April 22, 1996

OPINION NO. 96-027

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
2900 Columbus Avenue
Sandusky, Ohio 44870

Dear Prosecutor Baxter:

I have before me your request for an opinion concerning the use of flashing red lights and sirens on motor vehicles. Specifically, you wish to know whether R.C. 4513.17 prohibits the use of flashing red lights and a siren on county and personal motor vehicles used by the county coroner, deputy coroners, and the director of the county emergency management agency to respond to calls for their services.

R.C. 4513.17, which limits the use of flashing lights on motor vehicles, states in relevant part:

> (C) Flashing lights are prohibited on motor vehicles, except as a means for indicating a right or left turn, or in the presence of vehicular traffic hazard requiring unusual care in approaching, or overtaking or passing. This prohibition does not apply to emergency vehicles, road service vehicles servicing or towing a disabled vehicle, traffic line stripers, snow plows, rural mail delivery vehicles, vehicles as provided in section 4513.182 of the Revised Code, department of transportation maintenance vehicles, funeral hearses, funeral escort vehicles, and similar equipment operated by the department or local authorities, which shall be equipped with and display, when used on a street or highway for the special purpose necessitating such lights, a flashing, oscillating, or rotating amber light, but shall not display a flashing, oscillating, or rotating light of any other color, nor to vehicles or machinery permitted by section 4513.11 of the Revised Code to have a flashing red light.
> (D) Except a person operating a public safety vehicle, as defined in division (E) of section 4511.01 of the Revised Code, or a school bus, no person shall operate, move, or park upon, or permit to stand within the right-of-way of any public street or highway any vehicle or equipment which is equipped with and displaying a flashing red or a flashing combination red and white light, or an oscillating or rotating red

> light, or a combination red and white oscillating or rotating light....

1968 Op. Att'y Gen. No. 68-132 examined the provisions of R.C. 4513.17 and concluded as follows:

> It seems clear that the legislature intended to restrict the use of flashing lights on motor vehicles and to restrict the color of flashing lights on motor vehicles.
> Public safety vehicles are expressly authorized to use red flashing lights by virtue of Subsection 4513.17(D), *supra*. Other vehicles not expressly authorized by statute are prohibited by the provisions of Subsection [4513.17(C)], *supra*, from using any color of flashing lights except those named classes of vehicles which are permitted to use amber flashing lights.

Id. at 2-182; *see* 1960 Op. Att'y Gen. No. 1284, p. 283. Thus, R.C. 4513.17 permits only public safety vehicles as defined in R.C. 4511.01, school buses, and the vehicles and machinery described in R.C. 4513.11 to be equipped with red flashing lights.[1] Resolution of your question, therefore, turns on whether county and private motor vehicles used by the county coroner, deputy coroners, and the director of the county emergency management agency to respond to calls for their services constitute "public safety vehicles" for purposes of R.C. 4513.17(D).

R.C. 4511.01(E) defines "public safety vehicles" for purposes of R.C. 4513.17(D) as follows:

> _Public safety vehicle_ means any of the following:
> (1) Ambulances, including private ambulance companies under contract to a municipal corporation, township, or county, and private ambulances and nontransport vehicles bearing license plates issued under section 4503.49 of the Revised Code;
> (2) Motor vehicles used by public law enforcement officers or other persons sworn to enforce the criminal and traffic laws of the state;
> (3) Any motor vehicle when properly identified as required by the director of public safety, when used in response to fire emergency calls or to provide emergency medical service to ill or injured persons, and when operated by a duly qualified person who is a member of a volunteer rescue service or a volunteer fire department, and who is on duty pursuant to the rules or directives of that service. The state fire marshal shall be designated by the director of public safety as the certifying agency for all public safety vehicles described in division (E)(3) of this section.
> (4) Vehicles used by fire departments, including motor vehicles when used by

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[1] R.C. 4513.17(C) states that the prohibition against flashing lights does not apply "to vehicles or machinery permitted by section 4513.11 of the Revised Code to have a flashing red light." Pursuant to R.C. 4513.11(E), any boat trailer, farm machinery, or other machinery defined as a slow-moving vehicle in R.C. 4513.11(B) may be equipped with a red flashing light.

> volunteer firemen responding to emergency calls in the fire department service when identified as required by the director of public safety.
> Any vehicle used to transport or provide emergency medical service to an ill or injured person, when certified as a public safety vehicle, shall be considered a public safety vehicle when transporting an ill or injured person to a hospital regardless of whether such vehicle has already passed a hospital.

County and private motor vehicles used by the county coroner, deputy coroners, and the director of the county emergency management agency to respond to calls for their services do not fit within R.C. 4511.01(E)(1), (3), or (4). The only portion of this definition which is even arguably applicable to vehicles operated by the county coroner, deputy coroners, and the director of the county emergency management agency is R.C. 4511.01(E)(2). Pursuant to the language of R.C. 4511.01(E)(2), motor vehicles used by public law enforcement officers or other persons sworn to enforce the criminal and traffic laws of the state are public safety vehicles. Accordingly, if the county coroner, deputy coroners, and the director of the county emergency management agency are law enforcement officers or other persons sworn to enforce the criminal and traffic laws of the state, the motor vehicles used by these officials to respond to calls for their services would constitute "public safety vehicles," as that term is defined in R.C. 4511.01(E).

