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APR 27 1990

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--MEMORANDUM--

TO: J. M. Lynch, P.E.
State Traffic Engineer

FROM: Elaine A. Dawkins
Associate Attorney General

DATE: April 20, 1990

SUBJECT: Speed Zones Within Municipalities

This memorandum is in response to your request for a legal opinion about whether the North Carolina Department of Transportation or a municipality has controlling jurisdiction over the speed regulations on State Highway System Streets within a municipality's corporate limits.

N.C.G.S. §20-141 sets out the statutory speed limit restrictions and the respective jurisdictions of the Department of Transportation and municipalities over speed limits. As you know, in general, the speed limit within municipal corporate limits is 35 m.p.h., while the speed limit outside municipal corporate limits is 55 m.p.h., except on rural interstate highways where the speed limit has been raised pursuant to N.C.G.S. §20-141(d)(2). N.C.G.S. §20-141(b). The Department of Transportation has jurisdiction over speed restrictions for all State Highway System streets outside municipal corporate limits and for any part of a highway that is designated as part of the Interstate Highway System or other controlled-access highways, both inside and outside municipal corporate limits. N.C.G.S. §20-141(d). Municipalities are authorized to regulate speed zones within their corporate limits for non-State highway system streets pursuant to N.C.G.S. §20-141(e).

N.C.G.S. §20-141(f) sets out the jurisdictional authority of the Department and a municipality over State Highway System streets within a municipality that are not part of the Interstate Highway System nor part of other controlled-access highways. This statute authorizes the municipality to alter the speed zones within

its corporate limits based on engineering and traffic investigations for the following defined State Highway System streets:

any part of a street within the corporate limits of a municipality and which street is a part of the State highway system (except those highways designated as part of the interstate highway system or other controlled access highway) said local authority shall determine and declare a safe and reasonable speed limit. A speed limit set pursuant to this subsection may not exceed 55 m.p.h. Limits set pursuant to the subsection shall become effective when the Department of Transportation has passed concurring ordinances and signs are erected giving notice of the authorized speed limit.

Id. Additionally, "[t]he Department of Transportation is authorized to raise or lower the statutory speed limit on all highways on the State highway system within municipalities which do not have a governing body to enact municipal ordinances as provided by law. . . ." Id. N.C.G.S. §20-169 states that "local authorities, except as expressly authorized by G.S. 20-141 and 20-158 shall have no power or authority to alter any speed limitations declared in this article or to enact or enforce any rules or regulations contrary to the revisions of this article."

Thus, the statutory speed limit for State Highway System streets is 35 m.p.h. There are two statutory methods for altering the statutory speed limit on State Highway System streets within municipal corporate limits. The Department has jurisdiction to alter the speed limit on streets within municipalities that are part of the Interstate Highway System or a part of other controlled-access highways. The other authorized method for altering the speed limit on State Highway System streets in municipalities from the statutory 35 m.p.h. limit is as follows:

- (1) the municipality determines that the speed limit needs to be raised or lowered based upon an engineering and traffic investigations and studies,
- (2) the Department of Transportation issues a concurring ordinance and
- (3) a sign is posted, giving notice of the authorized speed limit.

In your request for an opinion, you indicated that many roads in questions may be US, NC and Secondary Roads routes, and you asked for an opinion for three specific fact situations which are restated and answered below.

1. "A State highway with an existing speed limit of 45 or 55 m.p.h. is annexed by a municipality. The municipality decides that they want the speed limit to revert to the statutory 35

m.p.h. Does the NCDOT have any recourse? Is there any way that the 45 m.p.h. can be retained since it has been determined by an engineering investigation and study to be the correct, safe, and reasonable speed limit?"

