

August 4, 1950

Barry DeRose
County Attorney
Gila County
Globe, Arizona

Attention: Harold A. Beelar
Deputy County Attorney

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ARIZONA ATTORNEY GENERAL

Dear Sir:

This will acknowledge receipt of your letter of July 11, 1950, requesting an opinion from this office on the following question:

"On Sunday afternoon, July 9th, some boys were cutting capers with an old jalopy at the Old Rodeo Grounds at Payson and the car turned over. One of the boys is at the point of death. Howard Childers, Deputy Sheriff at Payson, told me that the doctors had practically given him up. Naturally, we hope that the boy will live. In the event that he should pass away, the Coroner's attention will be directed to the matter of having a Coroner's inquest. The Coroner's Jury will be faced with the problem of whether or not the death was accidental. In view of the fact that we now have the new Safety Code in force and effect, the instant case may come under the category of negligent homicide which is defined and provided for in the new law in Section 53.

"The question that arises here is whether or not the premises where this accident occurred are covered by the new law of negligent homicide. As you recall, we talked about this over the phone and we didn't know for sure whether the law is limited to public highways, thoroughfares and roadways and public grounds where automobiles frequent. As I understood Howard to say, the Old Rodeo Grounds is private property and that the roadway that leads thereto is a private road."

In giving you our opinion on the above question, we will first call your attention to Section 22, Chapter 3, House Bill No. 5, First Special Session, which is our new Traffic Code, and said Chapter 3, supra, repealed Article 1, of Chapter 66, and all of Sections 59-208, 66-203, 66-402, 66-403 and 66-405, Arizona Code 1939, as amended.

Section 22 of the new Traffic Code, reads as follows:

"Provisions of Act Refer to Vehicles upon the highways--Exceptions. The provisions of this Act relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

1. Where a different place is specifically referred to in a given section.
 2. The provisions of Section 39 to 55, inclusive, shall apply upon highways and elsewhere throughout the state."
- (Emphasis supplied)

It is to be noted that subsection 2 provides that all the provisions of Sections 39 to 55, inclusive, shall apply upon highways and elsewhere throughout the state. Section 53 of the new Traffic Code reads in part as follows:

"Negligent Homicide. (a) When the death of any person ensues within 1 year as a proximate result of injury received by the driving of any vehicle in reckless disregard of the safety of others, the person so operating such vehicle shall be guilty of negligent homicide. * * * "

Section 55 of the new Traffic Code reads as follows:

"Reckless Driving. (a) Any person who drives any vehicle in wilful or wanton disregard for the safety of persons or property is guilty of reckless driving.
(b) Every person convicted of reckless driving may be punished upon a first conviction by imprisonment for a period of not less than 5 days nor more than 90 days, or by fine of not less than \$25.00 nor more than \$300.00, or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than 10 days nor more than 6 months, or by a fine of not less than \$50.00, or more than \$1,000.00, or by both such fine and imprisonment."

Section 53 is a new crime added to our criminal law.

Now, answering your question as to what portrays "elsewhere" throughout the state means, we will first call your attention to Webster's definition of "elsewhere":

"In and to some or any other place or places; as, it is reported in town and elsewhere; to go elsewhere."

In the case of Bankson v. Accident & Casualty Co. of Winterthur, Switzerland, 13 So. 2d 398, 401, 244 Ala. 371, the Supreme Court of Alabama held that under contractor's public liability policy whereby insurer agreed to defend any suit, and arising out of business operations of insured on described premises or "elsewhere in the state", insurer was obligated to defend suit brought against contractor for injuries, even though accident did not occur on the premises.

In the case of State v. City of Camden, 19 A. 539, 540, 52 N.J.L. (23 Vroom) 289, the Supreme Court in that case stated:

" 'Elsewhere' as used in an ordinance making it criminal to make, aid, maintain or assist in any improper noise, riot, disturbance, or breach of the peace in the streets or highways, or elsewhere within the city, is to be construed in connection with the words, 'streets and highways,' and must be regarded as 'signifying places ejusdem generis; namely, parks, squares, and places frequented by the public.' "

For other definitions on "elsewhere" see Words and Phrases Permanent Edition, Vol. 14 at Page 241, and Vol. 14 Pocket Supplement.

From the above definition and a reading of the new Traffic Code, it is our opinion that on principle and in reasoning, and in view of the purpose, scope and character of the Act, it should be construed and held to include death arising from injuries elsewhere than on the highways, as defined by Section 66-401 ACA 1939, as well as death arising from reckless driving on highways.

Trusting the above answers your question satisfactorily,
we are

Very truly yours,

FRED O. WILSON
Attorney General

MAURICE BARTH
Assistant Attorney General

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