plaintiff. The regulation consisted of an ordinance authorizing the city manager to determine upon what highways the accommodation of traffic or the public safety required parking restrictions and to erect and maintain the appropriate traffic signs. A similar ordinance authorized the city manager to place and maintain signs required by the traffic code and authorized him to place and maintain such other signs as he deemed necessary for the proper control of traffic. The court found that the ordinance was neither unconstitutional nor an unreasonable exercise of the police power, but that in this case the city manager had arbitrarily exercised the power vested in him, interfering with the inherent rights of those operating the hotel, by forbidding guests to stop at the hotel entrance during certain hours. In discussing the delegation issue the court said, "It is the claim of the plaintiff that the ordinance delegating power to the city manager to erect such signs is unconstitutional and void. This claim cannot be sustained. It may be inferred that council in the delegation of such power had the right to presume that the city manager would operate under such power in a manner consistent with the lawful and reasonable rights of abutting-propery owners. In failing so to do, he has not vitiated the power of council to enact the ordinance . . . " 126 N.E. 2d 922, 925. Actually the court advances no support for their apparent finding that the delegation is valid and merely states that arbitrary abuse of the delegated power by the city manager will not invalidate the ordinance.

Exactly what is required to constitute a valid municipal delegation of traffic regulation power to a municipal official is not at all clear. In fact there appear to be no cases dealing specifically with this point. Most cases discussing the problem of delegation involve either statutory authorization of a local official or action by a local official without any local legislative authorization. A recent New York case does throw some light on the problem. The defendant was accused of violating a traffic regulation established by a village ordinance which authorized the village police department to designate and regulate school crossings, safety zones, parking spaces, bus stops and taxicab stands in the public streets of the village and to cause the same to be marked and indicated by suitable signs. A statute authorized the legislative body of a village to designate a municipal officer or body to act in regard to safety zones, parking spaces, bus stops and taxicab stands, but there was no provision regarding school crossings. The court found the delegation invalid in the absence of express statutory authority. People v. Dalton, 131 N.Y.S. 2d 355 (1954). Thus, it would appear that where there exists express statutory authority for delegation in certain situations, delegation outside of the enumerated areas will be held invalid. The reasonableness of the regulation or of the standards provided to guide the official would be immaterial.

The few cases in which it appeared that the court was

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presented with the delegation problem illustrate the reluctance of the courts to commit themselves in this area. City of Bloomington v. Wirrick, 381 Ill. 347, 45 N.E. 2d 852 (1943) tested the validity of a city parking meter ordinance which provided that the mayor was to establish parking meter zones upon such streets as he should select, with the approval of the council. The mayor, with approval of council, could also change, add to or abandon the zones. In selecting or changing the zones the mayor was to be guided and governed by location, amount of traffic, demand for parking space, the congestion of traffic, the use of the street and all other traffic conditions which may be existent. The contention of invalid delegation to the mayor of authority to create parking zones was denied by the court, which merely stated that "this is a misapprehension of the provisions of the ordinance" and underscored the references to approval of council. 381 Ill. 347, 361, 45 N.E. 2d 852, 860. The inclusion in the ordinance of standards and factors to be considered by the mayor in making his selections was not even mentioned in the opinion.

Staley v. Vaughn, 92 Colo. 6, 17 P. 2d 299 (1932), illustrates another technique utilized by the courts to skirt the problem. A city ordinance authorizing the manager of safety to designate certain streets as through traffic streets and erect appropriate stop signs was held constitutional. The court said that the city could have passed an ordinance specifically designating these streets but chose to delegate authority. The court found that the designation of stop streets is merely an administrative action presumably based upon the exercise of reasonable discretion. Thus, rather than meet the problem of delegation the court chose to affix the "administrative action" label to the set of facts presented.

In view of the paucity of cases on this question of municipal delegation it is difficult to make any statement as to the law in the area. The existence or lack of standards prescribed by the ordinance does not appear to be a controlling factor. The constantly changing, complex problems of traffic regulation in a modern city require prompt action of a detailed character not suited to the legislative process. Perhaps the courts are less concerned with delegation and accompanying standards in this area than in other areas, such as licensing, because property interests are less directly affected.

Recreational Facilities — Racial Segregation

The school segregation decisions rejected the separate but equal doctrine as to public education. Now the Court has applied the principle of the school cases to a municipal golf course and public parks and bathing beaches. It did this by orders entered November 7, 1955, without opinions in cases arising in Georgia and Maryland which have not yet been reported.

A Review of "A Report to the President" by the Commission on Intergovernmental Relations.

(Washington, D. C.: Government Printing Office, June 1955. 279 p. Appendices, 31 p.)

By Howard W. Hallman, *Metropolitan Consultant,*
Philadelphia Housing Association

The Commission on Intergovernmental Relations issued its report during the summer of 1955, and by so doing contributed a significant and useful document to the intelligent discussion of the relationships involved in the federal system of the United States. The Commission's assignment from Congress was to "study and investigate all of the present activities in which Federal aid is extended to state and local governments, the interrelationships of financing this aid, and the sources of financing governmental programs"; and to "determine and report whether there is justification for Federal aid in the various fields in which Federal aid is extended; whether there are other fields in which Federal aid should be extended; whether Federal control with respect to these activities should be limited, and, if so, to what extent; whether Federal aid should be limited to cases of need; and all other matters incident to such Federal aid, including the ability of the Federal Government and the states to finance activities of this nature."

The Commission responded constructively to all of its assignment except the section regarding new fields for Federal aid. It avoided controversy to a great extent in discussing Federal aid with the admission that "The Commission has not dealt with questions of whether particular functions should be performed by government at all, nor has it dealt with substantive questions of policy in the various fields." Avoidance of specific policy questions was perhaps necessary due to the temporary nature of the Commission and the vast complexity of the subject: government in all forms in the United States and the relationships among these forms. Ducking controversy enabled the Commission to make two-thirds of its approximate seventy recommendations on Federal aid programs with unanimity, and where dissents were filed they generally centered on the question of where administrative responsibility for some aspect of a program should be placed, nationally or with the states. Such unanimity is important in itself in an era when there is much careless talk about one level of government usurping the powers of another, about another level failing in its responsibility to the people, and so on.

Yet a spark of vitality is gone when the substance of policy is omitted.

The program recommendations of the Commission are concentrated on twelve functions areas involving intergovernmental financial relations. Many of the recommendations deal with minor administrative details. Almost all of them, while important now, have only short term relevance: in several years they will be dead issues, likely as not. In this light, therefore, the portion of the report dealing with the philosophy of the federal system is by far the most important, in the opinion of this writer, for it helps to clarify the nature of the beast. (The confusion is illustrated by the wide use of the term "federal government." This is wrong. We have a "federal system" of which the "national government" is one part.)

In analyzing the federal system the approach of the Commission is historical. It observes that the American federal system began as an experiment, a product of necessity rather than doctrine. The system developed to strike a balance between the needs for central strength and local freedom. As the nation has developed, population growth, industrialization, urbanization, developments in agriculture, improvements in transportation and communications, changes in social outlook (such as the increased status of labor, a greater public concern for the general welfare), and the expanded role of the United States in world affairs have all influenced the federal system.

And as the nation has developed so too has constitutional doctrine and practice. Chief Justice Marshall early upheld national supremacy, but it took the Civil War to gain nationwide acceptance of that doctrine, except for scattered minorities who would still place the states first. The adoption of the Fourteenth Amendment in 1868 extended national judicial review, which at first became a means of protecting property rights against state legislative and administrative action. The Tenth Amendment in that same post-(Civil) war period was sometimes used for the same purpose. For the half century after 1880 two premises underlay judicial interpretation of national and state powers: "that workably clear and distinct boundaries between their respective realms of activity could be drawn in terms of constitutional powers" and "that the Supreme Court was the final arbiter of the system." This proved to be unworkable as boundaries of activities became less clear and as the Court became subject to political criticisms on decisions dealing with questions of basic policy. Judicial doctrine today recognizes what might be described as "cooperative federalism," which "rests constitutionally on a broad view of National authority, on the abandonment of the due process clause as a source of substantive restraints on State regulation of economic affairs, and on the Court's refusal to entertain taxpayers' suits challenging exercises of the spending power."

Today's constitutional doctrine regarding national-state relations, according to the Commission, can be summarized in five generalizations:

"First, the constitutional restrictions now applicable to any government in the United States are chiefly procedural, are quite similar in their admonitions to the Nation and to the States, and consequently under the philosophy of these decisions exert no major thrust on the working division of labor and authority between them one way or the other.

"Second, the prohibitions on the States, expressed and implied, that keep them from actions deemed to encroach on powers delegated to the National Government have only a minimal effect on the capacity of the States to discharge their functions.

"Third, the range of activities that lie primarily within the power of the States by reason of the lack of any coercive authority in Congress to deal with them, is substantial.

"Fourth, the possibility of a significant constitutional no man's land in our federal system has been disposed of by judicial reinterpretations." (At one time neither the national nor state governments could legislate to regulate child labor according to then current judicial decisions.)

"Fifth, it follows that the basic problems of maintaining our federal system today lie in those areas of National and State power where both Congress and the States have real choices to make, and where many alternative courses of action are open. . . . The crucial questions now are questions of policy: Which level ought to move? Or should both move? Or neither? What are the prudent and proper divisions of labor and responsibilities between them? These are questions mainly for legislative judgment, and the criteria are chiefly political, economic, and administrative, rather than legal."

Although the Commission on Intergovernmental Relations is oriented mostly toward the National Government, its report includes a chapter which effectively summarizes what many people have been saying about state and local governments. In brief the Commission indicates its thinking by quoting favorably Thomas Jefferson, who wrote that the only way in which the states can erect a barrier against the extension of national power into areas within their proper sphere is "to strengthen the State governments, and this cannot be done by change in the Federal Constitution . . . it must be done by the States themselves." The Commission lists some of the obstacles and problems standing in the way of more effective state and local action: restrictive state constitutions; need for legislative reapportionment to give urban areas a more equitable voice in state legislatures; lack of legislative flexibility in most states due to short, biennial sessions, low pay, over-detailed state constitutions; limitations on the governors in the exercise of executive power; overabundance of elected administrative officers; need to find the right size unit to perform local governmental functions; need to broaden home rule; intricacies of governmental relations in metropolitan areas (the Commission's Advisory Committee on Local Government

stated that "The metropolitan areas of the United States are the most important focal points for intergovernmental relations.") ; need for improvement of county government; need for state supervision and leadership. The Commission proposes a fundamental review and revision of state constitutions, a system of fair and equitable representation in the state legislatures, greater efficiency of the legislatures, reorganization of state administrations to provide the governors with more authority, more state leadership, more local home rule, fewer and stronger local units, better utilization of the counties, and solutions to the crucial problems of metropolitan areas. How? Through citizen awareness and citizen action.

Interstate cooperation is touched upon by the Commission, which is in favor of it. The brief treatment of this subject, however, in the opinion of this writer, is one of the weakest sections of the report, for the possibilities of interstate cooperation deserve more than passing reference.

Having recognized that division of powers and responsibilities is a legislative function (that is political) rather than a judicial one, the Commission sets forth its views on the activities appropriate for the National Government. First, there are those fields of primary responsibility: foreign relations in peace and war; management of the monetary and credit system; protection of freedom of trade and facilitating movement and communication within the market place; countercyclical fiscal programs; action needed because of the mobility of modern industrial society.

Secondly, there are conditions justifying national action when lower levels of government cannot or will not act: "When the National Government is the only agency that can summon the resources needed for an activity . . . When the activity cannot be handled within the geographic and jurisdictional limits of smaller governmental units, including those that could be created by compact . . . When the activity requires a nationwide uniformity of policy that cannot be achieved by interstate action . . . When a state through action or inaction does injury to the people of other states . . . When states fail to respect or to protect basic political and civil rights that apply throughout the United States." Perhaps his checklist should be on the desk of every member of Congress as he considers national legislation.

Thirdly, there are needs that justify national participation in functions where it does not have primary responsibility. Participation can be in the form of informational and financial support.

In regulatory activities divided jurisdiction occurs. The Commission suggests these principles as broad guidelines: absence of national action should not bar state action in a field of concurrent power; national laws should state clearly any intent to preempt any field against state action; "exercise of national power on any subject should not bar state action on the same subject unless there is positive inconsistency"; unless uniformity is imperative, states should have the right to set more rigorous standards than a national minimum standard; "statutes should provide flexible scope for administrative cessions of jurisdiction where the objectives of the laws at the two levels are substantially in accord."

To give continued attention to the proper function of the federal system, the Commission believes that the National Government should have a staff agency directed toward that end. The Commission makes recommendations on how this would be set up. Presumably the principles set forth by the Commission would guide this staff agency in its work.

In studying the financial aspects of the federal system the Commission concludes that there is no simple answer to the problem of dividing tax resources and expenditures among levels of government. The Commission recognizes the fiscal advantages of the National Government due to broader taxing resources and superior borrowing powers, while the states are limited, usually by self-imposed restrictions, and local governments are limited mainly by state controls. The Commission believes that if a high-level economy is maintained the states can tap many presently unused sources of revenue. The Commission assumes that the high rate of expenditures for war will continue and will not be available for peacetime uses in the foreseeable future.

The Commission favors greater separation of tax resources, greater tax coordination, and a broad system of national payments in lieu of property taxes to state and local governments. The Commission recognizes the fiscal disparities among the states but rejects Federal grants to equalize interstate variations in tax resources, comprehensive subventions for general governmental purposes, and simultaneous reduction of grants and taxes. In fact the Commission advocates no major change in the present fiscal arrangement, but it does want the states to try harder.

In considering Federal grants-in-aid, the Commission explores their history and the philosophy behind them. Based upon this background, the Commission discusses specific programs in twelve functional areas: agriculture, civil aviation, civil defense and urban vulnerability, education, employment security, highways, housing and urban renewal, natural disaster relief, natural resources and conservation, public health, vocational rehabilitation, and welfare. The recommendations in these areas are important to agencies and citizens with a special concern, and the reader is referred to the report for the findings.

As important as these program recommendations are, this writer believes that the most significant work of the Commission on Intergovernmental Relations is its efforts to clarify what the federal system is and how it has developed, and to suggest broad principles to guide its operation in the future.

ROUGH DRAFT 8/17/55

Pressman case

ANSWER TO BILL FOR DECLARATORY DECREE

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Respondents, Henry A. Barnes, Director of Department of Traffic Engineering of Baltimore City, and the Mayor and City Council of Baltimore, a municipal corporation, by Thomas N. Biddison, City Solicitor, Edwin Harlan, Deputy City Solicitor, Hugo A. Riccuiti and Francis X. Gallagher, Assistant City Solicitors, in response to the Bill for Declaratory Decree, say as follows:

1. The Respondents are without knowledge of all of the facts and contents of the first paragraph of said Bill and, therefore, neither admit nor deny the allegations contained therein.

2. The Respondents are without knowledge of all of the facts and contents of the first paragraph of said Bill and, therefore, neither admit nor deny the allegations contained therein.

3. The Respondents admit the allegations contained in Paragraph 3 of said Bill.

4. The Respondents admit the allegations contained in Paragraph 4 of said Bill.

5. The respondents in answer to Paragraph 5, sub-sections (a), (b), (c), (d), (e), (f), (g) and (h) of said Bill deny that the said "Administrative Regulation No. 7" is illegal and ultra vires but on the contrary that said "Administrative Regulation No. 7" is a proper, valid and constitutional enactment adopted pursuant to Article 66½ Section 151 (A) of the Annotated Code of Maryland 1951 edition, as amended, and Section 2(K)of Article 38 of the Baltimore City Code 1950 edition, as amended by Ordinance No. 786 of July 14, 1953; and in furhter answer to the specific allegations of the aforementioned sub-sections of Paragraph 5 of said Bill, say:

(a) That the Respondent, Henry A. Barnes, in promulgating "Administrative Regulation No. 7" is effectuating the purposes and intent of Ordinance No. 786 approved July 14, 1953, and Section 151 (a) of Article 66½ of the Annodated Code of Maryland, said purpose and intent being the public health, safety and general welfare;

(b) That the Respondent, Henry A. Barnes, by the promulgation of "Administrative Regulation No. 7" has not exercised any legislative power or function but on the contrary is performing those duties, obligations and functions necessary to effectuate the design and purpose of Ordinance No. 786 and Section 151 (a) and Article 66½ of the Maryland Code; and

(c) That the penal provisions provided for in "Administrative Regulation No. 7" are not in any wise or manner in conflict with Ordinance No. 786.

(d) That no conflict exists between Section 8 of "Administrative Regulation No. 7" and Section 176 (g) of Article 66½ of the Maryland Code.

(e) That the "Administrative Regulation No. 7" does not in any manner attempt to regulate the speed of vehicles on any road, street, lane or alley within the corporate limits of Baltimore City which has been designated or maintained as a part of the State of Federal highway system or an extension thereof.

(f) That "Administrative Regulation No. 7" is not self-contradictory but on the contrary is a concise, succinct and constitutional regulation designed to carry out the purpose and intent of Ordinance No. 786 and Section 151 (a) of Article 66½ of the Code.

(g) That "Administrative Regulation No. 7" is not in exercise of any legislative or judicial function and any and all penal provisions of said "Administrative Regulation No. 7" can only be enforced through judicial process in accordance with due process of law.

(h) That Ordinance No. 786 is a proper, valid and constitutional enactment of the Mayor and City Council of Baltimore designed to provide for the safe and expeditious movement of traffic in the City of Baltimore and to protect the safety of the citizens using its streets.

6. The Respondents in answer to Paragraph 6(a) of said Bill say that Ordinance No. 786 does not attempt to delegate legislative power to the Director of Traffic, but authorizes him to exact compliance with the provisions thereof and with such regulations as he has adopted or will adopt for their enforcement and gives him only such limited discretion as is necessary in the proper execution of a law or regulation designed to expedite movement of traffic and protection of the citizens in the use of street in Baltimore City.

The Respondents in answer to Paragraph 6(b) of said Bill say that the Director of Traffic in the promulgation of rules and regulations is guided in the exercise of his limited discretion by what is necessary to provide for the safe and expeditious movement of traffic in Baltimore City and to protect the safety of the citizens using the streets of Baltimore City and that the exercise of said limited discretion for the protection of the public health and safety cannot be prescribed within precise limits.

The Respondents in answer to Paragraph 6(c) say that Ordinance No. 786 does not contravene Section 6(24) of the Charter and Public Local Laws of Baltimore City, and in further answer to said Paragraph 6(c) say that the proviso in Section 6(24) of the Charter of Baltimore City

"that no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner" has reference to the executive powers of the Police Commissioner and does not restrict the power of the City to legislate on a matter within the scope of police power.

7. The Respondents in answer to Paragraph 7 of said Bill say that the Director of Traffic, Henry A. Barnes, pursuant to the authority vested in him by Ordinance No. 786 shall expend such sums as are necessary for the proper performance of the duties, obligations and functions imposed by the provisions of said Ordinance No. 786, in order to effectuate the design and purpose of said Ordinance, namely, the protection of the public health, safety and general welfare.

