

Summer 1958

CASE NOTE

D. L. McIntosh

Follow this and additional works at: <https://scholarcommons.sc.edu/sclr>



Part of the [Law Commons](#)

Recommended Citation

D. Laurence McIntosh, Case Note, 10 S.C.L.R. 722. (1958).

This Note is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact dillarda@mailbox.sc.edu.

CASE NOTE

CRIMINAL LAW—Violation of Statute Requiring Obedience to Traffic Officers.—Defendant was charged with violation of the local “obedience” ordinance and the state “obedience” statute which provided: “No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with authority to direct, control, or regulate traffic.” Defendant had approached an intersection at which a police officer was directing traffic from the center of the intersection. After defendant signaled for a left turn, he was ordered by the police officer to proceed straight ahead. Defendant refused to comply with the direction of the police officer and was thereupon arrested. The police officer testified that the violation took place about 5 p.m. and that he was allowing no left turns due to the condition of the traffic at that time. There was no city ordinance or state law prohibiting left turns at the intersection in question. The trial court found the defendant guilty. On appeal, HELD: Reversed and defendant discharged. In the absence of a showing that state or local legislation made it unlawful for defendant to make a left turn at the intersection in question, or that the police officer directing him not to do so had been vested with authority to so direct him, conviction for violation of the “obedience” statute could not stand. Though a police officer may be invested by proper legislation, state or local, with authority to direct, control or regulate traffic in accordance with reasonable standards set forth therein, in the absence of such legislation he has only the power to execute and enforce those traffic regulations duly enacted and promulgated by proper legislative enactment. *State v. Pascale*, ____ R. I. ____, 134 A. 2d 149 (1957).

The “obedience” statute under which this action was brought follows the language of the Uniform Act Regulating Traffic on the Highways, Article II, Section 3. 11 UNIFORM LAWS ANNOTATED 12 (1938). This section has been incorporated in the statutes of South Carolina, CODE OF LAWS OF SOUTH CAROLINA, 1952 § 46-287, and in the ordinances of at least two cities in this state. THE CODE OF THE CITY OF COLUMBIA, SOUTH CAROLINA, 1956 § 20-11; THE CODE OF THE CITY OF GREENVILLE, SOUTH CAROLINA, 1953 § 22-10. Similar

language, though omitting the words “invested by law . . .,” is used in the ordinances of two other cities in this state. THE CODE OF THE CITY OF CHARLESTON, SOUTH CAROLINA, 1952 § 46-4; THE CODE OF THE CITY OF SPARTANBURG, SOUTH CAROLINA, 1950 Chapter 21 § 7. It is well settled that the right of a citizen to use the public street is not absolute and unconditional but may be controlled and regulated in the interest of the public good. *Escobedo v. State Department of Motor Vehicles*, 35 Cal. 2d 870, 222 P. 2d 1 (1950); *State ex rel. Nicholas v. Headley*, 48 So. 2d 80 (Fla. 1950). The right to regulate motor vehicle traffic on the streets and highways of the cities and towns comes under the police power of the state. *Kaspach Corporation v. Town of Graham*, 99 F. Supp. 124 (M. D. N. C. 1951); *Phillips v. Officials of City of Valparaiso*, 233 Ind. 414, 120 N. E. 2d 398 (1954). The power to regulate and control traffic may be delegated to a municipality by the legislature, *Houck v. Minton*, 187 Tenn. 38, 212 S. W. 2d 891 (1948), but the municipality can exercise only such control as has been delegated to it by the state. *Hacksack Water Co. v. Ruta*, 3 N. J. 139, 69 A. 2d 321 (1949); *In re Seltenreich*, 95 Okla. Crim. 250, 244 P. 2d 587 (1952). A legislative body may not delegate legislative functions to officers, boards or commissions, though it may empower them to carry out in detail its purposes and promulgate rules by which to put in force legislative regulations. *Cavanaugh v. Gerk*, 313 Mo. 375, 280 S. W. 51 (1926); *Jones v. State*, 95 Okla. Crim. 323, 245 P. 2d 756 (1952). A legislative body cannot constitutionally delegate to an administrative officer an exercise of discretionary powers which are arbitrary. *Northern Boiler Co. v. David*, 157 Ohio St. 564, 105 N. E. 2d 451 (1952); *Thompson v. Smith*, 155 Va. 367, 154 S. E. 579, 71 A. L. R. 604 (1930). Certain discretion may be vested in the police in the regulation of traffic on the street, especially in the congested parts of the city since this is administrative rather than legislative power. *Houck v. Minton, supra*; *Taylor v. Roberts*, 84 Fla. 654, 94 So. 874 (1922); 2 McQUILLIN, MUNICIPAL CORPORATIONS § 10.41 (3rd ed. 1949). A public officer has such powers as are conferred upon him by statute; and unless a grant of power and authority can be found in the statute, it must be concluded that there is none. *State ex rel. Young v. Niblock*, 229 Ind. 596, 99 N. E. 2d 839 (1951); *Alexander Co. v. City of Owatonna*, 222 Minn. 312, 24 N. W.

2d 244 (1946). Where discretion has been delegated without specific rules and regulations to be observed, the provisions have been declared invalid upon the ground that they vest in the officer an unnecessary discretion and power of discrimination. *City of St. Louis v. Allen*, 275 Mo. 501, 204 S. W. 1083 (1918); *Thompson v. Smith*, 155 Va. 367, 154 S. E. 579, 71 A. L. R. 604 (1930). But provisions vesting such power under specified conditions where its exercise may be necessary in order to secure an orderly movement of traffic have been upheld on the ground that the subject is one which does not admit to fixed and rigid regulations that will operate automatically without the intervention of directing intelligence. *City of Chicago v. Marriotto*, 332 Ill. 44, 163 N. E. 369, 60 A. L. R. 501 (1928); 5 MCQUILLIN, MUNICIPAL CORPORATIONS § 18.15 (3rd ed. 1949).

By proper legislative enactment police officers may be vested with the power to direct traffic under circumstances which do not admit to fixed and automatic regulations. In the absence of such an enactment specifically vesting the police officers with the power to direct traffic, this decision would seem to raise some doubt as to their power to do so. But in reading the statutes on regulation of motor vehicles and traffic as a whole, rather than by isolated sections, there is a strong indication that it was intended that police officers should have such powers. Police officers are generally defined by the statutes as one "authorized to direct and regulate traffic. . . ." The statutes have several references to police officers directing traffic. The regulation and control of traffic necessarily contemplates a certain power and discretion being vested in police officers. Statutes in this field should be construed with respect to the growing complexity of traffic problems. The regulations are intended to promote public safety and convenience and should be construed to accomplish their fair and legitimate purpose. They ought not to be given an interpretation which would make them an unnatural and unjustifiable burden on travel or would render them absurd and unreasonable. Thus in consideration of the tenor of the statutes as a whole, it is doubtful that the courts of other jurisdictions would follow this decision in the interpretation of their own statutes.

D. LAURENCE MCINTOSH.