

One might be able to find justification for such legislative attempts to limit the availability of remedies by which to make frontal attacks on municipal by-laws in the need for municipal corporations to be able to proceed with impunity to implement their by-laws; however, such legislative limitations ought to be coupled with imperative legislation requiring municipal corporations to promulgate or otherwise bring their by-laws to the attention of their ratepayers and inhabitants.

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THE USE OF THE HIGHWAY TRAFFIC ACT, S.M. 1966, c. 29,  
s. 35(2) TO LIMIT OVERNIGHT PARKING

Until recently,<sup>1</sup> a municipal corporation in Manitoba could only limit the overnight parking of vehicles on the highway<sup>2</sup> within its territorial jurisdiction if it had erected appropriate signs on all such highways (such signs erected only at the points of ingress to the municipal corporation apparently were not sufficient).<sup>3</sup> In an effort to limit overnight parking without having to make the financial outlay for the signs required by The Highway Traffic Act, at least one municipal corporation has made a rather imaginative use of s. 35(2) of The Highway Traffic Act, which requires "a vehicle when standing upon a highway . . . [inter alia after sunset and before sunrise] to be lighted . . ." so that the light cast is clearly visible from in front of and behind the vehicle from a distance of five hundred feet: Tickets for the alleged violation of s. 35(2) have been handed out in substitution for overtime parking tickets. This presents a nice problem of statutory interpretation. Does one violate s. 35(2) in leaving a vehicle standing or parked off the travelled portion of a highway either alongside the kerb or entirely on the shoulder, as the case may be?

There have been no judicial interpretations of s. 35(2) relating to its use for the purpose in question. Section 35(2) or earlier versions

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1. Although at the time of writing it had yet to be proclaimed, on April 24, 1968 the Legislative Assembly of Manitoba passed Bill 37, clause 12 of which provided for an amendment to s. 113(1) of The Highway Traffic Act by virtue of which municipal corporations would be able in effect to prohibit overnight parking on "highways" without having to erect appropriate signs. The propriety of the amendment is left to the reader.

2. The term "highway" is used in this note as it is used in The Highway Traffic Act to refer to "any place or way . . . which the public is ordinarily entitled or permitted to use for the passage of vehicles . . . and includes all space between the boundary lines thereof . . ." (s. 2(23)). Thus, the term "highway" includes those "ways" in the urban or suburban setting which are usually edged with kerbs and called streets, avenues, roads, etc.

3. This followed from a reading of The Highway Traffic Act, ss. 86, 75(3) and other related sections.

of the section have been involved in several decided cases,<sup>4</sup> none of which is relevant to this discussion for they involved collisions in rural as opposed to urban situations where one of the vehicles was parked wholly on the travelled portion of the highway, or at least partly on the travelled portion of the highway and partly on the shoulder. Therefore, one is left to make an educated guess at the conclusion to which the courts might come on the meaning of s. 35(2) or the intention of the Legislature in enacting s. 35(2) insofar as its use for the purpose in question is concerned.

Surely it was the intention of the Legislature in s. 35(2) to ensure only that a vehicle standing upon the travelled portion of a highway be conspicuous, and in this case from a perusal of the definitions of the terms "highway" and "roadway" which are set out in ss. 2(23) and (49) of The Highway Traffic Act, respectively, the use of the latter term would be more satisfactory. To require that a vehicle not standing upon the travelled portion of a highway be lighted is not only unnecessary but it is to invite accidents, for it is a well-known phenomenon that less than totally alert drivers sometimes simply follow tail-lamps or gauge their position on their side of the highway from the head or parking lamps of oncoming vehicles. Therefore, it is submitted that s. 35(2) ought to be interpreted so that it applies only to a vehicle standing upon the travelled portion of a highway.

A similar interpretation ought to be made even if one does not concern oneself with the intention of the Legislature but rather looks only to the plain or literal meaning of s. 35(2). The use of the term "highway", even with the aid of s. 2(23), in the context of s. 35(2) results in some ambiguity. The section could be interpreted so as to require a vehicle to be lighted which is standing either on the travelled portion of a highway, or on one of the shoulders or even beyond the shoulders on what is designated normally as the right of way, or alongside the kerb of a highway where kerbs are provided. In such a case, where two or more plain meanings are possible, one or more of which would lead to an absurdity, the courts ought to choose or make the most reasonable interpretation. It is as absurd as it is dangerous to require a vehicle not standing on the travelled portion of a highway to be lighted. The absurdity becomes even greater when one moves from the rural to the urban setting and focuses upon the stipulation that a vehicle be so lighted as to be clearly visible from in front of and behind the vehicle from a distance of five hundred

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4. *Shust v. Harris* (1936) 44 Man. R. 121; *McLean v. Lysenko* [1943] 1 W.W.R. 173 (Man. C.A.); *Scibak v. Drohynych* (1947) 55 Man. R. 420; *Drewry v. Towns* (1951) 59 Man. R. 119; *Tinling v. Bauch and Kutry* (1952) 59 Man. R. 310; *Smyrski v. Smirnos* (1958) 66 Man. R. 105.

feet; the conspicuousness of a line of cars parked alongside a kerb will not be greatly if at all increased over and above that which would be the case under adequate street lighting by a requirement that they all leave their lamps burning. The absurdity fairly boggles the mind! Therefore, it is submitted that, even if one takes the plain or literal meaning approach, s. 35(2) ought to be interpreted so that it applies only to a vehicle standing upon the travelled portion of a highway.

The only basis upon which the courts might interpret s. 35(2) so as to require a vehicle standing either upon the travelled portion of a highway, or off the travelled portion on one of the shoulders, or on the right of way or alongside a kerb to be lighted would be that the meaning of the term "highway" is clear, unambiguous, and all embracing. Such a decision would be acceptable to the writer only if the courts paradoxically were intent upon placing the onus upon the Legislature to make the legislation more explicit.

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