8. The Respondents in answer to Paragraph 8 of said Bill say that the Director of Traffic, Henry A. Barnes, shall perform all of the duties and obligations imposed upon him by the validly, properly and constitutionally adopted Ordinance No. 786.

9. The Respondents in answer to Paragraph 8 of said Bill say that the Director of Traffic, Henry A. Barnes, in the performances of the duties and obligations imposed upon him by said Ordinance No. 786 has validly and legally spent and has spent public funds to effectuate the design and purpose of said Ordinance, namely, the protection of the public health, safety and general welfare.

WHEREFORE, having fully answered said Bill, your Respondents pray that the same be dismissed with proper costs.

ROUGH DRAFT 8/17/55

COPY

Board of Estimates
2nd Floor
City Hall

Pressman case

ANSWER TO BILL FOR DECLARATORY DECREE

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Respondents, Henry A. Barnes, Director of Department of Traffic Engineering of Baltimore City, and the Mayor and City Council of Baltimore, a municipal corporation, by Thomas N. Biddison, City Solicitor, Edwin Harlan, Deputy City Solicitor, Hugo A. Ricciuti and Francis X. Gallagher, Assistant City Solicitors, in response to the Bill for Declaratory Decree, say as follows:

1. The Respondents are without knowledge of all of the facts and contents of the first paragraph of said Bill and, therefore, neither admit nor deny the allegations contained therein.

2. The Respondents are without knowledge of all of the facts and contents of the ~~first~~ second paragraph of said Bill and, therefore, neither admit nor deny the allegations contained therein.

3. The Respondents admit the allegations contained in Paragraph 3 of said Bill.

4. The Respondents admit the allegations contained in Paragraph 4 of said Bill.

5. The respondents in answer to Paragraph 5, sub-sections (a), (b), (c), (d), (e), (f), (g) and (h) of said Bill deny that the said "Administrative Regulation No. 7" is illegal and ultra vires but on the contrary that said "Administrative Regulation No. 7" is a proper, valid and constitutional enactment adopted pursuant to Article 66½ Section 151 (A) of the Annotated Code of Maryland 1951 edition, as amended, and Section 2(K)of Article 38 of the Baltimore City Code 1950 edition, as amended by Ordinance No. 786 of July 14, 1953; and in furhter answer to the specific allegations of the aforementioned sub-sections of Paragraph 5 of said Bill, say:

COPY

(a) That the Respondent, Henry A. Barnes, in promulgating "Administrative Regulation No. 7" is effectuating the purposes and intent of Ordinance No. 786 approved July 14, 1953, and Section 151 (A) of Article 66½ of the Annodated Code of Maryland, said purpose and intent being the protection and preservation of the public health, safety and general welfare of the citizens of Baltimore.

(b) That the Respondent, Henry A. Barnes, by the promulgation of "Administrative Regulation No. 7" has not exercised any legislative power or function but on the contrary is performing those duties, obligations and functions necessary to effectuate the design and purpose of Ordinance No. 786 and Section 151 (a) of Article 66½ of the Maryland Code;

(c) That the penal provisions provided for in "Administrative Regulation No. 7" are not in any wise or manner in conflict with Ordinance No. 786.

(d) That no conflict exists between Section 8 of "Administrative Regulation No. 7" and Section 176 (g) of Article 66½ of the Maryland Code.

(e) That the "Administrative Regulation No. 7" does not in any manner attempt to regulate the speed of vehicles on any road, street, lane or alley within the corporate limits of Baltimore City which has been designated or maintained as a part of the State or Federal highway system or an extension thereof.

(f) That "Administrative Regulation No. 7" is not self-contradictory but on the contrary is a concise, succinct and constitutional regulation designed to carry out the purpose and intent of Ordinance No. 786 and Section 151 (A) of Article 66½ of the Code.

COPY

(g) That "Administrative Regulation No. 7" is not in any way in exercise of any legislative or judicial function and any and all penal provisions of said "Administrative Regulation No. 7" can only be enforced through judicial process in accordance with due process of law.

(h) That Ordinance No. 786 is a proper, valid and constitutional enactment of the Mayor and City Council of Baltimore designed to provide for the safe and expeditious movement of traffic in the City of Baltimore and to protect the safety of the citizens using its streets.

6. The Respondents in answer to Paragraph 6(a) of said Bill say that Ordinance No. 786 does not attempt to delegate legislative power to the Director of Traffic, but authorizes him to exact compliance with the provisions thereof and with such regulations as he has adopted or will adopt for their enforcement and gives him only such limited discretion as is necessary in the proper execution of a law or regulation designed to expedite movement of traffic and protection of the citizens in the use of streets in Baltimore City. (152 Md - Creaghan case)
Miss B: Don't type this

The Respondents in answer to Paragraph 6(b) of said Bill say that the Director of Traffic in the promulgation of rules and regulations is guided in the exercise of his limited discretion by what is necessary to provide for the safe and expeditious movement of traffic in Baltimore City and to protect the safety of the citizens using the streets of Baltimore City and that the exercise of said limited discretion for the protection of the public health and safety cannot be prescribed within precise limits.

The Respondents in answer to Paragraph 6(c) say that Ordinance No. 786 does not contravene Section 6(24) of the Charter and Public Local Laws of Baltimore City, and in further answer to said Paragraph 6(c) say that the proviso in Section 6(24) of the Charter of Baltimore City

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"that no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner" has reference to the executive powers of the Police Commissioner and does not restrict the power of the City to legislate on a matter within the scope of police power.

7. The Respondents in answer to Paragraph 7 of said Bill say that the Director of Traffic, Henry A. Barnes, pursuant to the authority vested in him by Ordinance No. 786 shall expend such sums as are necessary for the proper performance of the duties, obligations and functions imposed by the provisions of said Ordinance No. 786, in order to effectuate the design and purpose of said Ordinance, namely, the protection of the public health, safety and general welfare.

deny all allegations contained in said paragraph 8 and further say

8. The Respondents in answer to Paragraph 8 of said Bill ~~say~~ that the Director of Traffic, Henry A. Barnes, shall perform all of the duties and obligations imposed upon him by the validly, properly and constitutionally adopted Ordinance No. 786.

deny all allegations in said paragraph and further

9. The Respondents in answer to Paragraph 9 of said Bill, say that the Director of Traffic, Henry A. Barnes, in the performances of the duties and obligations imposed upon him by said Ordinance No. 786 has validly and legally spent and has spent public funds to effectuate the design and purpose of said Ordinance, namely, the protection of the public health, safety and general welfare.

WHEREFORE, having fully answered said Bill, your Respondents pray that the same be dismissed with proper costs.

Be 5-1500 Fourth Floor Tel. Date 5 6043 Be 5-6369

178 short

HYMAN A. PRESSMAN Plaintiff	*	IN THE
	*	CIRCUIT COURT
vs.	*	OF
HENRY A. BARNES, Director of Traffic	*	BALTIMORE CITY
and	*	
THE MAYOR AND CITY COUNCIL OF BALTIMORE a municipal corporation	*	
Defendants	*	

****

BRIEF OF HENRY A. BARNES AND THE MAYOR & CITY COUNCIL OF BALTIMORE

The Defendants deem it advisable, at the outset, to call to the attention of this Honorable Court, the conduits of authority involved in this case. The Legislature of Maryland has accorded the Mayor and City Council of Baltimore certain powers under the City's charter. The defendants respectfully submit that there are at least three charter powers involved in traffic regulation. They are found in Section 6, subsection (29) (d) subsection (39), and subsection (24).

Section 6 reads:

> The Mayor and City Council of Baltimore shall have full power and authority to exercise all of the powers heretofore or hereafter granted to it by the Constitution of Maryland or by any Public General or Public Local Laws of the State of Maryland; and in particular, without limititaion upon the foregoing; shall have power by ordinance, or such other method as may be provided for in its Charter, subject to the provisions of said Constitution and Public General Laws:
>
> (29) (d) To regulate the use of streets and public ways by persons, animals and vehicles; to prohibit the use of such streets and public ways by any or all motor vehicles under such circumstances or upon such conditions as it may, from time to time, by ordinance, deem necessary or expedient in the interest of the public.
>
> (39) To pass any ordinance, not inconsistent with the provisions of this Charter or the laws of the State, which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, as well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City.
>
> (24) To have and exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise said power within said limits; provided, however, that no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner.

Pursuant to the above powers, the Mayor and City Council have passed from time to time certain ordinances relating to Traffic. Many of these ordinances

are now contained in Article 38 of the Baltimore City Code, 1950, titled "Traffic Regulations."

In addition to the Charter powers hereinbefore enumerated relating to the regulation of traffic within Baltimore City by the Mayor and City Council, the Legislature of Maryland, by Public General Laws, has also empowered Baltimore City and others to regulate certain facets of traffic activity. Of particular importance are two sections in Article 66 1/2, Annotated Code of Maryland, 1951 edition, as amended. These sections are 151 and 151 A, the latter having been passed during the 1955 session of the General Assembly.

> Section 151 (Powers of Local Authorities.) (a) The provisions of this Article shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from -
>
> (1) Regulating the standing or parking of vehicles;
>
> (2) Regulating traffic by means of peace officers or traffic control devices;
>
> (3) Regulating or prohibiting processions or assemblages on the highways;
>
> (4) Designating particular higways as one way highways and requiring that all vehicles thereon be moved in one specific direction;
>
> (5) Regulating the speed and weight of vehicles in public parks;
>
> (6) Designating any intersection as a stop intersection requiring all vehicles to stop at one or more entrances to such intersections.
>
> (b) No ordinance or regulation enacted under subdivisions (4), (5), or (6) of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affacted asmay be appropriate.

> Section 151A-Notwithstanding any other provision of this article, the appropriate authorities of any incorporated city, town or village are authorized and empowered to regulate the speed of vehicles on any road, street, lane or alley which is within their respective corporate limits and which has not been designated or maintained as a part of the State or federal highway system or an extension thereof.

Pursuant to Section 151 of Article 66 1/2, the Mayor and City Council have enacted a number of ordinances relating to the subjects set forth. These, also, are contained in Article 38 of the Baltimore City Code, entitled "Traffic Regulations."

The importance of Sections 151 and 151A of Article 66 1/2 cannot be overemphasized particularly when it is observed that Section 1 of Article 66 1/2 states that the provisions of that article are " to be State-wide in their effect." Section 1 continues:

> and except to the extent that they may be specifically authorized by other provisions of this Article or by Public Local Laws providing for the regulation of taxicabs and the operators thereof, heretofore or hereafter enacted, no City County or other Municipal subdivision of this State shall have the right to make or enforce any local law, ordinance or regulation upon any subject for which provision is made in this Article...."

Sections 151 and 151A of Article 66 1/2 are specific authorizations to certain of the subdivisions to enact legislation on subjects also contained in Section 66 1/2. It follows, then, that by virtue of the Charter powers set forth and the specific authorizations in Section 66 1/2 of the Annotated Code of Maryland, that the Mayor and City Council have power to regulate certain areas relating to ~~traffic and~~ motor vehicles. Specifically, Article 66 1/2 Section 151A enumerates the ~~regulation~~ control of speed as one of the areas of regulation granted to the City.

The next step is to trace the use of these powers over traffic. Necessarily, of course, this also involves the question of delegation of a part of these powers. The Defendants respectfully include the following background information relating to Baltimore City Traffic Regulations and Ordinances to assist this Honorable Court.

Prior to the enactment of state-wide laws by the Maryland General Assembly, ~~Widely known exceptions,~~ the Mayor and City Council, by ordinance, passed most legislation relating to vehicles within Baltimore City. Such ordinances were placed in the City Codes, under the title, "Carriages, Horses, Boats and Scows". See the Baltimore Code Code of 1893, Article 8 and the Baltimore City Code of 1927, Article 4. On occasion, the City Council, by ordinance, delegated to the Police Commissioner of Baltimore City certain discretion in making rules and regulations pertaining to limited aspects of traffic and vehicles.

In 1924, the Maryland General Assembly empowered the Police Commissioner of Baltimore City to make rules and regulations for the control and conduct of all vehicles and vehicular traffic in the City of Baltimore. This law was challenged in State v. Stewart, 152 Md. 419 and struck down as invalid because the Legislature was "attempting to legislate upon a subject contained in the special grant of powers to the city." The power referred to was the charter power which gave the Mayor and City Council express power " to regulate the use of streets, highways, roads, public places by foot passengers, animals, vehicles, cars, motors, locomotives." This power (wording) is almost identical with that contained in the present Charter, Section 6 (29) (d).

When the Act of the Legislature was struck down, Baltimore City found itself without proper traffic regulations and immediately the City Council passed Ordinance 823 of 1926, a very comprehensive act designed to meet the challenge of increasing congestion and new problems presented by the automobile. The Police Commissioner was, under this ordinance, given some discretion in connection with certain matters including the issuance of "No Parking" permits. He was obliged, of course, to enforce all the provisions of the ordinance.

From 1926 until 1950, the City Council delegated very few of its powers over traffic and continued to provide for all traffic regulations by ordinance. Of course, it had to take cognizance of the state-wide jurisdiction over certain areas, such as speed, beginning in 1916, declared exclusive by the Maryland General Assembly. Its sphere of activity was limited to the extent that the State had "taken over".

Finally in 1950 - following the post-war "boom" in the production of automobiles and the immense problems that such a "boom" brought to a large municipality - the City Council created by ordinance No. 1678, the "Traffic Commission of the City of Baltimore" and delegated to that body certain powers over the control of motor vehicles in Baltimore City.

In 1953, upon the hiring of the Defendant Henry A. Barnes, the City Council passed ordinance 786 which amended ordinance 1678 of 1950-51 so that wherever Ordinance 1678 had read "Traffic Commission of Baltimore City", it would now read "Director of Traffic of Baltimore City" (Henry A. Barnes in this case) or "Department of Traffic Engineering." This was the only major change accomplsihed by Ordinance 786 of 1953. The powers given to the Traffic Commission were now given verbatim to the Traffic Director, and the Traffic Commission was, in effect, abolished.

Pursuant to section 2(k) of ordinance 786, the Traffic Director issued a number of directives known as "Administrative Regulations." Upon the passage of Section 151 A of Article 66 1/2 by the ~~Gener~~ General Assembly of Maryland in 1955 empowering the appropriate authorities of any municipality to set speeds, with certain limitations, the Traffic Director issued "Administartive Regulation # 7" dealing with speeds within the corporate limits of Baltimore City. The plaintiff, Hyman A. Pressman, contests the validity of Ordinance 786, and impliedly, of course, the validity of Ordinance 1678 of 1950-51 (now repealed) together with "Administrative Regulation # 7" issued pursuant to Ordiannce 786 of 1953.

Ordinance 786 of 1953

It would seem appropriate to consider carefully the contested ordinance 786 of 1953. The plaintiff attached a copy of the said ordinance to his Bill and introduced it into evidence at the hearing as "Plaintiff's Exhibit # 1".

Section 1. (a) of the ordinance states that the office of Director of Traffic of Baltimore City is being created "in order to provide for the safe and expeditious movement of traffic in the City of Baltimore, and to protect the safety of the citizens using its streets.." After providing for certain modes of operation of the Department of Traffic Engineering in Section 1 (b), (c) and (d), Section 2 states that" The Director of Traffic of the City of Baltimore be and is hereby granted full power and authority and directed to do any and all of the following:

A. Collect and analyze data relating to traffic needs.
B. Conduct analyses and investigations of traffic conditions.
C. Prepare and submit an annual report.
D. Make receommendations for traffic improvements which cannot be accomplished under his own powers.
E. Hold public hearings.
F. Establish and determine designs etc. relating to traffic control devices.
G. Designate "Stop" intersections or through highways.
H. Approve or disapprove bus stop locations of the Baltimore Transit Company.
I. Have and exercise all control over traffic that the Police Commissioner for the City of Baltimore had prior to the time this ordinance becomes effective, including the power to establish special "NO PARKING" spaces; provided, however, that the Director of Traffic of the City of Baltimore shall not have the power to make and enforce special regulations with regard to traffic as set forth in section 87 of this Article.
Note: Section 87 of Article 38 was introduced into evidence by the Plaintiff and marked "Plaintiff's Exhibit # 3".
J. Install such traffic signs etc. as heretofore or hereafter directed by ordinance or heretofore directed by the Police Commisioner of Baltimore City.
K. Adopt and promulgate rules, regulations, orders, and directives relating to, or in connection with, the movement of vehicular ~~traff~~ and pedestrian traffic in the City of Baltimore.

Sections ~~2(i)~~ 2 (I) and 2 (K) are set out verbatim inasmuch as these are the two particular sections of the Ordinance which the plaintiff attacks.

At the end of Section 2, the ordinance reserves to the City Council two important powers over traffic:

1) the establishment of general parking restrictions.
2) the establishment of one-way streets.

So, in effect, three powers in all are specifically withheld from the Director of Traffic - the two set forth above and the power of the Police Commissioner to make special regulations with regrad to traffic , at certain hours when the safety or conveneience of the public will be best subserved thereby. (Article 38, Section 87 , referred to in 2 (I) of the ordinance 786.)

Sections 3, 4, 5, and 6 of the ordinance relate to matters not properly at issue here. But section 7 , (a), (b), (c) and (d) makes it unlawful for interference with traffic devices and signs, for refusing to comply with orders and directives of the Traffic Director issued pursuant to 2(k), for refusing to comply with directives on signs or markers erected by authority of the Traffic Director and finally provides that any person doing any of the prohibited acts "shall be guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction, shall be fined for each and every offense not more than $100.00.

Section 8 repeals laws and regulations inconsistent with the ordinance or directives of the Traffic Engineer and Section 9 contains the usual clause as to separability and invalidity.

Summary

To review - ordinance 786 of 1953 does not give all power over traffic to the Traffic Director. In fact, it specifically withholds three important powers. The purpose and design of the ordinance is stated at the very beginning -" to provide for the safe and expeditious movement of traffic in the City of Baltimore, and to protect the safety of the citizens using its streets." Certain courses of action in connection with the exercise of the Traffic Director's powers are made mandatory. Section 2 states that the Director of Traffic is "directed to do" certain things. These requirements precede the rule-making power in 2(k) and the plaintiffs submit that this sequence demonstrates that the City Council intended that these requirements limit the discretion of the Traffic Director and that they should be read in conjunction with the language referring to the safe and expeditious movement of traffic and citizen safety. In so doing, we contend, sufficient guides are provided and discretion is limited. To be any more specific would be to defeat the very purpose of the ordinance - the use of expert judgment and experience under varying conditions.

