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Opinion No. 64-22-L
R-108
June 16, 1964

REQUESTED BY: JOSEPH R. DOTSON
Traffic Safety Division - Arizona Highway Dept.

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTIONS: 1. What legal authority exists for the establishment of the no-passing zone in the approach to a school cross walk ?

2.. If such authority exists, what constitutes passing in a school cross walk approach on a road-
was laned for four lanes of travel, two lanes in
either direction ?

A. Changing lanes and overtaking to pass but
not exceeding the speed limit.

B. Overtaking but not changing lanes while not
exceeding the speed limit.

ANSWERS: 1. See body of opinion.
2. See body of opinion.

A.R.S. §28-727 provides:

"The Commission is 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 in the roadway indicate the beginning and end of such zones, and when the signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions thereof."

The Commission in the exercise of the powers conferred by A.R.S. §28-727 must exercise its discretion in determining the existence of an especially hazardous situation. The exercise of its discretion is within the function of an administrative body and it

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is limited only by the test whether it abused its discretion and acted reasonably or arbitrarily. Arizona State Highway Commission v. Superior Court of Maricopa County, 81 Ariz. 74, 299 P. 2d 783.

Applying the statute and test to the fact situation it would seem that the establishment of no-passing zones in the approaches to school cross walks is based upon a particularly hazardous condition; to-wit: children crossing a highway at a cross walk may be obscured from the vision of a vehicle passing another vehicle in the approach to the cross walk. This determination is reasonably based upon the surrounding facts; and the establishment of such a no-passing zone is reasonably calculated to correct the situation. Therefore, it would seem that the commission may establish no-passing zones in the approaches to school cross walks under A.R.S. §28-727.

A.R.S. §28-797 provides for the location, marking and maintenance of school cross walks. It also provides a speed restriction with regard to vehicles approaching such cross walks. There are no provisions in this section regulating the passing of vehicles within the approaches to school cross walks. Therefore, though the Legislature specifically considered school cross walks, the express limitation on the approaches thereto was confined to speed of vehicles. In establishing a no-passing zone under the general statutory provisions of A.R.S. §28-727 the commission does not supercede the specific statutory provisions of A.R.S. §28-797 regarding approaches to school cross walks. Both statutory provisions are compatible and may be construed together as mutually operative. The enactment of A.R.S. §28-797 does not affect or curtail the provisions of A.R.S. §28-727 though the latter may be applicable to the same subject matter. When the specific statute is silent on matters covered by a general statute the provisions of the general statute remain applicable; (Mercado v. Superior Court of Pima County, 51 Ariz. 436, 77 P.2d 810; Desert Waters, Inc. v. Superior Court In and For Pima County, 91 Ariz. 163, 370 P.2d 652; Kay v. Hillside Mines, 54 Ariz. 36, 91 Ariz. 36, 91 P.2d 867.)

A.R.S. §28-727 confers upon the commission power to determine whether an especially hazardous condition exists that may be corrected by the establishment of a no-passing zone. It mus

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must be noted that the section provides that the hazardous condition to be corrected would be overtaking and passing or driving to the left of the roadway. Therefore, a no-passing zone would govern both passing without changing lanes and changing lanes to pass.

Since the hazardous situation to be corrected by the establishment of a no-passing zone in the approach to a school zone is that a child may be obscured from the vision of the driver of the passing vehicle it would seem that in both instances viz., changing lanes to pass and passing while in the same lane the hazardous situation would be created and therefore is governed by the no-passing prohibition.


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The Attorney General

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