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PHOENIX, ARIZONA

JULY 10, 1967

DEPARTMENT OF LAW OPINION NO. 67-17 (R-85)

REQUESTED BY: The Honorable Isabel Burgess
STATE SENATOR

QUESTION: Does a motorist have a duty to yield the right of way to a pedestrian when the latter is crossing a street in the crosswalk or at an intersection as provided in A.R.S. § 28-792?

ANSWER: See body of opinion.

A.R.S. § 28-792(A) provides:

"When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. . ." (Emphasis added.)

Further, A.R.S. § 28-794 states:

"Notwithstanding the provisions of this chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway." (Emphasis added.)

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It thus appears when there are no operating traffic-control signals and the pedestrian has placed himself in the crosswalk, there is a duty upon the motorist to then yield the right of way to the traveler on foot. As construed by the Arizona court, failure to so yield is a violation of the statute and thus actionable as negligence per se where the violation is the proximate cause of the accident. Young Candy & Tobacco Co. v. Montoya, 91 Ariz. 363, 368, 372 P.2d 703 (1962); City of Phoenix v. Mullen, 65 Ariz. 83, 86, 174 P.2d 422 (1946).

However, even though the burden is upon the operator of a motor vehicle to yield the right of way, it does not follow that the pedestrian is without duties himself. A.R.S. § 28-792(A) expressly provides that he shall not suddenly leave the curb or a similar place of safety, step into the path of a vehicle and then demand the right of way when he has now made it impossible for the motorist to yield it. Additional evidence that legislative intent was not to grant absolute right of way to the pedestrian is shown by the express limitations placed upon the right in the same statute. By naming only two instances in A.R.S. § 28-792(A) when the right should be yielded to pedestrians, e.g., "when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger," the legislature seemed to be noting that it could envision other instances when the pedestrian himself would have to be the one to yield. Further, they then set forth additional instances by enacting A.R.S. § 28-793 providing that the pedestrian shall yield to the vehicle when he crosses the roadway between adjacent intersections which have operating traffic control signals, at an intersection with an unmarked crosswalk, at a point other than within a marked crosswalk, or when he chooses not to use a pedestrian tunnel or crossing provided for his safety.

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As stated in A.R.S. § 28-794, every vehicle driver shall exercise due care to avoid hitting any pedestrian upon any roadway and shall give proper warning by sounding his horn. Nonetheless, it is illogical to surmise that this seemingly all encompassing provision was intended to place all burden upon the vehicle operator. It simply provides that the driver shall use reasonable care in all circumstances to avoid collision with any pedestrian. The pedestrian is still required to abide by the provisions of A.R.S. § 28-792(A) and § 28-793 and not place the operator in such a position wherein it would be impossible for him to yield the required right of way. Phrased another way, even though the operator must use reasonable care at all times when driving and yield the right of way when so required under A.R.S. § 28-792(A), the pedestrian must also use the same reasonable care and not leave a place of safety and demand right of way when it is impossible to yield it to him.

Respectfully submitted,



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