Delegation of Powers + Sufficiency of Standards

The plaintiff assails section 2(k) of Ordiance 786 of 1953 because, he alleges, said section delegates legislative functions to an administrative official and fails to provide sufficient standards to guide the Director of Traffic. The defendants deny this contention and submit to this Honorable Court a number of Maryland and out-of-state cases demonstrating that section 2(K) is a valid enactment. The following Maryland cases are in point: Petrushansky v. State, 182 Md. 164, Schneider v. Pullen, 198 Md. 64, Tighe v. Osborne, 149 Md. 349, Tighe v. Osborne, 150 Md. 452, Mayor & City Council v. Bloecher et al. 149 Md. 648, Portsmouth Stove & Range Co. v. Mayor & City Council of Baltimore, 156 Md. 244, Creaghan v. Mayor & City Council of Baltimore, 132 Md. 442 , Mayor & City Council of Baltimore v. Wolman, 123 Md. 310, State v. Hyman, 98 Md. 596, State v. Broadbelt, 89 Md. 565, Deems v. Mayor & City Council of Baltimore, 80 Md. 164.

In the Petrushansky case, the Appellant challenged a conviction growing out of his refusal to obey the orders of the Baltimore City Health Commissioner to clean up filthy premises pursuant to Ordinance 384 of 1941. Ordinance 384 of 1941 was described as adding new sections to the Code " requiring that dwellings be kept free and clean from dirt, filth, rubbish, garbage and similar matter, and from vermin and rodent infestation, and in good repair fit for human habitation, and authorizing the Commissioner of Health of Baltimore City to issue orders compelling the compliance with said provisions, or to correct the condition, at the expense of the property owner, and charge the property with a lien to the extent of the necessary repairs."

Section 156 G of Ordinance 384 of 1941 read:

> The Commissioner of Health is hereby authorized and empowered to make and adopt such rules and regulations as he may deem proper and necessary for the enforcement of this ordinance for the better protection of the health of the City.

Section 156 H read:

> Any person violating any of the provisions of this ordinance or any lawful order or regulation made and adopted by the Commissioner of Health in pursuance thereof, shall be guilty of a misdemeanor and shall be subject to a fine not exceeding $50.00 and each day's violation shall constitute a separate offanse.

The appellant challenged the ordinance in several grounds. One was that the ordinance unlawfully delegates to the Commssioner of Health arbitrary discretion whether to enforce it or not. The Court dismissed this objection saying that the Commssioner is presumed by law to do his duty, he has no choice as to offenders; he must treat all alike or subject himself to indictment for non-feasance or misfeasance.

It was also objected that no sufficient standards were defined in the ordinance for the guidance of the Commissioner of Health as to the conditions under which he is to act. The Court replied, "We fail to see how filth can be classified, graduated or standardized, except as filth. We have a standard, which we have thought and still think, is the better test, and that is that the application shall be to all alike. The only purpose of this ordinance is to protect and preserve the health of all the people of Baltimore; and the Commissioner of Health is obliged to treat all alike..." "If the Commissioner acts arbitrarily, unreasonably or exceeds his power those injured thereby may obtain relief from the Courts."

To the criticism that the Commissioner of Health had unbridled power under the ordinance, the Court quoted from State v. Hyman, 98 Md. 596:

> It may be conceded that some of these provisions, if harshly administered may be or become oppressive; but it by no means follows that the law itself is therefore not a legitimate exercise of the police power. It is not to be assumed that the public functionary will act in an oppressive or unlawful manner. Discretion must be reposed somewhere. If an official should transcend the legitimate limits of the authority with which the statute clothes him, the injured party is not without redress.

Finally, it was objected that no review of an order of the Commissioner was permitted to test its validity. But the Court of Appeals replied that the validity of the ordinance is for the courts which are always open for the injured and oppresed; its propriety, which is in the judgment of the Commissioner of Health, can be reviewed by a jury if there is an indictment. The Court concluded that there was nothing in the ordinance which"denied a citizen his day in court. "

The defendants contend that the Petrushansky case is extremely close to our own. A comparison of the ordinance 786 of 1953 and ordinance 384 of 1941 shows that the former provides a much more thorough set of standards than the latter. Yet the latter was upheld when attacked as not containing sufficient standards. Evidently the Court felt that the general design of the ordinance "for the better protection of the health of the City" was sufficient.

In Schneider v. Pullen, supra, the appellant sought a declaratory judgement and injuctive relief against the State Superintendet of Schools to prohibit the operation of Article 77, Section 14 (a) of the Annotated Code of Maryland as amended by Chapter 489 of the Acts of 1947, requiring that every private educacational institution must secure a certificate of approval from the State Superintendent of Schools before it could continue or begin to operate in Maryland.

It was contended that the " act is an unlawful delegation of legislative power because it provides no definite standards by which the State Superintendent is to be guided in issuing his regulations and in granting permits."

Chapter 489 of the Acts of 1947 read, in part:

> The State Superintendent of Schools shall issue a certificate of approval to any applicant operating or proposing to operate such a private school or educational institution whose conditions of entrance, scholarship, educational qualifications, standards and facilities are adequate and appropriate for the purposes, program, training and courses to be taught or given therein.

Section (d) read:

> The State Superintendet of Schools is hereby authorized to issue rules and regulations not inconsistent with this sub-title to supplement and implement the purposes and provisions hereof...provided 30 day notice is given....opportunity to be heard as to any objections. Such rules and regulations, when approved by the State Board of Education and filed with the Clerk of the Court of Appeals and the Bureau of Legislative Reference shall have the full force and effect of law.

Section (e) read:

> Any person, firm or corporation or association violating any of the provisions of this sub-title, or violating the rules and regulations promulgated under the provisions hereof shall be deemed guilty of a misdemeanor and fined not less than $50.00 nor more than $100.00 for each offense.

The Court rejected the contention that the act was an unlawful delegation of legislative power ebecause it provided no definite standards. The Court said

> It is, of course, a well-recognized rule that there must be guides and standards given to an administrative body or official where he has to grant permits or make regulations. The Acts which establsihed Section 14 (A) as a part of the education laws of the State cover all kinds of schools including trade schools, [illegible] It is said that some regulation was necessary because many mushroom schools of various characters sprang up in order to take advantage of government subsidies gievn to veterans of World War II. To cover all types of trade schools, as well as other educational institutions, there could be no one set of standards preseribed, but that need not invalidate the delegation of power if the general standards, broad though they may be, are sufficiently explicit to limit the State Superintendent of Schools in his actions and not permit him to exercise an arbitrary power....We think that the standards prescribed for so broad a subject are sufficiently definite for us to hold that the statute is not subject to constitutional objection on that ground.

The Schneider case, the defendants maintain, is another example on point which demonstrates that the Maryland Court of Appeals recognizes that there are some fields - education here, traffic in [illegible] own case - which can operate on a statutory basis only under broad, general rules and that the element of"expertise" must be given sufficient room to operate so as to effectuate the purpose of the statute.

The two zoning cases both known as Tighe v. Osborne, supra, furnish excellent examples of what limitations the Court of Appeals feels must be placed upon administrative bodies by statute. In the first case, the Court of Appeals found that Ordinance 334 was invalid because the delegation of powers to the Zoning Board to refuse or grant a permit was accompanied by standards that were too "broad and indefinite." Under ordinance 334, the Zoning Commissioner could refuse to grant a permit if the building was to be placed or its location would "in any way, menace the public welfare."

In objecting to the use of the standard "public welfare," the Court of Appeals pointed out that such a term could embrace matters outside the police power and that the police power itself "even as thus defined, vague and vast as it is, has its limitations, and it cannot justify any act which violates the prohibitions, express or implied, of the State or Federal Constitution." "..general welfare"...said the Court, " as defined by the lexicographers, would make the constitutions so much waste paper."

Upon the invalidation of ordinance 334, the City Council of Baltimore passed ordinance 522 of 1925, which eliminated the use of the term "public welfare, " and provided that the Zoning Commissioner could refuse to grant a permit, if the structure or its use "would menace the public security, health or morals." At page 458, the Court said, when considering whether the new ordinance was also invalid, " These things (public security, health and morals), as we have seen, are proper objects of police power and many of the matters which can legitimately be said to affect any of them, as well as many matters which cannot be properly said to affect them, have been passed upon in previous decisions of this court." The new ordinance was upheld.

Ordinance 522 also set out other guides, which in addition to the three standards above mentioned, made it apparent "that the ordinance does not vest an unlimited discretion in the zoning commissioner." And finally the Court said at page 459, "there is ample authoruty to sustain even broader delegations of power to administarive boards or subordinate offcials."

In discussing the entire field of administrative power, the Court made the following extremely important comment:

> The field has become so vast, and the things to be considered so enlarged in number and so interrelated with one another; that it has been found practically impossible to provide in laws and ordinances specific rules and standards by which every conceivable situation can be measured and determined. The result has been that we have turned more and more to the plan of providing in our laws and ordinances general rules and standards, and leaving to administrative boards and agencies the task of acquiring information, working out details, and applying these rules and standards to specific cases. This is not considered a delegation of legislative authority, though it probably does represent an expansion of administarive power.

> Such ordinances represent no change in principle; they merely indicate that the Courts, faced at least by an apparent necessity, have relaxed to some extent the particularity with which they formerly required the laws and ordinances to set out the rules and standards by which the delegated power was to be limited, and whatever may be said of the wisdom of this relaxation, no doubt can now be entertained as to its sanction by the great weight of authority in this country.

Here again, the defendants feel impelled to comment that increased complexity of the automobile age and its attendant problems makes this language and the general tenor of these zoning cases of particular importance when considered in conjunction with an ordinance purporting to meet the demands of mid-twentieth century urban traffic.

An injunction against the enforcement of ordinance 431 of 1925 was sought by the appellee in Mayor & City Council v. Bloecher et. al., supra. The ordinance was known as the "Meat Ordinance" and its purpose was stated to be the regulation of the meat business so as to more effectively preserve and protect the public health. The law required that meats condemned by the Inspectors of the Health Department had to be delivered to a rendering plant and destroyed. For failure to do so, the Commissioner of Health could revoke the license of the slaughterhouse.

The ordinance was attacked as giving the Commissioner of Health too much power and discretion. In addition, the standards were alleged to be non-existent or vague. The Court of appeals said, in upholding the ordinance, " It is now too late to deny the power of the state to regulate any business which if unregulated may menace the public health." Further, the Court said that it did not construe the ordinance to delegate to the meat inspectors an arbitrary discretion, unguided and uncontrolled by any standards, rules or regulations. "They (the inspectors) cannot under any power conferred by the ordinance refuse to pass products which are wholesome and fit for human food, unless they condemn them, and they cannot condemn them for the sole reason that the establishments in which they are produced do not conform to standards, regulations and requirements not fixed by the ordinance."

The Appellate Court continued, " It is true that the section fails to define the word sanitary, but it is evident from the whole enactment and from the particular context, that it is to be given its ordinary and accustomed meaning. " "And as thus defined, it means that which pertains to health, with especial reference to cleanliness and freedom from infective and deleterious influences."

It is interesting to note that, in this case, the meats had to be destroyed. The questions of due process certainly entered into this case inasmuch as property was involved. Yet, even though the ordinance required destruction of property without any immediate outside check on the condemned meats, its validity was upheld.

Ordinance 786 of 1953, under attack in our own case, has no such harsh property effect on property. Certainly, in its application it is much less oppressive than that just considered and upheld.

In the Portsmouth Stove & Range Co. v. Mayor & City Council of Baltimore, supra, the appellant sought to restrain the City from enforcing ordinance 436 of 1925 which provided that no gas tubing devices shall be offered for sale in Baltimore until registered with the Health Commissioner and that the Commissioner could require certain tests to be conducted by specified non-City agences. (Example - Johns Hopkins U., United States Bureau of Standards.) The Commissioner could revoke the license of a dealer and rrevoke registration of a product upon a hearing. The ordinance was challenged as an unlawful delegation of authority.

Rejecting this contention, the Court of Appeals denied that the outside testing was an unlawful delegation of authority and said that the testing was for the information of the Commssioner in making his determinations. So the revocation was the act of the Commissioner and not the non-City agency. But the Court indicated that even if the final determination of the outside agency was the actual mode of revocation that it might not be inclined to call such a procedure an unlawful delegation of power. Citing St. Louis Iron etc. v. Taylor, 210 U.S. 281, the Court noted that the determination of an outside testing agency - the American Railway Association - was binding under the statute on the Interstate Commerce Commssiion and that the Supreme Court had found that this was not an unlawful delegation of power.

The appelelnat had also contended in the Portsmouth case that the Health Commssioner was given instruments of oppression under the ordinance. But the Court replied:

> This is only a fear and apparently not well founded. The ordinances are designed, and their purpose is, to protect the health and promote the safety of the people of Baltimore, and as such are within the range of the police power....If in the exercise of his discretion, the Commissioner acts arbitrarily or unreasonably exceeds the powers conferred by the ordinance, those injured thereby can obtain relief from the courts.

In our own case, we have an ordinance which seeks to protect the safety of the citizens using our streets. Certainly, under the language above cited, such a purpose is within the range of the police power.

In the "Milk Cases", Creaghan v. Mayor & City Council, supra, and Deems v. Mayor & City Council, supra, two ordinances relating to the inspection of milk sold within Baltimore City were attacked as attempts to delegate legislative power to the Commissioner of Health. Both attacks failed and both ordinances were held valid.

In the Creaghan case, Ordinance 262 was assailed because the Commissioner of Health was given the power to grant or revoke permits. It was contended that this conferred upon him unlimited discretion. The Court quoted liberally from the Deems case and then added:

> It cannot be said that every grant of power to executive or administrative boards of officials, involving the exercise of discretion and judgment, must be considered a delegation of legislative authority. While it is necessary that a law, when it comes from the lawmkaing power, should be complete, still there are many matters relating to methods or details, which may be by the Legislature referred to some designated ministerial officer or body. All such matters fall within the domain of the right of the Legislature to authorize an administrative board or body to adopt ordinances, rules, by-laws, or regulations in aid of the successful execution of some general statutory provision.
>
> The ordinance does not attempt to delegate legislative power to the Commissioner of Health but authorizes him to exact compliance with the provisions thereof and with such regulations as he has adopted for their enforcement, and gives him only such discretion as is necessary in the proper execution of a law or regulation to prevent the introduction and sale of impure meilk etc. in Baltimore City.

An ordinance authorizing the Board of Health and its inspectors to destroy bad milk was attacked in the Deems case. An injunction to restrain the Board of Health from destroying milk its inspectors classified as adulterated was sought and refused. The destruction of the milk was included under the penalty provision of the ordinance and no appeal was provided from the decision of an inspector to destroy the milk.

The Court of Appeals held that on the basis of "the immediate promotion of the public good," the milk could be destroyed. Otherwise, the Court observed, the end sought to be provided by the ordinance - that is, the daily shipment of bad milk into homes - would be defeated. The ordinance was good, said the Court, as long as " proper means and instruments" were used by the inspection officers.

Here again, we have the Court upholding an ordinance which allows the destruction of property without immediate recourse being provided in the ordinance to save the property, by appeal. In this respect, the Deems case parallels the Bloecher case.

In Mayor & City Council of Baltimore v. Wollman, supra, ordinance 332 of 1913 was attacked, among other reasons, because it allowed the clerks of the city markets to fix the rents of all stands, stalls, shambles, benches or places in any market of Baltimore City. It was contended that the fixing of rents for the market stalls was a legislative function which could not be delegated. The court rejected this reasoning., saying:

> We think that the fixing of the rent of the market stalls in the City of Baltimore is an administrative and not a legislative function, and may be delegated to the clerks of the market as provided by the ordinance in question.

In State v. Hyman, supra, from which language was quoted in the Petrushansky case, the defendant was indicted under a Sweat Shop Act of 1902 which provided that no room of a tenement or dwelling house could be used for certain employment purposes without a permit from the Bureau of Industrial Statistics which could not grant the permit until after an inspection of the premises. The Chief of the Bureau had the right to revoke the permit at any time that the health of the community or that of the employees might require it. The defendant had failed to obtain a permit. In affirming the conviction and upholding the statute, the Court said that it was "obvious that the statute was passed in furtherance of the protection of the health of the community."

In State v. Broadbelt, supra, the defendant was indicted under a Maryland law requiring registration of cattle with the State Livestock Sanitary Board. The Board could prohibit the sale and shipment of milk from the premises until such a time as the premises conformed with certain sanitary rules. The statute was upheld as constitutional. The Court said, " the entire act is strictly a police regulation , enacted for the purpose of preserving the public health. No question as to delegation of powers was raised but the Court said that the act" is entirely free from constitutional objections."

Next we come to a number of out of state cases which have special bearing on our problem. Of paramount importance is the case of Houck v. Minton , 212 SW 2nd 891. The Charter of Nashville, Tenn. gave to the Traffic Commission of that City "full and exclusive legislative authority to adopt and publish traffic regulations..." Then it set up specific instances of what it meant by traffic regulations; one of these examples was regulating speed where the Commission felt that some speed less than 30 mph was proper. This charter provision was attacked as a delegation of legislative power to a municipal agency and therefore invalid. But the Court held " The power to regulate and control traffic is a power that may be delegated to a municipality by the Legislature, or to some designated agency of such municipality. "

At page 895, the Court said:

> When we come to consider the question of regulating traffic, especially within a congested area, it would be impossible to do so in many instances by a direct ordinance of a city council. In emergencies the public safety cannot wait for legislative action by a slowly-moving legislative council, nor can the latter be expected to declare by ordinance what is a hazard to public travel in changing situations and conditions. It must be left to the sound discretion of some agency of the local government.

In the Houck case, it was pointed out that the very words "legislative authority" were used in the charter. But the Court held that such authority was, in fact, administrative. It should also be noted that the City Council provided the penalties by ordinance for violations of the Traffic Commission's rules and regulations.

In Shipman v. Johnson, 80 S.E. 2d 717, 89 Ga. App. 620, an ordinance of the City of Atlanta authorizing the City Traffic Engineer to determine and designate intersections where particular hazard existed and to cause Stop Signs and traffic control signs to be erected, when needed, was attacked as being too vague and indefinte to be enforceable and also as a delegation of legislative power to an administrative officer. The Court upheld the ordinance. The Court said further that the constitutional provisions for separation of legislative, executive and judicial powers applies only to state and not municipal functions.

(Continuation of Pressman brief)

In Borum v. Graham, 4 Cal. App. 2d, 331, 40 P. 2d. 866, an ordinance authorizing the Chief of Police of Pasadena to mark crosswalks where, in his opinion, there was particular danger for pedestrians was held valid although attacked as a delegation of legislative powers. The Court held that in the proper enforcement of its ordinances, the city legislature may delegate the power to an officer to determine some fact or state of things upon which the ordinance makes it own action depend.

The following significant language was employed (at page 276) by the Court in Gould et. al. v. Western Dairy Products Inc. et. al. 55 P. 2d 274 in which a Burbank ordinance giving the Board of Police Commissioners authority to erect stop signs was upheld against the contention that it was an unlawful delegation of powers:

> Even a casusal observer of governmental growth and development must have observed the ever-increasing multiplicity and complexity of administrative affairs - national, state, municipal - and even the occasional reader of the law must have perceived that from necessity, if for no better grounded reason - it has become increasingly imperative that many quasi-legislative and quasi-judicial functions, which in smaller communities and under more primitive conditions were performed by the legislative or judicial branches of the government, are entrusted to departments, boards, commissions and agents. No sound objection can longer be successfully advanced to the growing method of transacting public business. These things must be done in this way or they cannot be done at all, and their doing, in a very real sense, makes for the safety of the republic and is thus sanctioned by the higher law.

