

Opinion No. 55-6297

October 4, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. C. C. Chase, Jr., District Attorney, Third Judicial District, Las Cruces, New Mexico

Your request for opinion dated September 17, 1955, has been received.

You raise two questions: 1. Does a motorist who enters the left side of the center of a highway to pass another vehicle while there is no yellow line in the right lane, violate the law if when he returns to his proper lane, the right side, he crosses a yellow line appearing in the right lane?

2. What, if any, are the proper opening and closing hours of school for the purpose of speed and traffic regulations at school crossings or zones?

Concerning your first question, Section 64-18-14, N.M.S.A., 1953, provides:

"The state highway commission is hereby authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous, and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the direction thereof."

It is under the authority of the above statute that the State Highway Commission has marked with yellow lines those portions of highway where passing is deemed especially hazardous. Other than the general language "obey the direction", of such "signs or markings" we have no specific legislative direction in the matter. Thus, we must take the view which appears most sensible, keeping in mind the purpose of the statute.

It is our opinion that if from the point where a motorist passes into the left side of the highway, the yellow line can be seen on the right hand side of the road, or as the statute puts it, the marking is "clearly visible to an ordinarily observant person", then if thereafter before crossing over to his proper lane there appears a yellow line in that lane, then he has violated the statute. He has placed himself in a position of the highway which has been determined to be hazardous. This is the conduct which constitutes the violation and not the crossing or the failure to cross the yellow line at some particular point. To construe the statute otherwise would be to license occupancy of a hazardous portion of the highway if a motorist would only get on that lane prior to the time a yellow line appears in his proper traveling lane.

Your first question is answered in the affirmative.

Concerning your second question, Section 64-18-35, N.M.S.A., 1953, as amended in 1955, provides in part:

". . . (c) At all school crossings, except as provided in paragraph (e) of this section, the school authorities shall place in the center of the roadway at the appropriate times, and at locations as hereinafter specified, portable signs inscribed 'School Crossing 15 MPH', one (1) such sign to be placed on each side of the school crossing, as follows: . . . (d) Portable signs reading 'Stop When Children in Cross Walk' shall also be placed in the center of the roadway, at the center of the marked school crossing. The signs provided in this paragraph and in paragraph (c) above shall be in use and in place, during recess or while children are going to or leaving school, during opening and closing hours. School authorities shall be held strictly responsible for the immediate removal of these signs and those referred to in paragraph (c) above when their use is not required as herein provided. Unless all portable signs are properly placed and removed as herein required, the authority with jurisdiction over said street or highway may prohibit such crossing (f) At all times when the signs 'School Crossing 15 MPH' and 'Stop When Children in Cross Walk' or either of them, are in the roadway, all vehicles shall come to a complete stop at the school crossing when the cross walk or any part thereof is occupied by any person."

In addition, part of Section 64-18-1, N.M.S.A., 1953, is applicable:

". . . 1. Fifteen (15) miles per hour on all highways when passing a school during school recess or while children are going to or leaving school during opening or closing hours; . . ."

It is noted that both § 64-18-1 and § 64-18-35, authorize the fifteen (15) mile per hour speed limit in school zones only "during recess" or while the children "are going to or leaving school during opening or closing hours." Thus, at other times during the school day it would seem that the fifteen (15) mile per hour limit cannot be enforced in these zones. However, the statute does not tell us when the opening and closing hours are. Since these may vary with the different schools, as for example between high schools and grade schools, and public schools and parochial schools, it would seem that the Legislature intentionally refrained from specifying definite hours which would apply to all schools throughout the State. For this reason this office will refrain from attempting to specify any definite or specific hours.

In this connection, it is noted that the responsibility for placing and removing the signs provided for in the statute, is squarely upon the school authorities. It should be brought to their attention that these signs may be upon the streets only at certain times throughout the day and that they should be removed when not authorized.

I am sorry that we are unable to give a more definite answer on your last question, but we hope nevertheless, that this is of some aid to you.

By Santiago E. Campos

Assistant Attorney General