Yes and no, as to both questions. Pursuant to N.C.G.S. §20-141, the speed limit for any street inside the municipal corporate limits is 35 m.p.h. However, the Department is authorized to determine and alter the speed limit on streets within the municipal corporate limits for any street that is either a part of the Interstate Highway System or is part of any other controlled-access highways. N.C.G.S. §20-141(d). If the street is neither part of the Interstate Highway System nor a part of any controlled-access highway, the speed limit for State Highway System streets within a municipality is 35 m.p.h. unless the municipality alters the speed limit from the mandatory 35 m.p.h. limit, pursuant to N.C.G.S. §20-141(f), i.e. the municipality has determined that the altered speed limit is a safe and reasonable one based upon an engineering and traffic investigation. However, this altered speed limit can not become effective until the Department has passed a concurring ordinance and a sign has been posted, giving the traffic notice of the authorized speed limit. N.C.G.S. §20-141(f).

Thus, it is this Office's opinion that all streets within a municipality, except those streets that are part of an Interstate Highway System or part of another controlled-access highway, have the speed limit of 35 m.p.h., unless the speed limit is altered by the municipality, concurred with by NCDOT through an ordinance and posted by a sign showing the authorized speed limit. If a street is a part of the Interstate Highway System or other controlled-access highway, the speed limit of the street is 35 m.p.h. until the Department alters the speed limit based upon engineering and traffic investigations and studies that show the altered speed limit is a reasonable and safe one. N.C.G.S. §20-141(d).

2. "A municipality annexes a portion of a State highway system road agrees to a 45 m.p.h. speed limit or one higher than 35 miles and executes a concurring ordinance. . . . After a short period of time the municipality decides that they want the speed limit reduced to the statutory speed limit of 35 m.p.h. to satisfy local residents. An engineering investigation study indicates that the correct speed limit should be 45 m.p.h. Since we have a concurring ordinance on the 45 m.p.h., does the NCDOT have to revoke their concurring ordinance and go with the Statutory speed limit of 35 m.p.h. as requested by the Municipality? Can we refuse to revoke our concurrent ordinance until such time as it is determined that the speed limit should be lowered?"

Yes and No. As stated in this Office's opinion to Question 1, the Department of Transportation has sole jurisdiction over the determination of whether or not to alter the speed limit on streets inside municipal corporate limits if the street is either a part of the Interstate Highway System or a part of another controlled-access highway pursuant to N.C.G.S. §20-141(d). The

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Department is not required to revoke its ordinance for the 45 m.p.h. speed limit on State Highway System streets where the Department determined and declared that 45 m.p.h. was the safe and reasonable speed limit based on engineering and traffic investigations. However, the municipality can revoke its speed limit ordinance, reverting to the statutory 35 m.p.h. speed limit. Where the municipality has determined that the statutory speed limit is the proper one for the State Highway System street within its corporate limits, the Department is not authorized to alter the speed limit from the statutory speed limit on State Highway System streets within municipal corporate limits that are not part of the Interstate Highway System or part of another controlled-access highway under N.C.G.S. §20-141. Thus, the Department's ordinance will not have any effect on the speed limit for such State Highway System streets within municipal corporate limits, as the Department does not have jurisdictional authority to alter the speed limit on these streets.

3. "A new incorporated municipality encompasses miles of State highways that are currently signed with 45 and 55 m.p.h. speed limits. The corporate limits for some of these municipalities sometimes extend for 2, 3, 4 or 5 miles in some instances from the center of town. These existing US, NC and SR routes are rural in nature and do not justify a reduction in the 45 or 55 m.p.h. speed limit at this time. Do all of these highways automatically revert to the statutory 35 m.p.h.? Does NCDOT have any recourse if the town insists that everything within the corporate limits be 35 m.p.h.?"

Yes and No. It is this Office's opinion that the speed limit for State Highway System streets within a municipality's corporate limits automatically become 35 m.p.h. under N.C.G.S. §20-141(b). As previously stated, the Department is authorized to alter the speed limit on such streets that are part of the Interstate Highway System or part of other controlled-access highways pursuant to N.C.G.S. §20-141(d). However, the Department does not have the jurisdictional authority to effectively alter the speed limit on other types of State Highway System streets within a municipality.

Please call if you have any questions about this opinion.

EAD/jth

cc: Eugene A. Smith