Further sensitivity of the courts to the traffic problems of urban areas was evidenced in City of Cleveland v. Gustafson, 180 N.E. 59, 124 Ohio St. 607 which held as long ago as 1932 that an ordinance authorizing a safety director to establish safety zones does not represent an invalid delegation of legislative powers. At page 60, the Court sounded thetheme that was to be heard over and over again as the automobile age gathered momentum:

> Increasing population, and an increase in the means and methods of travel, present to our legislative bodies their most complex problems. They occur and recur.
>
> It must be borne in mind that all of us must surrender something for the sake of government. When the motorist starts, he wants to go. So does the pedestrian. So does the passenger in the streetcar. The city council must look after the safety and general welfare of all at the same time and under all circumstances. Council cannot legislate with exact nicety, nor is it required so to do in the exercise of its police power. The Almighty Himself would find it a stupendous task to take care of our moving thousands without making some slight discrimination somewhere.

For other cases holding that control over traffic placed in the hands of administrative boards and agents is not a delegation of legislative power, see Taylor v. Roberts, 84 Fla. 654, 94 So. 874, Staley v. Vaughn, 17 P.2d 299, 92 Colo. 6, Veneman v. Jones, 20 N.E. 644, 118 Ind. 41, Miller v. Cincinnati Wholesale Grocery Co., 29 Ohio N.P., N.S. 43.

On October 12, 1954, Judge Raymond W. Fox filed a written opinion in the Circuit Court for the County of Kalamazoo, Michigan involving ordinance 442 (of 1954) of Kalamazoo, Michigan. The provisions of this ordinance are even broader than those of our own inasmuch as the City Traffic Engineer of Kalamazoo is given, among others, power to establish one-way streets, the power to increase or decrease certain speed regulations and the power to prohibit or restrict parking of vehicles on any street. The case, Stevens v. City of Kalamazoo and James R. Wichman, City Traffic Engineer, upheld the validity of the ordinance. Judge Fox gave considerable weight to the fact that registered motor vehicles in the County of Kalamazoo increased since 1946 from 28,000 to 48,000. Inasmuch as the contested Regulation # 24, fixing a one-way street, had been approved by the City Commission, as required by law, and since there was no showing "that the same is not made in a manner consistent with prevailing traffic safety practices nor in the best interests of the municipality," Judge Fox upheld the regulation issued under the ordinance. Judge Fox commented:

> It is impossible for the City Commission or the Legislature of our State to anticipate all of the very many details and contingencies that may arise in the handling of such a complex problem as regulating traffic upon the public highways.

Even in the rather antique case of Shreveport v. Herndon, 105 S. 244, 159 La. 113 (1925) cited by the plaintiff in oral argument as holding that certain delegations of power over traffic were invalid, two discerning judges filed dissents. One of them was written:

> Traffic regulation is becoming a matter of supreme importance in this age; and details need constant changing to keep up with the rapid growth of traffic. If these details must be written into law, any attempt to regulate traffic may be given over at the start; for in the time it takes to pass an ordinance conditions may have already so changed as to make the ordinance no longer practicable; and what was best yesterday may be all wrong today and good again tomorrow.

From the foregoing cases, the defendants contend that that it is obvious that the more recent thinking by our courts has concluded that the regulation of traffic by an administrative agency - when accompanied by proper safeguards - is not an illegal delegation of legislative powers particularly in a congested urban area such as Baltimore. These cases include, of course, the regulation of speed.

We submit, therefore, that proper standards have been provided in ordinance 786 and that the regulation of speed is not a legislative function.

Director of Traffic Is Appropriate Authority

The plaintiff asserts in his Bill that the authority to set speed limits in Baltimore City has not been delegated to Henry A. Barnes, Director of Traffic. We deny this. The defendants maintain that Section 151 A of Article 66 1/2 of the Maryland Code together with the operation of Section 2 (K) of ordinance 786 of 1953, makes it abundantly clear that the Traffic Director of Baltimore is the proper authority.

Section 151 A of Article 66 1/2 of the Maryland Code (Chapter 43 of the Acts of the General Assembly of 1955) provides that"...the appropriate authorities of any incorporated city...are authorized and empowered to regulate the speed of vehicles...." Note that the bill does not say "Mayor and City Council" or any such equivalent terminology.

Ordinance 786 of 1953 gives to the Director of Traffic of Baltimore City , with but three enumerated exceptions , authority to adopt and promulgate rules, regulations, orders and directives relating to, or in connection with "the movement of vehicular and pedestrian traffic in the City of Baltimore." Certainly this language is broad enough to encompass the regulation of speed. True, the City Council did not have the power to regulate speed upon the passage of ordinance 786 but this should not prohibit the language of the ordinance from operating in such a manner as to give full effect to the wording.

As Sutherland on Statutory Construction says at Volume 2, Sec. 5101,

> Legislative standards are generally couched in terms which have considerable breadth. Therefore, a statute may be interpreted to include circumstances or situations which were unknown or did not exist at the time of the enactment of the statute.

One of the most common examples of a statute operating together with a prior enactment to accomplish some end is the inclusion of a new prohibited act among others formerly prohibited with the result that the penal section also provides punitive force for a violation of the new prohibition.

BILL OF COMPLAINT

5. That the said "Administrative Regulation No. 7" is illegal and ultra vires for the following reasons:

a. That the Defendant Henry A. Barnes, in issuing said regulation, has undertaken to perform the legislative function of setting speed limits, which power has not been delegated to him, nor can it lawfully be delegated to him.

b. That the Defendant Henry A. Barnes has undertaken to exercise the legislative power of providing the penalties for violations, which power has not been delegated to him, nor can it lawfully be delegated to him.

c. That the penalties set forth in the said regulation are in conflict with the penalties prescribed in the said Ordinance No. 786.

d. That the fine of "not less than $100.00" provided in the said regulation for operating a motor vehicle at a rate of speed greater than 70 miles per hour is in conflict with Section 176(g) of Article 66½ of the Annotated Code of Maryland, 1951 Edition, which establishes the penalty for such violation to be "a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) or to be imprisoned for not less than thirty (30) days nor more than one (1) year, or to both fine and imprisonment, forthe first offense".

e. That the said regulation sets the speed limits on all roads, streets, lanes and alleys of Baltimore City including those which have been designated as a part of the State or Federal highway system or an extension thereof, which is in violation of the provisions of Chapter 43 of the Laws of Maryland of 1955, Section 151 A of Article 66½ of the Annotated Code of Maryland, 1951 Edition as amended, which authorizes local authorities to regulate the speed of vehicles within their corporate limits on any road, street, lane or alley "which has not been designated or maintained as a part of the State or Federal highway system or an extension thereof".

f. That the said regulation is self-contradictory in that it refers to the speed limits as being "prima facie" in some parts and "conclusive" in another part of the regulation.

g. That the said regulation invades the judicial as well as the legislative powers by providing what shall constitute conclusive evidence at the trial of any person charged with the violation of the regulation.

h. That paragraph 2K of said Ordinance No. 786, pursuant to the authority of which the said regulation was promulgated, is invalid, as is hereinafter set forth.

6. That paragraphs 2I and 2K of the said Ordinance No. 786 are invalid for the following reasons:

a. That said paragraph 2K delegates legislative functions to an administrative official.

6. b. That said ordinance does not supply proper standards for the guidance of the Director of Traffic in adopting and promulgating "rules, regulations, orders and directives relating to, or in connection with, the movement of vehicular and pedestrian traffic in the City of Baltimore "as provided in paragraph 2K of said ordinance.

c. That said ordinance violates Section 6(24) of the Charter and public Local Laws of Baltimore City, 1949 Edition, which provides "that no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner" by ordaining in paragraph 2I of the said ordinance that the Director of Traffic shall "have and exercise all control over traffic that the Police Commissioner for the City of Baltimore had prior to the time this ordinance becomes effective, including the power to establish special "NO PARKING' spaces" and by giving the said Director of Traffic powers in the said ordinance which conflict, impede, obstruct, hinder and interfere with the powers of the said Police Commissioner.

7. That the Defendant H enry A. Barnes has expended and unless restrained by this Honorable Court in ends to expend and will expend many thousands of dollars of the revenues of the Mayor and City Council of Baltimore derived from taxation and from the sale of certificates of indebtedness of the Mayor and City Council of Baltimore in pursuance of said illegal Administrative Regulation No. 7 and said invalid provisions of Ordinance No. 786 for the erection of invalid signs and other devices.

8. That the erection of said invalid signs will inform motorists of speed limits which are not legally correct and thereby cause confusion and unending litigation. That such invalid signs would tend to cause accidents, thereby subjecting the Mayor and City Council of Baltimore to damage suits and causing your Orators and other taxpayers unnecessary loss and special damage.

COPY

CITY SOLICITOR'S OFFICE

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY, that on this day of August, 1955, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared _____ and made oath in due form of law that the matters and facts contained in the aforegoing Answer to Bill for Declaratory Decree are true as therein set forth, to the best of his knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.

_____
Notary Public

COPY

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Notary Public

ROUGH DRAFT 8/17/55

COPY

Pressman case

ANSWER TO BILL FOR DECLARATORY DECREE

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Respondents, Henry A. Barnes, Director of Department of Traffic Engineering of Baltimore City, and the Mayor and City Council of Baltimore, a municipal corporation, by Thomas N. Biddison, City Solicitor, Edwin Harlan, Deputy City Solicitor, Hugo A. Ricciuti and Francis K. Gallagher, Assistant City Solicitors, in response to the Bill for Declaratory Decree, say as follows:

1. The Respondents are without knowledge of all of the facts and contents of the first paragraph of said Bill and, therefore, neither admit nor deny the allegations contained therein.

2. The Respondents are without knowledge of all of the facts and contents of the first paragraph of said Bill and, therefore, neither admit nor deny the allegations contained therein.

3. The Respondents admit the allegations contained in Paragraph 3 of said Bill.

4. The Respondents admit the allegations contained in Paragraph 4 of said Bill.

5. The respondents in answer to Paragraph 5, sub-sections (a), (b), (c), (d), (e), (f), (g) and (h) of said Bill deny that the said "Administrative Regulation No. 7" is illegal and ultra vires but on the contrary that said "Administrative Regulation No. 7" is a proper, valid and constitutional enactment adopted pursuant to Article 66½ Section 151 (A) of the Annotated Code of Maryland 1951 edition, as amended, and Section 2(K)of Article 38 of the Baltimore City Code 1950 edition, as amended by Ordinance No. 786 of July 14, 1953; and in furhter answer to the specific allegations of the aforementioned sub-sections of Paragraph 5 of said Bill, say:

COPY

(a) That the Respondent, Henry A. Barnes, in promulgating "Administrative Regulation No. 7" is effectuating the purposes and intent of Ordinance No. 786 approved July 14, 1953, and Section 151 (a) of Article 66½ of the Annodated Code of Maryland, said purpose and intent being the public health, safety and general welfare;

(b) That the Respondent, Henry A. Barnes, by the promulgation of "Administrative Regulation No. 7" has not exercised any legislative power or function but on the contrary is performing those duties, obligations and functions necessary to effectuate the design and purpose of Ordinance No. 786 and Section 151 (a) and Article 66½ of the Maryland Code; and

(c) That the penal provisions provided for in "Administrative Regulation No. 7" are not in any wise or manner in conflict with Ordinance No. 786.

(d) That no conflict exists between Section 8 of "Administrative Regulation No. 7" and Section 176 (g) of Article 66½ of the Maryland Code.

(e) That the"Administrative Regulation No.7 does not in any manner attempt to regulate the speed of vehicles on any road, street, lane or alley within the corporate limits of Baltimore City which has been designated or maintained as a part of the State of Rederal highway system or an extension thereof.

(f) That "Administrative Regulation No. 7" is not self-contradictory but on the contrary is a concise, succinct and constitutional regulation designed to carry out the purpose and intent of Ordinance No. 786 and Section 151 (a) of Article 66½ of the Code.

COPY

(g) That "Administrative Regulation No. 7" is not in exercise of any legislative or judicial function and any and all penal provisions of said "Administrative Regulation No. 7" can only be enforced through judicial process in accordance with due process of law.

(h) That Ordinance No. 786 is a proper, valid and constitutional enactment of the Mayor and City Council of Baltimore designed to provide for the safe and expeditious movement of traffic in the City of Baltimore and to protect the safety of the citizens using its streets.

6. The Respondents in answer to Paragraph 6(a) of said Bill say that Ordinance No. 786 does not attempt to delegate legislative power to the Director of Traffic, but authorizes him to exact compliance with the provisions thereof and with such regulations as he has adopted or will adopt for their enforcement and gives him only such limited discretion as is necessary in the proper execution of a law or regulation designed to expedite movement of traffic and protection of the citizens in the use of street in Baltimore City.

The Respondents in answer to Paragraph 6(b) of said Bill say that the Director of Traffic in the promulgation of Rules and regulations is guided in the exercise of his limited discretion by what is necessary to provide for the safe and expeditious movement of traffic in Baltimore City and to protect the safety of the citizens using the streets of Baltimore City and that the exercise of said limited discretion for the protection of the public health and safety cannot be prescribed within precise limits.

The Respondents in answer to Paragraph 6(c) say that Ordinance No. 786 does not contravene Section 6(24) of the Charter and Public Local Laws of Baltimore City, and in further answer to said Paragraph 6(c) say that the proviso in Section 6(24) of the Charter of Baltimore City

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"that no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner" has reference to the executive powers of the Police Commissioner and does not restrict the power of the City to legislate on a matter within the scope of police power.

7. The Respondents in answer to Paragraph 7 of said Bill say that the Director of Traffic, Henry A. Barnes, pursuant to the authority vested in him by Ordinance No. 786 shall expend such sums as are necessary for the proper performance of the duties, obligations and functions imposed by the provisions of said Ordinance No. 786, in order to effectuate the design and purpose of said Ordinance, namely, the protection of the public health, safety and general welfare.

8. The Respondents in answer to Paragraph 8 of said Bill say that the Director of Traffic, Henry A. Barnes, shall perform all of the duties and obligations imposed upon him by the validly, properly and constitutionally adopted Ordinance No. 786.

9. The Respondents in answer to Paragraph 8 of said Bill say that the Director of Traffic, Henry A. Barnes, in the performances of the duties and obligations imposed upon him by said Ordinance No. 786 has validly and legally spent and has spent public funds to effectuate the design and purpose of said Ordinance, namely, the protection of the public health, safety and general welfare.

WHEREFORE, having fully answered said Bill, your Respondents pray that the same be dismissed with proper costs.

ROUGH DRAFT 8/17/55

COPY

Pressman case

ANSWER TO BILL FOR DECLARATORY DECREE

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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(a) That the Respondent, Henry A. Barnes, in promulgating "Administrative Regulation No. 7" is effectuating the purposes and intent of Ordinance No. 786 approved July 14, 1953, and Section 151 (a) of Article 66½ of the Annodated Code of Maryland, said purpose and intent being the public health, safety and general welfare, the protection and preservation of the citizen of Balto.

(b) That the Respondent, Henry A. Barnes, by the promulgation of "Administrative Regulation No. 7" has not exercised any legislative power or function but on the contrary is performing those duties, obligations and functions necessary to effectuate the design and purpose of Ordinance No. 786 and Section 151 (a) and Article 66½ of the Maryland Code;

(c) That the penal provisions provided for in "Administrative Regulation No. 7" are not in any wise or manner in conflict with Ordinance No. 786.

(d) That no conflict exists between Section 8 of "Administrative Regulation No. 7" and Section 176 (g) of Article 66½ of the Maryland Code.

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(f) That "Administrative Regulation No. 7" is not self-contradictory but on the contrary is a concise, succinct and constitutional regulation designed to carry out the purpose and intent of Ordinance No. 786 and Section 151 (a) of Article 66½ of the Code.

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(g) That "Administrative Regulation No. 7" is not an exercise of any legislative or judicial function and any and all penal provisions of said "Administrative Regulation No. 7" can only be enforced through judicial process in accordance with due process of law.

(h) That Ordinance No. 786 is a proper, valid and constitutional enactment of the Mayor and City Council of Baltimore designed to provide for the safe and expeditious movement of traffic in the City of Baltimore and to protect the safety of the citizens using its streets.

6. The Respondents in answer to Paragraph 6(a) of said Bill say that Ordinance No. 786 does not attempt to delegate legislative power to the Director of Traffic, but authorizes him to exact compliance with the provisions thereof and with such regulations as he has adopted or will adopt for their enforcement and gives him only such limited discretion as is necessary in the proper execution of a law or regulation designed to expedite movement of traffic and protection of the citizens in the use of streets in Baltimore City.

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"that no ordinance of the City or act of any municipal officer shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner" has reference to the executive powers of the Police Commissioner and does not restrict the power of the City to legislate on a matter within the scope of police power.

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8. The Respondents in answer to Paragraph 8 of said Bill say that the Director of Traffic, Henry A. Barnes, shall perform all of the duties and obligations imposed upon him by the validly, properly and constitutionally adopted Ordinance No. 786.

9. The Respondents in answer to Paragraph 8 of said Bill say that the Director of Traffic, Henry A. Barnes, in the performances of the duties and obligations imposed upon him by said Ordinance No. 786 has validly and legally spent and has spent public funds to effectuate the design and purpose of said Ordinance, namely, the protection of the public health, safety and general welfare.

WHEREFORE, having fully answered said Bill, your Respondents pray that the same be dismissed with proper costs.

STATE V STEWART, 152 Md. 419 (Decided March 3, 1927)

Chapter 436 of 1924 of the Legislature empowered the Police Commissioner of Baltimore City to make rules and regulations for the control and conduct of all vehicles and vehicular traffic within the City of Baltimore. Defendant indicted for parking violation issued thereunder. The statute was challenged as being a public local law in conflict with an express power granted to the City under its charter, e.g. the Mayor and City Council have power to legislate to " regulate the use of streets, highways, roads, public places by foot passengersm animals, vehicles, cars, motors, locomotives.." The Court agreed

The Court held that the Legislature "was attempting to legislate upon a subject contained in the special grant of powers to the city.

"The enforcement of the laws local to Baltimore City is committed to the Police Commissioner, in the execution of the police power enjoyed by the City.."

(Note: The lower court had reached the same conclusion.)

As soon as this lower court decision was made, the City Council passed Ordinance 823 of 1926 approved by the Mayor September 28, 1926.