The term "law enforcement officer" is defined in R.C. 2901.01(K) for use in the Ohio Revised Code. R.C. 2901.01(K) states:

> "Law enforcement officer" means any of the following:
> (1) A sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, or state highway patrol trooper;
> (2) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of such statutory duty and authority;
> (3) A mayor, in his capacity as chief conservator of the peace within his municipal corporation;
> (4) A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of such member's appointment or commission;
> (5) A person lawfully called pursuant to section 311.07 of the Revised Code to aid a sheriff in keeping the peace, for the purposes and during the time when such person is called;
> (6) A person appointed by a mayor pursuant to section 737.01 of the Revised Code as a special patrolman or officer during riot or emergency, for the purposes and during the time when such person is appointed;
> (7) A member of the organized militia of this state or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or

> protect against domestic violence;
> (8) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;
> (9) An Ohio veterans' home policeman appointed under section 5907.02 of the Revised Code.

The county coroner, deputy coroners, and the director of the county emergency management agency are not specifically listed in R.C. 2901.01(K). In addition, none of these officials is imposed, by statute, with a duty to conserve the peace or to enforce all or certain laws and the authority to arrest violators. Finally, neither the county coroner, deputy coroners, nor the director of the county emergency management agency is sworn to enforce the criminal and traffic laws of the state. Accordingly, I find that the county coroner, deputy coroners, and the director of the county emergency management agency are not, as a general matter, law enforcement officers or other persons sworn to enforce the criminal and traffic laws of the state.[2] *See* 1980 Op. Att'y Gen. No. 80-091 at 2-356 ("in carrying out his duties of determining cause, mode, and manner of death, a coroner is not a _law enforcement officer_ for purposes of R.C. 2901.01(K)").

Because the county coroner, deputy coroners, and the director of the county emergency management agency are not law enforcement officers or other persons sworn to enforce the criminal and traffic laws of the state, the motor vehicles used by these officials to respond to calls for their services do not fall within the scope of R.C. 4511.01(E)(2). As stated above, none of the provisions of R.C. 4511.01(E)(1), (3), or (4) apply to motor vehicles operated by these public officials. R.C. 4511.01(E) thus does not include county and private motor vehicles used by the county coroner, deputy coroners, and the director of the county emergency management agency to respond to calls for their services within the definition of "public safety vehicles." Insofar as R.C. 4511.01(E) does not include county and private motor vehicles used by the county coroner, deputy coroners, and the

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[2] I note that there is at least one instance in which the county coroner is conferred the authority to make an arrest. Pursuant to R.C. 2941.44, a county coroner "may arrest a convict escaping from a state correctional institution and forthwith convey him to the institution and deliver him to the warden of the institution." In 1980 Op. Att'y Gen. No. 80-091 at 2-357, which concluded that a county coroner's duty to determine cause of death does not qualify him as a law enforcement officer, my predecessor examined the issue whether the authority to arrest escaped convicts pursuant to R.C. 2941.44 qualifies the county coroner as a law enforcement officer for purposes of R.C. 2901.01(K), and determined that:

> When a coroner is faced with the situation of arresting an escaped convict, he perhaps comes within the definition of a law enforcement officer given in R.C. 2901.01(K)(2), since he has the duty to conserve the peace and the authority to arrest. Such a coroner would, however, be a law enforcement officer only "within the limits of such statutory duty and authority." ... Except when a coroner acts pursuant to such [a statute], he is not a law enforcement officer within the definition set forth in R.C. 2901.01(K).

director of the county emergency management agency to respond to calls for their services within the definition of "public safety vehicles," these motor vehicles are not "public safety vehicles" for purposes of R.C. 4513.17(D).

It is a well-settled maxim of statutory construction that the expression of one thing in a statute implies the exclusion of another. *See, e.g., Craftsman Type, Inc. v. Lindley*, 6 Ohio St. 3d 82, 451 N.E.2d 768 (1983); *Kroger Co. v. Bowers*, 3 Ohio St. 2d 76, 209 N.E.2d 209 (1965). Application of this maxim of statutory construction indicates that having designated in R.C. 4513.17 the motor vehicles that are authorized to use flashing red lights, the General Assembly has thereby limited the motor vehicles that may use flashing red lights. Therefore, since county and personal motor vehicles operated by the county coroner, deputy coroners, and the director of the county emergency management agency are not listed among the vehicles that are authorized to utilize flashing red lights, I must conclude that R.C. 4513.17(D) prohibits the county coroner, deputy coroners, and the director of the county emergency management agency from operating county or personal motor vehicles which are equipped with flashing red lights and a siren. *See* 1962 Op. Att'y Gen. No. 2873, p. 191; *see also* 1960 Op. Att'y Gen. No. 1284, p. 283.

Based on the foregoing, it is my opinion, and you are advised that R.C. 4513.17(D) prohibits the county coroner, deputy coroners, and the director of the county emergency management agency from operating county or personal motor vehicles which are equipped with flashing red lights and a siren.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

April 22, 1996

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
2900 Columbus Avenue
Sandusky, Ohio 44870

SYLLABUS: 96-027

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