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obedience to the mandate of legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act being done." This definition has been quoted in numerous subsequent decisions.

It is difficult to give a general and complete definition of a discretionary or quasi-judicial function, since the determination depends upon all elements of the particular act to be performed. If the act relates to a basic function of the office and requires the exercise of discretion as to whether or not it is done, and further requires the exercise of judgment in its performance, then it would generally be considered as discretionary. Each function would have to be considered separately and a determination made, based on the general rules.

The answer therefore to your question depends upon a determination of the class within which the power or duty falls. If it is ministerial it may be delegated, if it is discretionary or quasi-judicial, the responsibility and authority to exercise and perform the same may not be delegated. The extent to which subordinates or employees are used to assist in these functions is an administrative decision, unless direct participation by the superior is required by statute, but in any event the final responsibility for all action taken under the provisions of this act remains with the Highway Commission.

OFFICIAL OPINION NO. 14

April 12, 1961

Mr. David Cohen, Chairman
State Highway Commission
11th Floor, State Office Building
Indianapolis, Indiana

Dear Mr. Cohen:

I have before me a request from Mr. George M. Foster, Executive Director of the State Highway Department, requesting my Official Opinion on the following question:

"Is it legal for a vehicle to cross a yellow barrier line in a restricted passing zone in order to make a left

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turn to leave the highway or to enter the highway from a driveway?"

It appears to me that the answer to the problem presented depends upon the interpretation of the phrase "driving to the left of the center line" or similarly phrased statements used by the Legislature in enacting our existing traffic code. If such phrase was intended to include left hand turns across highways either by drivers thereon or drivers entering from private driveways, then it would be clear that such turns would be illegal.

Certain of the numerous statutes controlling the flow of traffic are set out herein for the purpose of comparison and also as the basis for this Opinion.

The Acts of 1939, Ch. 48, Sec. 65 as found in Burns' (1952 Repl.), Section 47-2014 is as follows:

"Limitations on Overtaking on the Left. No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event, the overtaking vehicle must return to the right hand side of the roadway before coming within one hundred [100] feet of any vehicle approaching from the opposite direction." (Our emphasis)

The Acts of 1939, Ch. 48, Sec. 66 as found in Burns' (1952 Repl.), Section 47-2015 is as follows:

"Further Limitations on Driving to the Left of Center of Roadway.

"(a) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

"1. When approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard

in the event another vehicle might approach from the opposite direction.

“2. When approaching within one hundred [100] feet of or traversing any intersection or railroad grade crossing.

“3. When the view is obstructed upon approaching within one hundred [100] feet of any bridge, viaduct or tunnel.

“(b) The foregoing limitations shall not apply upon a one-way roadway.” (Our emphasis)

The Acts of 1939, Ch. 48, Sec. 67, as found in Burns’ (1952 Repl.), Section 47-2016 is as follows:

“No Passing Zones. The state highway commission is hereby authorized to determine by an engineering and traffic investigation 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 marks on the roadway, indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions thereof.” (Our emphasis)

These sections taken together would not prohibit a left turn in a no passing zone. All prohibited action consists of driving on the left side of the center line for the purpose of overtaking and passing another vehicle. It is true that Burns’ 47-2015, *supra*, does not by itself confine the violation to overtaking and passing but the section is, as entitled in the original act, a further limitation of the right of overtaking and passing as set forth in the prior section.

It is interesting to note Burns’ (1949 Repl.), Section 36-2934. This is an earlier statute on the same subject and may have been repealed as being in conflict with Burns’ 47-2015, *supra*, although a determination of this point is not essential to this Opinion. This section provides for no passing zones, the marking of the same by the highway commission, and provides a penalty for the violation. A violation of such

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sections consists of "driving or operating a vehicle of any kind on said highway *to pass or attempt to pass* within said zone." (Our emphasis) Said section does not include a left turn as being a violation.

Another controlling factor in the determination of the intention of the Legislature is their apparent desire to make the subject of turns on highways an entirely independent object of legislation and not to include it within the sections above quoted.

The Acts of 1939, Ch. 48, Sec. 72 as found in Burns' (1952 Repl.), Section 47-2021 controls the making of turns, commonly known as U turns, as an independent subject, which section reads as follows:

"Turning on Curve or Crest of Grade Prohibited. No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within seven hundred fifty [750] feet."

By comparison of the situations in which U turns are prohibited with those in which driving to the left of the center line is prohibited it is apparent that U turns are not prohibited in all situations wherein driving to the left of the center line is. I believe it to be common knowledge that making a U turn is much more hazardous than a simple left turn and it would seem contrary to good judgment to prohibit left turns in a like situation in which U turns are permitted.

In addition, the Legislature has enacted special sections in regard to left turns. On highways of four or more lanes, the Acts of 1939, Ch. 272, Sec. 3, as found in Burns' (1949 Repl.), Section 36-2933, provides for the making of left turns thereon and further provides for the posting of certain highway sections with signs worded "Keep to the Right of Centerline," and in which all left turns are prohibited. Also, on three lane highways, the Acts of 1939, Ch. 48, Sec. 69, as found in Burns' (1952 Repl.), Section 47-2018, provides for left turns and makes specific mention of both overtaking and passing a vehicle and making a left turn.

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One further section of the statute was given consideration and is of value due to what it omits as well as that which is included. The Acts of 1939, Ch. 48, Sec. 80, as found in Burns' (1952 Repl.), Section 47-2029 reads as follows:

“The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right of way to all vehicles approaching on said highway.”

This section provides for the proper rule of the road for entering a public highway from a private drive but does not prohibit a left turn if it would necessitate crossing a yellow line. It would, in the absence of contrary legislation, infer that such action would therefore not be prohibited.

The only case in point that I was able to find arose in Virginia. The reasoning therein is similar to that contained in this Opinion and is in support hereof.

See: *Burcham v. J. P. Stevens Co., Inc., et al.* (1954), 209 F. 2d 35, 40.

Taking all of the above statutes as indicative of the law on the subject, and construing the same together as representing the intent of the Legislature, it is my opinion that it was not intended that the phrase “driving to the left of the center line” or similar phrases should include the making of a left turn.

Therefore, I conclude that the answer to your question is that a yellow barrier line in a restricted passing zone does not in and of itself prohibit the making of a turn in order to leave a highway or to enter thereupon.