Ordinance 823 of 1926 was extremely comprehensive: It did the following:

1) Set up the Central Business District
2) Provided for no parking on certain streets at certain times.
3) Provided certain exceptions to No Parking rules- physicians etc.
4) provided for the erection of signs relating to rules set forth
5) fire plug parking prohibition
6) prohibited parking in front of residence deterimental to resident
7) prohibited obstructions in streets
8) Provided for No Parking permits in front of Business Houses but permits were to be issued by the Police Commiss oner " in his discretion with such restrictions and limitations as he may fix."
9) It implied a certain amount of control by the Commissioner in carrying outthe ordinance

   Section 67 read as follows

   It shall be unlawful for any person to fail, neglect or refuse to comply with any instruction or direction on any post, standard, sign or other device, created by authority of the Police Commissioner, or with any directing lines or marks painted in the roadway, or upon any curb or pavement, by authoruty of the said Commissioner, for the regulation of traffic and parking on the public highways
10) provided a general penalty clause -misdemeanor fine $1.00 to $25.00

From this point on, the Council legislates over this area down to the creation of the Traffic Commission Ordinance 1678 (1950 -51). Then by ordinance 786 of 1953, Barnes comes in and all functions of Traffic Commission now become those of the Department of Traffic Engineering and the Traffic Director.

The vast majority of ordinance which now constitute Article 38 of the City Code were passed after Ordinance 823 of 1926 except those relating to bicycles and other subjects - such as horses etc - applicable before that time.

Prior to 1926, Traffic ordinances were placed under Article 4 of the Baltimore City Code of 1906 entitled "Carriages, Carts and Hacks."

SCHNEIDER VS. PULLEN, 198 Md. 64

Bill for declaratory judgment and injunctive relief against the State Superintendent of Schools to prohibit operation Artivle 77, Section 14 (a) as amended by Chapter 489 of the Acts 1947 requiring every private educational institution to secure a certificate of approval from the Superintendent of Schhols before it may begin or continue to operate in Maryland. Appellant operates a barber school since 1913. He sues for himself and others similarly situated.

The main contention is that "the act is an unlawful delegation of legislative power because it provides no definite standards by which the State Superintendent is to be guided in issuing his regulations and in granting permits."

Court refused this argument saying:

It is, of course, a well-recognized rule that there must be guides and standards given to an administrative body or official where he has to grant permits or make regylatiions. The Acts which established Section 14(A) as a part of the education laws of the State cover all kinds of schools including trade schools. It is said that some regulation was necessary because many mushroom schools of various characters sprang up in order to take advantage of government subsidies given to veterans of World War II. To cover all types of trade schools, as well as other educational institutions, there could be no one set of standards prescribed, but that need not invalidate the delegation of power if the general standards, broad though they may be, are sufficiently explicit to limit the State Superintendent of Schools in his actions and not permit him to exercise arbitrary power.....We think that the standards prescribed for so broad a subject are sufficiently definite for us to hold that the statute is not subject to constitutional objection on this ground.

Note: Chapter 489 of the Acts of 1947 really had no standards at all. The only thing it provided as a check on the discretion of the Commissioner was a system of appeals.

The only apt langauge is " The State Superintendent of Schools shall issue a certificate of approval to any applicant operating or proposing to operate such a private school or educational institution whose conditions of entrance, scholarship, educational qualifications, standards and facilities are adequate and appropriate for the purposes, program, training and courses to be taught or given therein.

Section (d) of the Bill provides,

The State Superintendent of Schools is hereby authorized to issue rules and regulations not inconsistent with this sub-title to supplement and implement the purposes and provisions hereof....provided 30 day notice is given ...opportunity to be heard as to any objections. Such rules and regulations, when approved by the State Board of Education and filed with the Clerk of the Court of Appeals and the Bureau of Legislative Reference shall have the full force and effect of law.

(e) Any person, firm or corporation or association violating any of the provisions of this sub-title, or violating the rules and regulations promulgated under the provisions hereof shall be deemed guilty of a midemeanor and fined not less that $50.00 nor more than $100.00 for each offense.

Shyslocked - no help

MAYOR & CITY COUNCIL OF BALTO.V BLOECHER et al 149 Md. 648

Injunction requested against enforcement of Ordinance 431 of 1925 as unconstitutional and void. Ordinance known as the Meat Ordinance and its purpose was to regulate that business so as to more effectively preserve and protect the public health. Condemned meats had to be delivered to a rendering plant and destroyed or Commissioner could revoke license of slaughterhouse.

Objection based on these propositions

a) The ordinance gives the Commissioner of Health too much power and discretion through his inspectors.
b) the standards is non-existent or vague
c) that the ordinance limits the scope of appeal from decisions.

Duties of Inspectors set forth in ordinance and in addition Section 10 read " said inspectors shall perform such duties ... as may be presecribed by the Commissioner of Health."

Court said as to (a) above, "It is now too late to deny the power of the state to regulate any business which if unregulated may menace the public health." The Court said as the objection that the act delegated to the meat inspectors an arbitrary discretion, unguided and uncontrolled by any standards, rules or regulations, under which they could act without any legitimate or legal reason, that it did not believe the ordinance could be so construed. "They (inspectors) cannot under any power conferred by the ordinance refuse to pass products which are wholesome and for for human food, unless they condemnthem, and they cannot condemn them for the sole reason that the establishments in which they are produced do not conform to standards, regulations and requirements not fixed by the ordinance."

As to (b) which ties in with (a), said " It is true that the section fails to define the word sanitary, but it is evident from the whole enactment and from the particular context that it is to be given its ordinary and accustomed meaning." "And as thus defined, it means that which pertains to health, with especial reference to cleanliness and freedom from infective and deleterious influences.

As to (c) which objected to the fact that the ordinance limited the jurisduction of the Baltimore City Court to a consideration of the legality of the act or acts of the persons charged with the administration of the law, the Court said that it had found in Goldman v Crowther, 147 Md. 310 that the Mayor and Coty Council might by ordinance provide for appeals from the acts the governmental agencies, engaged in executing the ordinances and the administering the government of that City, to the Baltimore City Court.

TIGHE VS. OSBORNE (ZONING CASES) 150 Md. 452, 149 Md. 349

In the first case, Ordinance No. 334 was found to be unconstitutional because of the delegation of powers to the Zoning Board was too broad and indefinite. The City Council then passed Ordinnace No. 522 of 1925 which amended the first and this was also challenged as an improper delegation of legislative powers to an administrative body. Second ordinace found valid.

Comparison of the Two Ordinances:

Old ordinance - The Zoning Commissioner could refuse to grant a permit if the building was to be put or its location would " in any way, menace the public welfare." - This was the crux of the objection. See 150 Md. 457

New Ordinance - The Zoning Commissioner could refuse to grant a permit, if the structure or use of it"would menace the public security, health or morals." - Note "no mention of public welfare."

At page 458, the Court said, "These things (public security, health and morals) , as we have seen, are proper objects of the police powerm and many of the matters which can legitimately be said to affect any of them, as well as many matters which cannot be properly said to affect them, have been passed upon in previous decisions of this court.

The ordinance also set out other considerations, which in addition to the three test above recited, made it apparent "that the ordinance does not vest an unlimited discretion in the zoning commissioner." The Court said, at page 459, "And finally, there is ample authority to sustain even broader delegations of power to administraive boards or subordinate officials.

Very important language, after general discussion:

"The field has become so vast, and the things to be considered so enlarged in number and so interrelated with one another; that it has been found practically impossible to provide in laws and ordinances specific rules and standards by which every conceivable situation can be measured and determined. The result has been that we have turned more and more to the plan of providing in our laws and ordinances general rules and standards, and leaving to administrative boards and agencies the task of acquiring information, working out details, and applying these rules and standards to specific cases. * This is not considered a delegation of legislative authority, though it probably does represent an expansion of administartive power.

"Such ordinances represent no change in principle; they merely indicate that the Courts, faced at least by an apparent necessity, have relaxed to some extent the particularity with which they formerly required the laws and ordinances to set out the rules and standards by which the delegated power was to be limited, and whatever may be said of the wisdom of this relaxation, no doubt can now be entertained as to its sanction by the great weight of authoirty in this country."

The crucial difference between the two ordinances seems to have been that the defintiion of "public welfare" was broader in scope than the definition of police power, because as the Court pointed out " the police power even as thus defined, vague and vast as it is, has its limitations, and it cannot justify any act which violates the prohibitions, express or implied, of the State or Federal Constituion."

" .. general welfare, as defined by the lexicographers, " would make the constitutions so much waste paper."

CREAGHAN V MAYOR & CITY COUNCIL OF BALTO. 132 Md. 442

Bill for an injunction and declaratory decree aginst Ordinance No 262 of Baltimore, relating to Milk Inspection. Ordinance held valid.

It was chiefly contended

(a)that the ordinance attempts to confer upon the Commissioner of Health unlimited discretion in granting refusing and revoking permits therein provided for

(b) that it attempts to delegate legislative power to the Commissioner of Health "in that it attempts to empower him to make regulations for the sale of milk etc."

The Court quoted heavily from the Deems case, adopting all of its language and the further said:

It cannot be said that every grant of power to executive or administrative boards of officials, involving the exercise of dsicretion and judgment, must be considered a delegation of legislative authority. While it is necessary that a law, when it comes from the lawmaking power, should be complete, still there are many matters relating to methods or details, which may be by the Legislature referred to some designated ministerial officer or body. All such matters fall within the domian of the right of the Legislature to authorize an administrative board or body to adopt ordinances, rules, by-laws or regulations in aid of the successful execution of some general statutory provision.

" The ordinance (262) does not attempt to delegate legislative power to the Commisioner of Health but authorizes him to exact compliance with the provisions thereof and with such regulations as he has adopted for their enforcement, and gives him only such discretion as is necessary in the proper executiion of a law or regulation designed to prevent the introduction and sale of impure milk etc in Baltimore City.

PORTSMOUTH STOVE & RANGE CO. VS. MAYOR AND CITY COUNCIL OF BALTIMORE , 156 Md. 244

Injunction to restrain the Mayor and City Council from enforcing Ordinance 436 of 1925 which provided that no gas tubing device shall be offered for sale in Baltimore until registered with the Health Commissioner and the Commissioner could require certain tests to be conducted by specified non-city agencies. (ex. Johns Hopkins, United States Bureau of Standards etc.) Commissioner could revoke license of a dealer and revoke registration of a product upon a hearing

Challenged as

a) unlawful delegation of authority
b) possible that Health Commissioner has instruments of oppression under ordinance.

Note: Section 11 of Ordinance reads:

The Commissioner of Health in collaboration with the Gas Reference Committee as in the next succeeding section created, is hereby authorized and directed to prepare and promulgate such rules and regulations as may be necessary to carry out and enforce all the provisions of this ordinance, provided that all the rules and regulations so promulgated shall be pursuant to, but not inconflict with the provisions of this ordinance, and all rules and regulations promulgated as aforesaid shall be published and sent to each registrant and to any person applying therefor.

(The Gas Reference Committee had only an advisory role)

Section 13- Set up penalties for violation of provisions of this ordnance and further provided that conviction " shall render the license of the violator liable to revocation by the Commissioner of Health."

(No provision for appeal)

As to (a) above, the Court denied that outside testing was an unlawful delegation of authority and said that the testing was for the information of the Commissioner and that he acted on the information in making his determination. So the revocation was the act of the Commissioner and not the outside bureau. But the Court indicated that even if the final determination of the outside agency was the actual mode of revocation that it might not be inclined to call such a procedure an unlawful delegation of power. Citing St Louis Iron etc. vs. Taylor, 210 U S 281, the Court noted that the determination of a testing agency - American Railway Assoc - was binding under the statute on the Interstate Commerce Commission and was held not to be an unconstitutional delegation of power.

As to (b) above, the Court said

"This is only a fear and apparently not founded well. The ordinances are designed, and their only purpose is, to protect the health and promote the safety of the people of Baltimore, and as such are within the range of the police power....If in the exercise of his discretion, the Commissioner acts arbitrarily or unreasonably or exceeds the powers conferred by the ordinance, those injured thereby can obtain relief from the courts.

Cited by Pressman

MAYOR & CITY COUNCIL OF BALTIMORE V. WOLLMAN, 123 Md. 310

Ordinace No. 332 of 1913 provided in part, at Section 13:

> The clerks of the several markets, with the approval of the Board of Estimates, shall have power to fix the rent of all stalls, stands, shambles, benches or places in any market of Baltimore City..."

This sections was attacked, among others, on the grounds "that the fixing of rents for the market stalls is a legislative function which could not be delegated to the clerk, with the approval of the Board of Estimates. "

By charter, the City had the power to "erect, control, regulate and maintain markets and stalls within Baltimore City."

The Court said, in overruling the objection:

> The rule is plain and well established that legislative or discretionary powers or trusts devolved by law or charter on a council or governing body cannot be delegated to others, but ministerial or administrative functions may be delegated to subordinate officials.
>
> We think that the fixing of the rent of the market stalls in the City of Baltimore is an administrative and not a legislative function, and may be delegated to the clerks of the market as provided by the Ordinance in question.

STATE VS. HYMAN, 98 Md. 596

Defendant was indicted under a sweat shop act of 1902 (state law) . No room of a tenement or dwelling house was to be used for certain employment purposes, under the act, without a permit from Bureau of Industrial Statistics which would not be granted, under the law, ~~xx~~ until an inspection of the premises. Further the Chief of the Bureau had the right to revoke the permit at any time the health of the communityor that of the employees of dwellers may require it. The defendat had failed to obtain a permit.

The court said it was "obvious that the statute was passed in furtherance of the protection of the health of the community."

The language cited in Petrushansky is used naturally.

No question as to the constitutionality of the delegation of power to the Chief of the Bureau of Industrial Statistics.

PETRUSHANSKY v. STATE - 32 A2d 696 182 Md 164

Appellant was convicted under Baltimore City Ordinance 384 of 1941 relating to orders issued by the Commissioner of Health relating to filthy premises which was ignored. Ordinance challenged on the grounds that

a) That the ordinance unlawfully delegates to the Commissioner of Health an arbitrary discretion whether or not to enforce it.
b) No definite standards are defined in the Ordinance for the guidance of the Commissioner of Health as to the conditions under which he is to act.
c) No review of an order of the Commissioner is permitted to test its validity.

The ordinance was described as adding new sections to the Code "requiring that dwellings be kept free and clean from dirt, filth, rubbish, garbage and similar matter, and from vermin and rodent infestation, and in good repair fit for human habitation, and authorizing the Commissioner of Health of Baltimore City to issue orders compelling the compliance with said provisions, or to correct the condition, at the expense of thr property owner, and charge the property with a lien to the extent of the necessary expenses."

Section 156 G of the Ordinance read

> The Commissioner of Health is hereby authorized and empowered to make and adopt such rules and regulations as he may deem properr and necessary for the enforcement of this ordinance for the better protection of the health of the City.

Section 156 H read

> Any persons violating any of the provisions of this ordinance or any lawful order or regulation made and adopted by the Commissioner of Health in pursuance thereof, shall be guilty of a misdemeanor and shall be subject to a fine not exceeding $50.00 and each day's violation shall constitute a separate offense.

As to (a) above, the Court dismissed this objection saying that the Commissioner is presumed by law to do his duty, he has no choice as to offenders; he must treat all alike or subject himself to indictment for non-feasance or misfeasance.

As to (b) above, the Court said, "We fail to see how filth can be classified, graduated or standardized except as filth. We have a standard, which we have thought and still think, is the better test, and that is that the application shall be to all alike. The only purpose of the ordinance is to protect and preserve the health of the people of Baltimore; and the Commissioner of Health is obliged to treat all alike."...." If the Commissoner acts arbitrarily, unreasonably or exceeds his power those injured thereby may obtain relief from the Courts."

Further, the Court said that "The Charter tried, at least, to provide for a capable and impartial commissioner. To the criticism of the defendant that the Commissioner has unbridled power, theanswer is State v. Hyman, 98 Md 596, where it was said

> It may be conceded that some of these provisions, if harshly administered may be or become oppressive; but it by no means follows that the law itself is therefore not a legitimate exercise of the police power. It is not to be assumed that the public functionary will act in an oppressive or unlawful manner. Discretion must be reposed somewhere. If an official should transcend the legitimate limits of the authority with which the statute clothes him, the injured party is not without redress.

As to (c) above, the Court saidthat the validity of the ordinance is for the courts which are always opened for the injured and oppressed; its propriety, which is in the judgment of the Commissoner of Health, can be reviewed by a jury if there is an andictment. There is nothing in the ordinance which denied a citizen his day in court.

Shepherdized - No Help.

DEEMS V MAYOR AND CITY COUNCIL, 80 Md. 164

Request for an injunction to restrain the Board of Health of Baltimore from destroying milk that its inspectors classified as adulterated. Ordinance called for appointment of a chemical analyst and three inspectors. Ordinance allowed the destruction of the milk without mention of any appeal procedure in a given case, although some provision is made for a hearing by the Commissioner of Health.

Section 3 of the Ordinance read in part

> It shall also be the duty of the Board of Health to make such rules and regulations as may be required under this ordinance for the better protection of the health of the City.

The Court disposed of all questions summarily except whether the City could provide that its inspectors could destroy the milk. On the basis of the "immediate promotion of the public good", the Court said that the end sought to be provided by the ordinance - that is the daily shipment of bad milk into homes - would be defeated and that the ordinance was good as long as "proper means and instruments" were used by the inspection officers

Note that in this case, the destruction of the milk was classified under the penalty section of the ordinance by specific amendment.

Section 6 as amended read:

> And be it further enacted and ordained, That any person or persons who, violate, disobey, neglect, or refuse to comply with this ordinance shall be subject to a penalty of not less than 20 dollars nor more than 50 dollars for each offense; said fine to be collected as other fines and forfeitures are collected And the milkor food products in the possession of the person or persons so violating, disobeying, refusing or neglecting to comply with the provisions of this ordinance may be confiscated and destroyed by the Inpscetor examing the same.

Note also that no appeal is provided for the milk destruction nor does the ordinance say that a party aggrieved must be given a hearing by the Commisioner. It appears that hearings were in the discretion of the Commisiioner.

STATE V BROADBELT, 89 Md. 565

Defendant was indicted under a Md. law requiring registration of cattle with the State Livestock Sanitary Boad. The Board could prohibit the sale of milk and the shipment of milk from the premises until such a time as the premises conformed with certain sanitary rules.

Statute upheld as constitutional. The Court said "the entire act is strictly a police regulation, enacted for the purpose of preserving the public health".

No question as to delegation of power raised. But court concluded, that the act" is entirely free from constitutional objections."

G I VETERANS TAXICAB V. YELLOW CAB CO. , 65 A2d 173 - 192 Md. 551

Ordinance 201 of 1948 of the Mayor & City Council provided that the Police Commissioner of Baltimore Citycould no longer give exclusive use of certain places to certain taxi companies and all old exclusive stands were done away with. This ordinance was challenged, among other things, because the Charter of the City stated that "no ordinance of the City... shal conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner." Chapter 109 of the Acts of 1910 had given the Board of Police Commissioners authority to set aside and designate certain places in Baltimore for hackney carriages.

The Court found that the power to regulate taxicabs now was a function of the City Council and not the legislature although it was the legislature's at the time of the passage of the above act of 1910 (before Home Rule). The passage of the rdinance had the effect of limiting the exerO cise of the Police Board's power but the Act of 1910 had been local public law.

The Court found that the provision in the charter as to the powers of the Police Commissioner "would seem to have reference to his executive powers." The Court went on to say of the Charter provision:

> In any event, we think it does not restrict the power of the City, under the Home Rule Amendment, to legislate on subject matter within the scope of the police power, even though such legislation may add to or subtract from his duties as to local enforcement.

The Bill to declare the ordinance 201 unconstitutional was dismissed without leave to amend.

Held - ord. not in conflict with provision of Charter, that Power of Police Commissioner shall not be impeded by ord. etc.

Refers to Executive Powers

Shepardized - no change.

Comments Relating to Meaning of "Extensions thereof"
in 151 A of Article 66 1/2

We argue that there is a distinction between "extension" of the state highway system and "connection" with it. Our poisition is that highways within Baltimore City are connections and not extensions. Our highways are neither designated nor maintained by the State Roads Commission. We do our own marking. Barnes has changed the markings without permission. 89B of the Code seems to limit the SRC jurisdction to County Roads.

Lookingatthe the SRC map as to what it consdiers extensions demonstrates that these roads are the arteries of the greatest volume of traffic and congestion in Baltimore City. If these roads were meant to exempt from local speed regulation, then the act is a nullity as far as Baltimore City is concerned. We got relief where we least needed it and got none where we needed it the most.

Furthermore, if Baltimore City cannot increase the speeds on these roads which the State says are extensions, then no one has the power to do so. The State Roads Commission is forbidden by law to increase them.

Section 176 h reads, 66 1/2

> When the State Roads Commission shall determine upon the basis of an engineering and traffic investigation, that any prima facie speed limit hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist at any place upon any public higway within this State outside the corporate limits of ~~Baltimore~~ any municipality or upon any state maintained street within the corporate limits of any municipality, the SRC shall determine a safe reasonable prima facie speed limit..

SRC cannot increase the speed. If we can't, who can? The whole purpose of the act is defeated.

Federal or State Highway System or extension thereof.

Extension refers to System & Article 89 B. Sec 2 - defines Highway System - means owned by State - or from time to time designated as such by Comm. & maintained & operated by at Also 176 h of Art. 66 1/2 - Prohibits State from changing speed limit in Balto. City.

Article 89B - STATE ROADS
Annotated Code of Maryland, 1951

Sections in point:

Section 2 - "Definitions"

B (State Highway System) . The term "State Highway System" means that system of Roads which are from time to time owned by the State and which the State Roads Commission by resolution from time to time designates as State roads to be maintained and operated by the Commission.

Section 59 The State Roads Commission shall erect and maintain, out of the receipts of its office, along the rights of way of the State roads, the necessary signs, signals or markers for the purpose of directing the traveling public, warning them of danger, or for any other purpose which in the opinion of the Commission may be right or proper.

Note"State roads" afe defined as " any public road included in the State highway system.

Section 64 - Upon the request of the Board of County Commissioners of any county, the States Roads Commission shall furnish s aid board with plans and plats showing how the county road system of said county may best be improved as a concomitant to the State system. ...

The words or an extension thereof refers not to any mere physical extension, but rather an extension or future addition to a State Road System already in existence.

Does not mean physical extension or projection of the road-way or bed.

This is only proper interpretation that can be given to these words.

Refer to Section 176 H of Article 89 B

"EXTENSION"

35 CJS 289

The word is not a word of art, and, having no legal or technical significance, may mean whatever the parties intended when contracting. It has been defined generally as the act of extending or the state of being extended.....and more specifically , as an addition to existing facilities, the continuance of an existing thing, involving the idea of something pre-existing with which it is connected and is thereby enlarged.

143 NYS 52 (55)

Comments Relating to Allegations Concerning Penalties.

5 b of the Bill of Complaint alleges that Barnes has undertaken the legislative function of providing penalties, which power has not been delegated to him nor can be.

We admit that Administrative Regulation # 7 has penalties outlined therein but their inclusion is mere surplusage. Actaally the penalties are provided in Ordinance 786 of 1953, Section 7c which makes it unalwful to violate any of Barnes' regulations. 7d sets the penalty for violation of 7 c for each and every offense not more than $100.00. fine. The mention of fines in the Regulation is for the information of the public. Branes did not create the penalties in the Administartive regualtion, the City Council did.

5c of the Bill of complaint alleges that the penalties in Administrative Regulation # 7 are in conflict with the ordinance.

No fine set forth in # 7 is in excess of $100.00. The ordinance has a $100.00 ceiling but no minimum. In several places in # 7 a minimum has been set up $1.00 in one place, $10.00 in another and $100.00 in a third. But these minimums are not established by Barnes. Chief Judge Scherr of the Traffic Court in conference announced what minimums his Court would impose in certain cases by vitrue of Ordinance 786 of 1953. These minimums have been set forth in the regulations as information as to what the public may expect from the hands of the Traffic Court magistrates. They can change this minimum at any time and it is not the intent of the Regulation to attempt to prohibit them from doing so since such an attempt would be futile in any case.

5d of the Bill alleges that the penalty provided in # 7 is in conflict with the penalty provided in 66 1/2 for exceeding 70 mph. It is true that it is a different penalty but we deny it is in conflcit. The greatest penalty that can be imposed under Ordinance 786 is $100.00. Article 66 1/2 provides for a penalty of not less than $100.00 and not more than $1000.00 or imprisonment for not less than 30 days nore more than a year or both. The City under its ordinance cannot match the state's penalty. We have no power to imprison or fine over $100.00 . Yet if we have to set the same penalty that 66 1/2 does for exceeding 70 mph then the grant of power to set speeds is an absurdity. Section 151A of Aetivle 66 1/2/ begings with "Notwithstanding any other provision of this section." Certainly that makes it clear we are not bound by the penalties provided in 66 1/2/

AN ANALYSIS OF ORDINANCE NO. 786 of 1953

In general, this ordinance substitute "Director of Traffic of the City of Baltimore" wherever the word "Traffic Commission" appeared in Ordinance 1678 of 1950-51.

Section 1. (a) sets up the standards of operation at the very outset by stating that the office of Director of Traffic is created "in order to provide for the safe and expeditious movement of traffic in the City of Baltimore , and to protect the safety of the citizens using its streets."

It would appear that the ordinance is designed to operate both under the Police Powers of the City and also under Section 6 29 (d) of the Charter:

> "To regulate the use of streets and public ways by persons, animals and vehicles; to prohibit the use of such streets and public ways by any or all motor vehicles under such circumstances, or upon such conditions, as it may, from time to time, by ordinance deem necessary or expedient in the interest of the public. "

Section 2K, the more vigorously attacked section of the ordinance, gives the Director of Traffic power to adopt and promulgate rules and regulation orders and directives relating to, or in connection with the movement of vehicular and pedestrian traffic in the City of Baltimore.

However, certain exceptions are made

1) general parking restrictions are retained by the City Council
2) designation of one-way streets is retained by the Council
3) the power of the Police Commission under Article 38 Sec 87 to make and enforce special regulaions with regard to the traffic, at certain hours, when the safety or convenience of the public will be best subserved thereby.

So the grant of power is subject to specific important exceptions.

But implicit in the regulations is a directive that certain conduct and standards obtained therefrom will be followed. The Director of Traffic in section 2 of the ordinance at its ouset reads:

"The Director of Traffic of the City of Baltimore be and is hereby granted full power and authority and directed to do any and all of the following."

a) collect and analize data
b) conduct engineering analyses and investigations
c) make recommednadations to the Mayor & City Council to do those things which he cannot do.
d) hold public hearings, in number and type as he may deem necessary
e) submit an annual report
f) establish signs, markings devices etc.

Then, after all these are set out, he is authorized under 2K to issue his rules and regulations. Implicit in the placing of 2K after these requirements is the understanding that these courses of action are to be his guide.

To become any more specific in setting up guides and standards would be to do away with the discretion and expertise required in such a specialized field.

The penalty clause is provided: It shall be unlawful to for any person to violate any rule, regulation or order of the Director . But certainly one can have his day in court to attack any of his findings. The door to appeal is open.

WYATT V. BEALL 1 A2d 619

At page 624

"Regularly, under its charter, the city controls the opening and management of highways within its limits.."

City above refers to Baltimore City

Abstracts of Authorities Cited in Hyman Pressman's Brief, which are not Covered in City's Reply Brief.

164 MD 487 Sugar v. North Baltimore Methodist Protestant Church
Board of Zoning Appeals v. North Baltimore Methodist Protestant Church

Petition by the North Baltimore Methodist Protestant Episcopal Church and others by way of appeal from a decision of the BZA granting a permit to Sarah Sugar and others for the establishment of a delicatessen store at a certain location. From an order reversing the desision of the BZA, Sarah Sugar appealed. BZA also appealed. Appeals dismissed. The propriety of granting the permit turned on the validity of paragraphs 12 and 33 of the Zoning Ordinance. The relevant portions of Paragraph 12 indicated:

> "Use District Special Exceptions.
> The BZA may, in its discretion, in a specific case, and as provided in paragraph 33, permit where otherwise excluded or limited**********
> (c) Within one hundred feet of a boundary line between two use districts, any use permitted in that one of such two use districts which has the lower classification, provided such one hundred foot measurement shall not extend across a street."

The applicant's petition was for a permit in a specific case and the premises were within one hundred feet of the boundary line between a first commercial use district and a residential use district; and this distance, where so measured, did not extend across a street, and a confectionery and delicatessen store was a use permitted in the first commercial use district, which had a lower classification of permitted uses than the residential use district. Paragraph 33 provided:

> "Special Exceptions by Board of Zoning Appeals.
> The BZA may after public notice and hearing, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of this ordinance in harmony with its general purpose and intent as follows:
> (a) Grant a permit wherever it is provided in this ordinance that the approval of the BZA is required.
> (b) Grant a permit when there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of any of the provisions of this ordinance."

The court held these two provisions invalid, though it upheld the validity of the ordinance in general. By elaboration the court said that the ordinance was predicated on the theory that it would be uniformly and equally impressed upon all, but by the terms of Paragraph 12, a special

privilege would be bestowed in ppposition to the general benefit which had been the determinant of the boundary lines in the Zoning Ordinance. The most palpable vice was that Paragraph 12 constituted a permission to change the boundary line without reference to the public good, in the undefined and unlimited discretion of an administrative agency, ie: the BZA.

The vice of Paragraph 33 was that the only limitation on the discretion of the BZA was that it could make special exceptions to the terms of the ordinance "in harmony with its general purpose and intent." The power to "grant a permit when there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of any of the provisions of this ordinance" was especially obnoxious since "practical difficulties" and "unnecessary hardships" are too general and indefinite to furnish a satisfactory criterion. Similarly, the phrases "in appropriate Cases," "subject to appropriate conditions and safeguards," add nothing to definition. The result of these terms is to empower an administrative board of review to set aside the ordinance if any of these nebulous difficulties are encountered. This is a grant of undefined and unregulated discretion in an administrative body, which as an arbitrary and unlawful power cannot be sustained.

164 MD 147 Jack Lewis, Inc., v. Mayor and City Council of Baltimore, et al. 1932

Petition by Jack Lewis Inc., by way of appeal from a decision of the BZA and the Baltimore City Court denying a permit to open a funeral home in a residential use district. Affirmed. The appellant, an undertaker, contended that the refusal of the permit constituted a denial of due process of law, since it in effect amounted to a deprivation of his property without true authority. The ordinance attacked was No. 1247, passed on March 30th, 1931, and known as the Zoning Ordinance. The ordinance (which is not set out in the reported case) was upheld as to its general purpose in the protection of the public residential areas. However, sub sections g-3 of paragraph 32 and subsection b of paragraph 33 were each held invalid. The first subsection provided that the BZA should have the power; g-3:

> "To authorize upon appeal in specific cases such variance from the terms of this ordinance

> as is necessary to avoid arbitrariness and so that the spirit of the ordinance shall be observed and substantial justice done."

The second subsection bestowed upon the board the discretion to:

> "(b) Grant a permit when there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of any of the provisions of this ordinance."

The court observed, in discarding these provisions, that the BZA was given the power to set aside or annul an ordinance with no more definite standard than that such action may only be taken when there are "practical difficulties or unnecessary hardships". The grant of a power such as that conferred by those provisions to an administrative agency such as the BZA must, therefore, to be valid, be so defined and limited that both the citizen and the board may know with certainty what their rights, privileges and powers under it are. Any departures must be protected by definite guides and must not be left to untrammeled administrative official discretion.

(The invalidity of such provision of the ordinance does not affect the ordinances as a whole, and for this reason the appeal was denied.)

185 MD 266 J. Edwin Mugford, et al v. Mayor and City Council of Baltimore, et al. 1945

Taxpayer's suit to have a contract entered into by the city and the garbage collectors and street cleaners union declared void and to restrain the city from extending any preferential advantage to the union. Decree granting partial relief was granted and affirmed on appeal. The nature of the contract is not fully revealed by the reported case, but the bill of complaint indicated that it applied to hours, wages and working conditions. Furthermore, the city agreed to deduct union dues from the city employees who were also members of the particular union. The court declared that the contract was void, but permitted the city to deduct union dues from the city employees who were also members of the particular union, if such employees requested it and also if such employees would be allowed to discontinue such deductions when they so requested. The court in a two and a half page opinion indicated that the Department of Public Works could not bind the city by contract in any particular relative to working conditions, hours and wages either as to union employees or as to all employees in the same classifications. The court said:

> "To the extent that these matters are covered by the provisions of the City Charter, creating a budgetary system and a civil service, those provisions of the law are controlling. To the extent that they are left to the discretion of any City department or agency, the City authorities cannot delegate or abdicate their continuing discretion. Any exercise of such discretion by the establishment of hours, wages or working conditions is at all times subject to change or revocation in the exercise of the same discretion."

The court concluded that the contract attempted to delegate governing and discretionary power to the union. To uphold the contract would, as a practical matter, result in the City government being administered regardless of its charter.

180 MD 377 Maryland Theatrical Corporation v. George J. Brennan, 1942.

Suit to enjoin enforcement of a local law requiring the obtaining of a license for each public dance in the city. The Act was Section 776CA of Article 4, Code of Public Local Laws, 1930, and Section 942 of the Baltimore City Charter and Public Local Laws, 1938. It was a revenue measure and not a regulatory measure, as its prime purpose was the raising of money. Essentially, it provided that the Police Commissioner of the City of Baltimore could grant a license on payment of a permit fee of not less than $5 nor more than $100 for the holding of a public dance, entertainment, athletic contests or boxing matches. The amount of the license was to be determined solely in the Police Commissioner's discretion. The court held the act to be unconstitutional. The court said:

> "The usual rule with respect to delegations of the police power to administrative officials is that they must be surrounded with such safeguards that the official cannot arbitrarily, at his own will and pleasure, determine whether or not certain businesses or amusements can operate.....Had the legislature laid down any rules for the issuance of permits in Baltimore City by which certain types of entertainments or amusements would pay one fee, others a higher fee, and others the maximum, there would be no question as to the validity of the regulatory clause in the act...In the act before us, the authority to regulate by means of a fee was left to the uncontrolled discretion of the Police Commissioner. Financial regulation is of the most potent kind, and the power to fix the fee in this instance can readily be used to prohibit."

The court concluded:

> "The clause fixing the fees, in the Act before us, is so drawn as to come within the prohibitions against unlimited grant of power. It is an invalid exercise of the police power, and it cannot be made good merely because it is found in a revenue Act."

160 MD 653 County Commissioners v. Northwest Cemetery Company, 1931

Bill for an injunction brought by the County Commissioners of Prince George's County against the Northwest Cemetary Company to restrain the defendant from developing and maintaining a cemetery in that county because the company had not obtained permission for the purpose from the County Commissioners under Chapter 187 of the Acts of 1929 which provided:

> "It shall be unlawful for any person, firm or corporation to establish or maintain in Prince George's County a cemetery or graveyard...without written permission, first obtained of the County Commissioners of said county. Provided, however, that the written permission of the County Commissioners for the establishment of a cemetery shall not waive the provisions of any zoning law or any other law which applies to the establishment of a cemetery, the requirement of this section being intended as an addition to and not in substitution of any existing law or laws. Any person, etc., violating any provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five thousand dollars."

The Act went on to provide that the county commissioners should have the power to enjoin by law the establishment or maintenance of such cemeteries or to order their removal once established. The decree dismissing the bill for injunction was affirmed. The court indicated that there was no standard in the act by which a direction as to the grounds upon which permission to establish a cemetery might be properly granted or refused. The court cited authority, and continued saying:

> "The effect of those decisions is that a statute or ordinance which commits to a municipal or other governmental body or agency an indefinite authority to permit or forbid a lawful enterprise or property use is unconstitutional and void."

The court concluded:

> "It is because the omission to prescribe reasonably definite standards for the exercise of such an authority might result in arbitrary discrimminations, beyond the proper scope and purposes of the police power, that such enactments are held to be in conflict with the organic law. In accordance with that settled principle, we must hold, in agreement with the lower court, that the act under consideration is invalid."

182 MD 111 State Tax Commission v. Potomac Electric Power Company, 1943.

Proceeding by the Potomac Electric Power Company against the State Tax Commission and others, for the refund of recordation tax paid under protest by the utility upon the recordation of a counterpart mortgage in one county, after the original mortgage had been previously recorded in other counties. From an order of the trial court reversing the order

of the State Tax Commission disallowing the claim, the State Tax Commission and others appeal. Order affirmed. The utility company executed a trust mortgage in 1936 in Prince George's and Montgomery Counties. It the time of recording the original mortgage, no tax was required by Maryland law. The company sought to record a counterpart mortgage in Charles County in 1942, and it was required to pay recordation tax of $1500. In 1937 the Legislature passed the Recordation Tax Act, imposing a tax on every instrument recorded on or after June 1, 1937. The Recordation Tax Act of 1939, provided that no tax would be imposed for the recordation of any instrument securing a debt which merely confirms, corrects, modifies or supplements an instrument previously recorded. The Act further provided that any instrument or counterpart of any instrument previously recorded may be recorded in any other county or in Baltimore City without the payment of a tax.

Mr. Harlan: At this point Mr. Gallagher came in and told me to stress the cases covering delegation of authority. For that reason, I am not finishing this abstract.

147 MD 282 Daniel Goldman v. J.Frank Crowther, (Inspector of Buildings for Baltimore City) 1925.

The plaintiff owned property which is classified as part of a residence district under the Zoning Ordinance No 922. The plaintiff undertook to use the basement of his property for a tailor shop. He applied to the defendant for a permit to use the premises for a tailor shop, but he was refused the permit. The plaintiff thereupon sought a writ of mandamus to compel the city to issue to him a permit. The defense raised was that the permit was refused under authority of city ordinances vesting a discretion in the building inspector as to the issuance of permits in such cases. The ordinance provided that in the residence district no building or land should be used nor should any building be erected unless it was for a stipulated list of uses. (Dwellings, boarding houses, hotels, clubs, etc.) The ordinance contained a general provision authorizing the board of zoning appeals in appropriate cases, to determine and vary the application of the use district regulations established in the ordinance in harmony with their general purpose and intent, and then sets out and limits the extent of the authority thus given the board of zoning appeals to vary the terms of the ordinance. The ordinance indicates that where there are practical

difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, the BZA shall, with the concurring vote of five members, have the power in passing upon appeals, to vary or modify any of the regulations or provisions of this ordinance, relating to the use, construction, or alteration of buildings or the use of the land, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done. The rule that the BZA shall follow in deciding the various questions referred to in this ordinance, shall be the protection of living conditions as far as reasonable or the prevention of serious injury to the appropriate use of neighboring property. The Superior Court refused to issue a mandamus. On appeal this was reversed and the cause remanded. The court indicated that so much of the ordinance as attempts to regulate and restrict the use of property in Baltimore City was void, because it deprived the property owners of Constitutionally protected rights and secondly because such deprivation was not justified by any consideration for the public welfare, security, health, etc., and thirdly, because it does not require that the restrictions shall be based upon any such consideration. The court continued:

> "A further objection is that the power granted to the board of zoning appeals to disregard and in effect set aside the provisions of the ordinance in particular cases is too arbitrary and indefinite to be sustained....the real objection to that delegation of power is not that it commits to that board a discretion, for that may be essential to any proper administration of the law, but that it fails to provide any proper standards or rules by which the exercise of that discretion must be guided and limited insofar as it applied to the "use" provisions of the ordinance, and if it were necessary to decide that question in this case, we would hold it to be invalid so far as it applied to those provisions."

The court concludes:

> "Practical difficulties" and "unnecessary hardships" may have a definite meaning when applied to the construction of a building, but are quite meaningless when applied to the effect which the proximity of a small tailor shop may have on the aesthetic sensibilities of persons in its vicinity."

107 MD 178 Hagerstown v. B&O. RR. 1908.

The railroad was charged by the city with keeping and confining a herd of assorted cattle within two hundred and fifty feet ~~from~~ of several residences in the City of Hagerstown. The railroad filed a bill of complaint for an

injunction stating in effect that it is impossible to comply with the ordinance and still keep the cattle within easy access of the railroad, and also that the ordinance is arbitrary. The ordinance in question provided:

> ".....it shall be unlawful for any person or persons, corporation, etc., without a permit therefor first had...from the Mayor and Council to herd, keep, or confine, temporarily, transiently, habitually or permanently within a distance of two hundred and fifty feet from two or more residences, which shall be situated, within the corporate limits of Hagerstown and upon a public street thereof, any horses...cattle... or other domesticated animals whether the same are awaiting transportation or otherwise, unless such (animals) shall be...kept...in an enclosed structure that shall be covered throughout by a substantial roof and enclosed on all sides by a tight wall containing apertures only for such doors and windows as shall be necessary to secure access and ventilation to such enclosed structure and in no event shall any such doors and windows open or look upon any public street of said Hagerstown."

The court held the ordinance invalid. The court extended two reasons for the invalidity of the law. First, since it was not within the charter powers of the City of Hagerstown to remove and abate nuisances, the stockyard could not declared a nuisance since at common law or under statute the municipality could not declare a thing to be a nuisance that was not a nuisance per se, and a stockyard was not a nuisance per se. Secondly, since the granting of a permit to keep cattle otherwise than in a covered structure is not regulated or controlled by the provisions of the ordinance, but is committed to the arbitrary will of municipal officers, who may give permits to some and refuse permits to others under the same conditions. The court said:

> "...it will be observed that the ordinance does not establish or prescribe any general rules by which the Mayor and Council are to be controlled ...in granting or withholding the permission to ...keep.. the animals mentioned therein. It provides, that the herding, keeping, etcl, of domesticated animals within the corporate limits of Hagerstown, as prescribed therein, shall be unlawful without a permit from the Mayor and Council. In other words, notwithstanding the business the appellee may be engaged in, is a lawful one, and in accordance with its chartered rights, it may be destroyed or taken from it and given to its competitors, at the mercy of partisan action of the municipality."

160 MD 476 Public Service Commission v. Sun Cab Company, 1931.

Bill by the Sun Cab Company, against the Public Service Commission to restrain the commission from enforcing an order requiring taxicab companies to take out indemnity insurance as a prerequisite to a permit to operate. The Commission promulgated an order requiring the plaintiff to carry public liability insurance in the amount of ten thousand dollars for any one person and in the amount of twenty thousand dollars for any one accident for each cab operated by the said company or by any lessee, licensee or permissive user of the said company. In lieu of this requirement the company was authorized to provide and maintain an indemnity reserve fund of not less than one hundred thousand dollars. A petition for rehearing by the plaintiff resulted in a small reduction of the amounts required. Plaintiff denies the authority of the commission to enforce such orders. The Commission argued that while it did not have specific power to pass such an order, it did have implied power under the Act of 1910, Chapter 180, Code Article 23, Section 349 et seq., to do so in the interest of the safety of passengers and others using the public streets. Article 23 Section 379 provides:

> "No common carrier ...shall...exercise any franchise or right... without first having obtained the permission and approval of the commission. The commission shall have power to grant the permission and approval herein specified whenever it shall, after due hearing, determine that...such exercise of the franchise or privilege is necessary or convenient for the public service..."

Section 383 provides in part:

> "the commission shall determine the just, reasonable, safe, reasonably adequate and proper regulations, practices, equipment...and services to be in force and to be observed in respect to such transportation of persons, etc...and so fix and prescribe by order to be served upon every common carrier or other corporation to be bound thereby."

Section 362 provides:

> "Every corporation, person, or common carrier performing the services designated in the preceding sections shall furnish, with respect thereto, such service and facilities as shall be safe and adequate and in all respects just and reasonable."

The lower court decreed for the plaintiff. The commission appealed. Affirmed. The court indicated that the powers of the commission known as the Public Service Commission Law and all its acts are legislative, but unlike the legislature, it is limited strictly to the powers so delegated. Such a

power to require indemnity insurance is not conferred by the provisions of the Statute, Code Article 23, Section 373, giving the commission the power to determine the reasonably adequate and proper "practices" ~~of a public utility or carri~~ to be observed by common carriers, since "practices" of a public utility or carrier have to do only with its physical operations. Nor can such a power be supported under the safety clauses of the Public Service Commission Act, as being a device, contrivance, equipment, facility, practice, operation or regulation having relation to the public safety.

95 MD 400 Frank C. Bostock, et al v. Conway W. Sams, et al, Judges of The Appeal Tax Court of Baltimore City. 1902.

Petition for mandamus filed in the Court of Common Pleas to compel the defendants to issue a permit for the erection of a building. The Appeal Tax Court ostensibly is empowered to issue such permits. The powers are set forth in the City Code, 1893, Article 50, Sections 24, 25, 27, and 28:

28 "(after providing for filing plat; ~~distances~~ what shall be deemed as requiring a permit, etc.,)...no permit shall be issued unless in the judgment of the said judges of the Appeal Tax Court, or a majority of them, the size, general character and appearance of the building or buildings to be erected, will conform to the general character of the buildings previously erected in the same locality, and will not in any way tend to depreciate the value of surrounding improved or unimproved property;..."

The petitioner proposed to use the property in question for a zoo. The Appeal Tax Court refused the application on the grounds that the proposed building "did not conform to the general character of the buildings in the said locality, " and that the use of the building proposed to be erected "will be for the purposes of a zoo to show wild animals, in reality conducting a continuous circus upon one of the most beautiful streets in the city of Baltimore." The Court of Common Pleas dismissed the petition for the writ of mandamus. On appeal, the order was reversed and the cause remanded. The court declares that the citizen has the right to build as he wishes without being fettered by the considerations of whether his structure conforms in "size, general character and appearance" to the "general character" of "the buildings previously erected in the same locality." The court expands on this approach:

"...the power is conferred in the most vague and general terms and an unlimited and

> unregulated discretion is given to an agency of the city government thereunder. No standard is set up according to which this judgment is to be exercised;nor means provided by which it is to be instructed or controlled and the citizen is left helpless to question its exercise in any particular case. What is meant by the 'general character of the buildings previously erected?' And what is there to define and fix this?.....A right to create power so vague and undefined in its sdope , so entirely unrestricted in its exercise, and so essentially arbitrary in its character, designed to abridge important and valuable property rights of the citizen, if it can be conferred at all upon a municipal corporation, ought to be found to be so conferred in very clear terms or by some necessary implication."

The court continues:

> "Nowhere in the charter of the city of Baltimore can it be found that there is conferred upon the corporation, by any express legislative provision, the power implied in the ordinance under consideration. Nor can such power be deduced by any reasonable implication from any of the specific or general powers enumerated and granted in the charter."

The court concluded that the charter power to regulate buildings is limited to regulations guarding against dangers arising from unsafe construction or from the use of inflammable materials, or some similar exercise of the police power.

196 MD 86 Welsh, Assignee v. Kuntz, et al. 1949.

(Covers mortgages and the judicial construction of statutes.)

STENOGRAPHIC TRANSCRIPT

In the Case of

HYMAN A. PRESSMAN

vs

HENRY A. BARNES, ET AL.

IN THE

CIRCUIT COURT

OF

BALTIMORE CITY

HERMAN M. MOSER, J.

PROCEEDINGS OF AUGUST 23, 1955

YALE J. AARONS
OFFICIAL COURT STENOGRAPHER
BALTIMORE 2, MD.

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HYMAN A. PRESSMAN	:	IN THE
vs.	:	CIRCUIT COURT
HENRY A. BARNES	:	OF BALTIMORE CITY
	:	

Baltimore, Maryland
Tuesday, August 23, 1955
10:00 a.m.

Before Honorable Herman M. Moser, J.

Appearances:

Hyman A. Pressman, Esq. on behalf of the Plaintiffs.

Hugo Ricciuti, Esq. on behalf of Henry A. Barnes and City.

BY THE COURT: All right, gentlemen, do you have a stipulation ?

BY MR. RICCIUTI: Yes your Honor.

BY THE COURT: Do you have an extra copy you can give the Court please ?

BY MR. RICCIUTI: Your Honor, it hasn't been filed as yet.

BY THE COURT: Suppose we start off by filing the stipulation. Now, is it going to be necessary to take testimony ?

BY MR. PRESSMAN: Yes your Honor.

BY THE COURT: Put the testimony on.

BY MR. PRESSMAN: Your Honor, before proceeding with the testimony, may I ask your Honor to sign an order making the 44 parties plaintiff who petitioned your Honor yesterday ?

BY THE COURT: I didn't know they had.

BY MR. PRESSMAN: We filed it yesterday. I waited until the other side had notice of it before asking your Honor to sign it. I understand they have no objection.

BY MR. RICCIUTI: I have no objection.

BY THE COURT: All right. Am I supposed to know who the 44 are, or does it make any difference ?

BY MR. PRESSMAN: May it please your Honor, I would like to offer into evidence and have introduced as an agreed exhibit some of the items stipulated. We'd like to offer Plaintiff's Exhibit No. 1, being Ordinance No. 786, as agreed Exhibit No. 1.

BY THE COURT: All right.

BY MR. PRESSMAN: We would like to offer Administrative Regulation No. 7, heretofore filed as Plaintiff's Exhibit No. 2, to be agreed Exhibit No. 2, and we also would like to file two sections of the Baltimore City Code, the first one being Section 87 of Article 38, which reads --

BY THE COURT: All these matters you are referring to in your brief?

BY MR. PRESSMAN: Yes. "The Police Commissioner is hereby authorized and empowered to make and enforce regulations with regard to the traffic at certain hours, when the safety and convenience of the public will best be served thereby", and Section 89 of Article 38, which we offer into evidence. The Section 87 I just read is agreed exhibit No. 3 your Honor, and agreed Exhibit No. 4, Section 89, Article 38 -"The Police Commissioner of Baltimore City is hereby authorized and empowered to designate as a "Stop Intersection" any street intersection which he may deem necessary for the safe movement and control of street traffic and to place "Stop Intersection" traffic signs at all street intersections so designated by him; whenever any such signs have been so erected it shall be unlawful for the operator of any vehicle to fail to stop in obedience thereto, except when traffic at such marked intersection is controlled by traffic signals of officers. All such signs shall be illuminated at night or so placed as to be illuminated by the headlights of an approaching vehicle or by street lights."

BY MR. RICCIUTI: Your Honor, at that point, I'd like the record to show that the City agrees that that por-

tion of Article 38 is entered as part of the stipulation in the record, that the City does not concede the effect of that ordinance at this time for the purposes of argument.

ERNEST W. BUNTING

a witness of lawful age, produced on behalf of the plaintiff, and having first been duly sworn according to law, was examined and testified as follows:

BY THE CLERK:

Give your name and home address and position please?

A. Ernest W. Bunting, 2736 Didoly Avenue. Associate Engineer of Traffic Division, Maryland State Roads Commission.

DIRECT EXAMINATION BY MR. PRESSMAN:

Q Mr. Bunting, how long have you been in the Traffic Division of the State Roads Commission ?

A Thirteen and a half years.

Q In answer to a subpoena, haveyou brought an official highway map published by the State Roads Commission?

A Yes I have

Q Will you produce it please ?

BY THE COURT: That's the same one you showed me in the chambers the other day.

By Mr. Pressman: That's right. We offer this in evidence your Honor.

BY MR. RICCIUTI: I object at this point your Honor. He has raised no foundation for the relevancy of the map at this particular juncture. What he intends to prove by it I don't know.

BY THE COURT: You may suspect, because the Court suspects, he is going to try to prove this map indicates that there are certain State maintained highways that flow into the City to the point where the City has a continuation. The test, of course, means what the word "continuation" means, is that right ?

By Mr. Pressman: That's right your Honor.

BY MR. RICCIUTI: Further, to assist the Court, perhaps I would be willing to have the map admitted for the limited purpose of showing what Federal or State controlled highways meet the City limits.

By Mr. Pressman: We want to show more than that. We want to show the extensions into Baltimore City.

BY MR. RICCIUTI: I object to that.

BY THE COURT: I'll overrule the objection, with the understanding the Court is not accepting any phraseology that is on the map that uses the words "extension" as meaning the same thing necessarily as the use of the word "extension" in Ordinance in question. That's the thing the Court has to decide, and the Court, of course, will utilize everything that is properly available. This may or may not tend to show that's so.

BY MR. RICCIUTI: I have my exception ?

BY THE COURT: Yes you do.

By Mr. Pressman: Sir, referring -

BY THE COURT: At this point most assuredly it does not.

By Mr. Pressman: Would you show on that map whether any highways of the State highway system lead up to Baltimore City ?

A Yes sir, quite a few of them do. Starting on the east with Route 40, Route 1, Route 111, Route 139, Charles Street Avenue, Falls Road, 25, Park Heights Avenue, and Reisterstown Road, Liberty Heights Avenue. Do you prefer the number or the name ?

Q The numbers please.

A I'll go back then. U.S. 111, Charles Street Md. 139, Falls Road Md. 125, Park Heights Avenue, Maryland

129, U.S. 140, Maryland 26, U.S. 40, Md. 144, Md. 372, Southwestern Boulevard-which is U.S. 1 and Alternate U.S. 1, the old Boulevard, and Baltimore-Washington Expressway, and Md.2 and U.S. 301, which runs concurrently up to Hanover Street Bridge.

Q Are all those on the east ?

A No sir. I said starting at the east. I went all around the City.

Q Do any of those highways come to one side of the City and go through to the other side of the City ?

A Yes they do. U.S. 40 is one.

BY MR. RICCIUTI: I object to that form of the question your Honor. I don't know what he means - Do these highways. What do you mean - the physical extension of the highways, or do you mean the system as such ?

By Mr. Pressman: I mean highways.

BY THE COURT: Let the witness answer what he means. He said yes. What do you mean by yes ?

A The way I gather, the question means - I've answered thusly. If U.S. 1 interwoven end and also takes up at another end, that would - is that what counsel meant ?

BY MR. RICCIUTI: I object as to what counsel meant.

BY THE COURT: No, he was only explaining his

"yes". In other words, he means "yes, those that do start at one end of the City and take up at another end of the City". That is the phrase.

By Mr. Pressman: And do any Federal routes do that?

A The U.S. routes are generally designated as federal routes; state routes are indicated by "Maryland".

Q What do you mean by U.S. routes? Do you by any chance mean highways of the federal highway system ?

A Now you're getting into a difficult thing. U. S. routes generally referred to as Federal highways because they have the U.S. number and carries them through one state generally.

Q Now you have testified that those routes lead up to one side and begin at another side of the City. Now, do any of those routes go through the City ?

BY MR. RICCIUTI: Again I object as to the form of the question your Honor.

BY THE COURT: Maybe the witness doesn't understand it. Maybe you want to ask "What do you mean by through a city?" Do you understand the question ?

A Well, that they are marked through the City, all designated through the City, yes sir.

BY THE COURT: If you understand it now and the

question "Are any of them marked, designated as going through the City?"

A Yes sir.

Q By whom ?

By Mr. Pressman.

Q By whom have they been marked and designated ?

A By the Maryland State Roads Commission.

Q And will you name some of those roads that have been marked and designated ?

A Well, beginning at the eastern end of the City, U.S. Route 40, U.S. Route 1, U.S. Route 111, U.S. Route 140, Md. Route 26, U.S. Route 40 again on the West, and U.S. Route 1, Baltimore-Washington Expressway, and U.S. Route 301 and Md. 2.

Q Are those marked and designated within Baltimore City as well as without Baltimore City ?

A Yes

Q Have they been thus marked and designated by the State Roads Commission in Baltimore City ?

A Yes.

Q. And are any of those routes part of the State highway system ?

BY MR. RICCIUTI: I object to that question your Honor.

BY THE COURT: Maybe he can't answer that .

A They are not maintained by the State.

By Mr. Pressman: I understand that they are not maintained by the State, but are any of those routes that you have mentioned that are not U.S. routes part of the state highway system ?

BY MR. RICCIUTI: YOUR Honor, I object. He's asking for legal conclusions from this witness .

BY THE COURT: I think somewhat.

BY MR. RICCUTI: It's a very pointed issue.

BY THE COURT: There may be other things in his judgment in answer to that question. Now,you can ask him why he said that, but you probably show its meaningless or not meaningless. Can you answer that question? Would you repeat it please - rephrase your question ?

By Mr. Pressman: Are any of those routes a part of the system of roads which are from time to time owned by the State and with the State Roads Commission's resolution from time to time designated as state roads, to be maintained and operated by the Commission ?

BY MR. RICCIUTI: I repeat my objection.

BY THE COURT: I will overrule your objection.

A You've got the word "maintained" in there. I'd say no.

Q Part of Baltimore City is not maintained ?

A No sir.

Q Are any routes maintained outside of Baltimore City by the State Roads Commission ?

A All of them are.

BY MR. RICCIUTI: Outside of Baltimore City ?

A Yes sir.

By Mr. Pressman: Your witness.

CROSS EXAMINATION BY MR. RICCIUTI:

Q Your name is Mr. Bunting ?

A Yes sir.

Q Who is your immediate supervisor ?

A George N. Lewis, Jr.

Q Is he available today ?

A He was called down to Eastern Shore.

Q I see. You work of course with the State Roads Commission ?

A Yes Sir.

Q You work in the Maintenance Department ?

A No sir.

Q What particular department ?

A Traffic Division.

Q Are you familiar with the definition of the state roads system as defined by Article 66½ ?

A Read it. I haven't read it.

Q Referring your Honor to Article 89 of the Maryland Code entitled "State Roads", Section 2 "Definitions" under B-State Highway Systems. The term "state highway system" means that system of roads which are from time to time operated by the State and which the State Roads Commission by resolution from time to time designates as state roads to be maintained and operated by the Commission. Now that, of course, is in accordance with your testimony, isn't it Mr. Bunting ?

A Yes, that's right.

Q None of these roads are maintained by the State Roads Commission in Baltimore City ?

A Yes.

Q Now, I thought I heard your testimony to the effect that the State Roads Commission presently maintains or designates certain roads in Baltimore City .

BY MR. PRESSMAN: Objection. He said, "They are the ones that put the markers up."

By Mr. Ricciuti: When is the last time you put them up Mr. Bunting ? Do you know ?

A No I do not. There has been an agreement with

the Barnes office, who were going to put them up.

BY MR. PRESSMAN: We move that be stricken your Honor.

By Mr. Ricciuti: That explains his prior answer your Honor.

BY THE COURT: Yes. I think it's proper cross-examination.

By Mr. Ricciuti: As far as you know ?

A The ones that were put up there were put up by the State Roads Commission.

Q Are they maintained presently by the State Roads Commission ?

A No sir.

Q As a result of what agreement ?

BY THE COURT: Let me understand what you're saying. What youre saying is that originally they were put there by the State Roads Commission ?

A Yes sir.

Q Since that time they have been maintained by the City ?

A Yes sir.

Q If one gets broken or destroyed, the City replaces it ?

A Yes sir.

By Mr. Ricciuti: As a result of the correspondence between Mr. Barnes and your office, it's been made perfectly clear Mr. Barnes is to designate the roads in Baltimore City.

BY MR. PRESSMAN: Objection . leading for one thing.

BY THE COURT: No, its cross examination. Overruled.

By Mr. Ricciuti: Isn't that correct ?

A I'm not familiar with the correspondence.

Q You're not familiar with any correspondence that may affect your testimony concerning whether or not the State continues to designate roads in Baltimore ?

A I would say I would take Mr. Lewis' place on a half hour's notice.

Q You don't know what future action Mr. Lewis may have taken without your knowledge ?

A I had heard about the agreement.

Q What did you hear about it ?

BY MR. PRESSMAN: Just a minute.

By Mr. Ricciuti: His Honor would like to know what the agreement is .

BY THE COURT: I'm not going to get it from him.

BY MR. PRESSMAN: On this point I move that the previous testimony about such an agreement be stricken from the records, because its hearsay.

BY THE COURT: Yes. Strike it; it's just a rumor. It's just gossip.

By Mr. Ricciuti: Mr. Bunting, do you know --

BY THE COURT: You can go into it other ways.

By Mr. Ricciuti: Do you know as a matter of fact there has been correspondence between Mr. Barnes and Mr. Lewis,who is your immediate supervisor ?

A Let me put it this way. Now I'll answer the question "No".

Q You do not personally know ?

A I do not know.

Q Would you deny there being any correspondence ?

BY MR. PRESSMAN: I object.

BY THE COURT: He doesn't know.

By Mr. Ricciuti: Your Honor, I want to reserve at this point the right to call Mr. Lewis.

BY THE COURT: You can reserve the right. You can try this case before another judge too.

By Mr. Ricciuti: I asked him whether Mr. Lewis

was available.

BY THE COURT: I am not going to be around after this week on equity cases.

By Mr. Ricciuti: We tried to reach him. We understand from Mr. Pressman he was subpoenaed as a witness.

BY MR. PRESSMAN: I sent a subpoena out Friday morning.

BY THE COURT: What is your decision gentlemen ? I indicated to counsel I would give him a warning to dispose of this case, but I didn't give him the option on any other time.

By Mr. Ricciuti: I'll continue with this witness.

BY THE COURT: If you tell me that the testimony of Mr. Lewis is essential, you can stipulate as to what he'd say. I'll do whatever counsel desires to do at this point. You're not being bound at this time. We can take it up later after we get through it. It may be a good thought. I rather suspect that he will be.

By Mr. Ricciuti: I have my witness here. Can you distinguish Mr. Bunting between a Federal highway and a Federal numbered highway - or Federal numbered highway ?

A Well now, you define both of these terms "Federal highway" as a federal highway in your estimation.

Q I'm asking you .

BY MR.PRESSMAN: We object. I don't know of any differance between the two, if he doesn't know it.

BY THE COURT: Maybe he does or doesn't.

A Not that I know of.

By Mr. Ricciuti: Now, do you know of any federal highway maintained by the Federal Government that reaches the City lines ?

A City lines of Baltimore City ?

Q Baltimore City ?

A Not to my knowledge.

Q None to your knowledge ?

A Federally maintained highways, no.

Q Are there any Federally designated highways that reach the limits of Baltimore City, if you know ?

A Well, it all hinges on what you mean by the word "Federal". U.S. Route and Federal route are synonymous in my estimation. There are several that reach the City and leave the City.

Q You're familiar with, are you not, Article 151A of the Code ?

BY THE COURT: Ask him to read it to you.

By Mr. Ricciuti: It's in evidence. Notwithstand-

ing any other provisions, this Article appropriates authority in any individual city, town or village authorized and empowered to regulate the speed of the vehicle on any road, street, alley, lane, in the specific corporate limits not being designated or maintained as a part of a state or federal highway system, or an extension thereof." What is meant by Federal highway system as used in that section I just read.

BY MR. PRESSMAN: Objected to.

BY THE COURT: He doesn't know he said.

By Mr. Ricciuti: No further questions. Your Honor, I would like again to repeat at this time my motion to strike out his testimony on the basis of irrelevancy and renew my objection to the admission of the map at this time.

BY THE COURT: Overruled.

HENRY A. BARNES

a witness of lawful age, produced on behalf of the plaintiff, and having first been duly sworn according to law, was examined and testified as follows:

BY THE COURT STENOGRAPHER: Would you please give your name and position please?

A Henry A. Barnes, Traffic Director for the City of Baltimore.

DIRECT EXAMINATION BY MR. PRESSMAN:

Q Mr. Barnes, did you hear all the testimony of the previous witness ?

A I did.

Q And you're familiar with route U.S. 40 that he mentioned, are you not ?

A I am familiar with U.S. Route 40.

Q Now, are you familiar with the part of U.S. Route 40 which is not maintained by the State, which goes through Baltimore City ?

A There is no part of U.S. Route 40 that is maintained by the State within the City.

Q. I said that, are you familiar with the part of U.S. 40 which is not maintained by the State, which goes through Baltimore City?

A. I am familiar with U.S. Route 40 as it lies within the City of Baltimore.

Q On that route is it your intention to make any speed limits which are different than the State speed limits ?

A. I don't know. We haven't completed studies

as yet.

Q Is it your intention to mark your speed limits on that route ?

A I don't follow you sir.

Q Is it your intention to make any speed limits on that route ?

A Oh certainly.

Q And is it your intention to make those speed limits higher than 35 miles an hour ?

A It's our intention at this moment sir to adopt the same general speed limits on that thoroughfare which were in effect prior to the time that Legislature gave us this authority to regulate speeds.

Q How much is that ?

A It would vary in the various localities. Between 25 miles an hour in some sections, 35 miles an hour in some sections, and the west end from Milton Street to the city limits would be 35.

Q You don't intend any part of U.S. Route 40 shall be more than 35 miles an hour ?

BY MR. RICCIUTI: He answered that question your Honor.

BY THE COURT: Now he's being asked it directly.

A Not unless competent studies show there is a need for it. If it shows there is a need for the change, it might be lower or higher.

BY THE COURT: At this time you have no such idea?

A No sir.

By Mr. Pressman: Mr. Barnes, in paragraph 7 of the Stipulation, you stipulated that you intend to expend and will expend public funds in pursuance of an administrative regulation No. 7. Will that expenditure include the erection of signs showing speed limits of over 35 miles an hour?

A Very possible.

Q Isn't that your intention - to put up signs showing more than 35 miles an hour in some parts of Baltimore ?

A It's very possible some will be more than 35, and very possible some will be less than the present speed limits.

Q Don't you plan now for speed limits less than the present speed limits and more than 35 miles ?

A At the present time we are making studies to ascertain where we can increase the speeds.

Q Didn't you appear at the Legislature in regard to this legislation ?

A Yes, before the Senate.

Q Did you tell them you wanted to make some of the speeds higher on some of these roads leading from out of the City ?

A Yes I did.

BY MR. RICCIUTI: I object to this line of questioning your Honor, what his testimony was before the Senate Committee.

BY THE COURT: Well, it's in line with this examination to what he intends to do. I'm assuming if he has changed his mind since he told the Senate what he intends to do since then.

A I haven't changed my mind. I'm still studying it. I haven't determined --

By Mr. Pressman: Have you changed your mind since you appeared before the Senate ?

A No

Q Then you still intend to make some of the limits higher than 35 miles an hour ?

A After studies have been completed showing where its reasonable.

Q It's your intention when you complete the

study to put up such signs ?

A Yes.

Q Do you intend any of those signs be on any of the routes which were mentioned by the previous witness ?

A What routes are they ?

Q Routes 40, 1,111,129, 25, 140, 144, 129, 40 and 372.

A At the moment I don't believe we're making any studies to increase the speed. Well, there might be one or two included in there, such as Erdman Avenue. I believe there is one or two routes in there. The main route you didn't mention of course, is the Baltimore-Washington Expressway.

Q You intend to increase the speed limits on that speedway ?

A Certainly, it would be highly desirable because there is a nice speed trap out there now ?

Q You intend to make signs making the speed limit higher ?

A Yes.

Q Is part of that highway maintained by the State outside of Baltimore City?

A I wouldn't know what happened outside of

Baltimore City. I only have jurisdiction in the City.

Q You mean you don't know that the State Roads Commission maintains the Baltimore-Washington Expressway outside of the city limits ?

A I wouldn't have any idea whether it is maintained by the state, colony or federal government outside of my jurisdiction.

Q You do know that that is a part of a state and Federal highway do you not ?

A Which is that ?

Q The Baltimore-Washington Expressway?

A I believe it was constructed by the state and federal funds.

Q So isn't it true that the part near Washington is maintained by the federal government, and the part near Baltimore is maintained by the state ?

BY MR. RICCIUTI: Your Honor, I have to object.

BY THE COURT: If he knows.

BY MR. RICCIUTI: It's purely irrelevant whether these roads outside of the City of Baltimore are maintained by the state or federal government.

By Mr. Pressman: They lead into Baltimore, Mr. Barnes - the Baltimore-Washington Expressway that leads into Baltimore?

A Yes.

Q The part in Baltimore is maintained by Baltimore ?

A Yes sir.

Q Now will you show on this map, Plaintiff's Exhibit No. 5, where that highway is ?

A Which highway is that ?

Q Baltimore-Washington Expressway ?

A Well, are you telling me or asking me ?

Q I'm trying to make it easier for you.

A I have had little training in reading maps.

Q You have had little training in reading maps ?

BY MR. RICCIUTI: Your Honor, this map is in evidence. It will speak for itself.

BY THE COURT: I think it can.

A This road right here (indicating on map) is the Baltimore-Washington Expressway.

Q What color is that on the map sir ?

A It appears to be red.

Q Is that a double line ?

A Yes, it's a double line sir.

Q Could we have that marked as to indicate which one you pointed to. Mark an X where you marked it.

BY THE COURT: You asked him in such a way it's designated. It can't be changed.

CROSS EXAMINATION BY MR. RICCIUTI:

Q. Mr. Barnes, you were here when Mr. Bunting testified?

A I was here.

Q Did you hear him state that there are certain roads in Baltimore City that are marked by the State Roads Commission?

A I heard him say that, yes.

Q With regard to that specific question, did you have a meeting with Mr. George N. Lewis, Director of the State Roads Commission, who is the immediate supervisor of Mr. Bunting?

A I'm not sure whether he is the immediate superior. I had a meeting with Mr. Lewis, the Traffic Engineer for the State Roads Commission.

Q And as a result of that meeting with Mr. Lewis, did you write him a letter on June 30th, 1955 ?

A I believe I did.

Q This is a copy of your letter here.

BY MR. PRESSMAN: I object.

A Yes

By Mr. Ricciuti: May the Court have it ?

BY THE COURT: I can read it.

By Mr. Ricciuti: Mr. Barnes, as a result of that letter, apparently it was agreed between you and Mr. Lewis that you were to designate all the roads in Baltimore City ?

A That's correct.

Q And mark them ?

A That's correct.

Q Did you get any response to that letter ?

A I never received any answer to it.

BY THE COURT: What is the date ?

By Mr. Ricciuti: June 30th, 1955. And is it presently your understanding that the responsibility for marking --

BY THE COURT: Somebody neglected their correspondence.

By Mr. Ricciuti: Is it your understanding then Mr. Barnes that you had control over the marking of all the roads in Baltimore City ?

A That was requested by Mr. Lewis of the State Roads Commission - that we take over the practice which they formerly had done, of maintaining signs, and we not only erected signs but we fabricated them and maintained

them in every respect entirely to our expense.

Q Now is it your opinion that there are no designated or maintained parts of the state or federal highway systems or extensions thereof in Baltimore City ?

BY MR. PRESSMAN: I object. I would like to call your Honor's attention to the fact that I called the witness as an opposing party.

By Mr. Ricciuti: You didn't say that.

BY MR. PRESSMAN: Well he obviously is an opposing party.

BY THE COURT: Not necessarily. That doesn't put him in the position of an opposing party. Anyhow, he's here to give the facts as he sees it.

BY MR. PRESSMAN: We object to it.

BY THE COURT: Are you making him your witness now for the purpose of that question?

By Mr. Ricciuti: Yes.

BY THE COURT: Then rephrase your question.

By Mr. Ricciuti: Is it your opinion Mr. Barnes that there are presently no federal or state highways or systems - let me read the exact lanquage to you --

BY MR. PRESSMAN: We object to the leading nature

of the question. I'd rather you rephrase it.

By Mr. Ricciuti: Let the Courtrule on that.

BY THE COURT: Ask him this. Ask him, "Are there any" and then rephrase your question.

By Mr. Ricciuti: Mr. Barnes, are there any state or federal highway systems or any extensions thereof designated or maintained in Baltimore City ?

BY MR. PRESSMAN: Objection.

A No

BY THE COURT: Why

BY MR. PRESSMAN: Because he's being asked to give an interpretation of the law, which is your Honor's province.

BY THE COURT: That's the very point counsel made about your statement, so if I'm wrong, I'm wrong on both sides. I still say, however, that the question is not the question I have to decide. I have to decide the question from the legal point of view. Now, if this is of any help to me at all, all right. If it isn't --

By Mr. Ricciuti: Your answer is No to that question?

A My answer is "No".

Q No further questions.

BY THE COURT: You may cross examine if you care

to.

CROSS EXAMINATION BY MR. PRESSMAN:

Q Mr. Barnes, you have replaced some of these route numbers, have you, since your conversation with the State Roads Commission ?

A Yes. We maintained all the markers if they are knocked down. My crews go up and put them up, and actually on the Baltimore-Washington Expressway we install all of those signs for the State.

Q Well have you put up any route numbers?

A Yes, we have added some. Some new ones in places where formerly it didn't exist, and we have replaced a number of them when damaged, and we have also created an additional route or changes in route.

Q In cases where you replaced signs or route numbers that were damaged, did you put the same number back? If it were U.S. Route 40 you'd still designate it as U.S. Route 40 ?

A Obviously.

Q When you put up the new numbers in the new locations, you also used the same route numbers formerly used along that road, such as U. S. Route 40 ?

A That's right.

Q That would also be true of the state route numbers ? When you replaced the state route numbers you

used the same numbers the State used before ?

A We have done it. It's not mandatory. We can do some, we can change that.

Q We move the last part be stricken. You have done it?

A So far, yes.

Q You have never changed the numbers, have you ?

A Wait a while. What do you mean by never ?

Q Have you ever had a number that you took down and had to be replaced and put a different number up in its place? In other words, if it were U.S. Route 40, would you use a number other than 40 ?

A Let me put it this way. We have never put up another route number. Sometimes there are three or four routes covering the same streets. We might put up two signs.

Q You never redesignated it by any numbers used before ?

A No sir, I don't recall any cases.

BY MR. RICCIUTI: You have taken down state route numbers?

A Oh yes.

BY THE COURT: I would say I would assume he

hasn't.

BY MR. RICCIUTI: No further questions.

By Mr. Pressman: Your Honor, at this time I would like to offer the Governor's message explaining veto of House Bill No. 45, 1954 and I'd also like to offer House Bill No. 45 of 1954, and I'd like to state my reasons for it your Honor.

BY THE COURT: All right.

By Mr. Pressman: The reason for it is that we want to try to get at the intention of the 1955 statute, as to what is meant by extensions of these routes or what was intended in the passage of this law; what routes were to be considered? In 1945 a law was passed which was very similar to the law passed in 1955, except it didn't mention federal highway systems and extensions.

BY MR. RICCIUTI: He's attempting to get into evidence the very thing we are going to object to by way of explanation. It's just going to be futile for me to object after he's told you what the veto message is.

By Mr. Pressman: I haven't told you.

BY MR. RICCIUTI: You're coming to it.

BY THE COURT: Let's put it this way. There is certainly no objection to counsel in their brief calling

my attention to any pertinent matter, and I certainly think this will not be in by way of offering evidence, but it might be very well argument. I don't say it is, but it might very well be argument in your brief.

By Mr. Pressman: All right. I offer it your Honor.

BY THE COURT: I'll sustain the objection.

By Mr. Pressman: That's our case your Honor. You want to hear argument?

BY THE COURT: How long you want to argue, bearing in mind I'm giving both sides the same time. I'm not going to take a cut at this ball without the briefs. How long do you want ?

BY MR. PRESSMAN: There are some important points that I feel that I would like to have a great deal more time, but feel that I couldn't do it justice in less than an hour.

BY THE COURT: May I suggest it would be a great deal of help if you relied upon the Court's statement. It's going to decide this matter primarily on the briefs. You have indicated to me generally what your objections to these Ordinances are, to give me authority; after authority your handing me a bail full of apples. I haven't had a

chance to examine the quality of the apples.

(CLOSING STATEMENT MADE BY MR. PRESSMAN)

(CLOSING STATEMENT MADE BY MR. RICCIUTI)

BY THE COURT: Gentlemen, let's get down to how much time you want to prepare the briefs.

BY MR. PRESSMAN: Your Honor, we have reached a tentative arrangement between ourselves to submit a brief and to exchange the brief one week from today.

BY THE COURT: That's fine. As long as you have done that, it's entirely satisfactory to the Court.

(STATEMENT IN REBUTTAL MADE BY MR. PRESSMAN)

END OF TESTIMONY