November 29, 1994

OPINION NO. 94-076

The Honorable William F. Schenck
Greene County Prosecuting Attorney
45 N. Detroit St.
Xenia, Ohio 45385

Dear Prosecutor Schenck:

You have requested an opinion on the following question: "When an injury accident occurs on a state highway, are the state highway patrol or the fire department/emergency medical technicians in charge?" Your question arises from an incident that occurred when the emergency equipment of a township fire department within your jurisdiction was dispatched to an injury accident at the intersection of a state highway and a local road. You relate that shortly after the emergency squad arrived at the scene, a State Highway Patrol trooper requested the captain of the fire department to move a piece of emergency apparatus from the flow of traffic. The captain of the fire department did not move the emergency apparatus[1] and was arrested for failure to comply with the order or signal of a police officer in violation of R.C. 2921.331.[2] It appears that various criminal charges were then actually filed against both the captain of the fire department and the State Highway Patrol trooper. All such charges were subsequently dismissed, however, and there was no judicial resolution of the issue you have raised.

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[1] Information provided by the State Highway Patrol indicates there may be some dispute as to the nature of the apparatus involved in the incident described in your request. This opinion only addresses the responsibility for the placement and location of actual emergency equipment responding to an injury accident on a state highway and does not address the question of what type of equipment qualifies as emergency equipment.

[2] R.C. 2921.331(A) states: "No person shall fail to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic." A violation of this provision is a first-degree misdemeanor.

Duty of Township Fire Department to Provide Emergency Services Pursuant to R.C. 505.37(A)

R.C. 505.37(A), which authorizes a township to provide fire protection services, provides in pertinent part:

> The board of township trustees may establish all necessary rules to guard against the occurrence of fires and to protect the property and lives of the citizens against damage and accidents, and may ... purchase or otherwise provide any fire apparatus, mechanical resuscitators, or other equipment, appliances, materials ... for fire fighting purposes that seems advisable to the board.... The board may employ one or more persons to maintain and operate fire-fighting equipment....

Although the language of R.C. 505.37(A) does not explicitly state that a township may establish an emergency medical service, that section has been interpreted as granting to townships the authority to provide such a service through the township fire department or a volunteer fire department regardless of whether the emergency involves a fire. *See generally* 1989 Op. Att'y Gen. No. 89-028 at 2-119; 1962 Op. Att'y Gen. No. 3332, p. 793 at 795 (purchase and use of ambulance by township fire department "in an emergency not connected with the putting out of fires is clearly implied"); 1953 Op. Att'y Gen. No. 2416, p. 114 (construing predecessor statute G.C. 3298-54 as not being limited to fire protection and fire-related emergencies). Additionally, R.C. 9.60, which authorizes various political subdivisions to contract for fire protection services, provides that "_[f]ire protection_ includes the provision of ambulance, emergency medical, and rescue service by the fire department of a firefighting agency." R.C. 9.60(A)(4). Although the definition of fire protection in R.C. 9.60(A) is limited to that section, it demonstrates that the General Assembly recognizes that the provision of emergency medical services is a legitimate function of the fire department of a township or other political subdivision.

State facilities and property within a township are entitled to the same emergency services as the township provides generally to other properties in the township. *See, e.g.*, Op. No. 89-028 (syllabus) (a township that provides emergency rescue service throughout the township must provide such services to an institution of the Department of Rehabilitation and Correction); 1988 Op. Att'y Gen. No. 88-042 (syllabus, paragraph two) (Department of Youth Services facility entitled to same fire and rescue services as are provided to rest of township); 1987 Op. Att'y Gen. No. 87-040 (syllabus) (a township that chooses to provide fire protection without the creation of fire districts cannot exclude a portion of the Ohio Turnpike located in the township). In the situation you have described, the township has chosen to provide emergency medical services to the township, and has determined that those services should be provided by the township fire department. Accordingly, when the township fire department emergency squad personnel are called to the scene of an injury accident on a state highway in the township, they are engaged in the performance of a statutory duty assumed by the township pursuant to R.C. 505.37(A).

Duties and Authority of State Highway Patrol Do Not Include Direct Control of Emergency Personnel or Equipment Responding to an Emergency, But Do

Include the Obligation to Regulate the Movement of Traffic as It Affects the Public Safety

State Highway Patrol troopers at the scene of an injury accident on a state highway are similarly engaged in the performance of a statutory duty. R.C. 5503.02(A) states, in pertinent part:

> The state highway patrol shall ... enforce on all roads and highways, notwithstanding section 4513.39 of the Revised Code,[3] the laws relating to the operation and use of vehicles on the highways; ... and regulate the movement of traffic on the roads and highways of the state, notwithstanding section 4513.39 of the Revised Code.
> ....
> State highway patrol troopers shall investigate and report all motor vehicle accidents on all roads and highways outside of municipal corporations....
> The superintendent or any state highway patrol trooper may enforce the criminal laws on all state properties.... (Footnote added.)

R.C. 5503.01 additionally provides:

> [S]tate highway patrol troopers shall be vested with the authority of peace officers for the purpose of enforcing the laws of the state that it is the duty of the patrol to enforce and may arrest, without warrant, any person who, in the presence of ... any trooper, is engaged in the violation of such law.

See also State Fraternal Order of Police v. State, 4 Ohio St. 3d 28, 30, 446 N.E.2d 157, 160 (1983) ("the patrol possesses most of the power of any other police force in Ohio").

The duty of a State Highway Patrol trooper, pursuant to R.C. 5503.02(A), to "investigate and report all motor vehicle accidents" provides neither express nor implied authority to control the delivery of emergency services at the scenes of those accidents. Nor is such authority found in the provisions of R.C. 5503.02(A) that require a State Highway Patrol trooper to "regulate the movement of traffic" and to "enforce ... the laws relating to the operation and use of vehicles." The provisions of R.C. 4511.041 expressly exempt the drivers of emergency vehicles from the requirements of most laws relating to the operation and use of vehicles, and in particular from the prohibition in R.C. 4511.66 against blocking traffic.[4] Thus, the authority of a State Highway Patrol

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[3] R.C. 4513.39(A) provides that the State Highway Patrol and sheriffs or their deputies have authority, to the exclusion of all other peace officers, to make arrests on state highways for violations of certain provisions of R.C. Title 45 governing motor vehicles. R.C. 4513.39(B) allows members of the police force of a township police district to make certain arrests on state highways located in a township police district. Thus, R.C. 4513.39 governs the relationship between the State Highway Patrol and other peace officers, but has no bearing on the relationship between the State Highway Patrol and fire or emergency squad personnel.

[4] R.C. 4511.66 states:

trooper with respect to the movement of traffic and the enforcement of traffic laws does not extend to control over the placement of emergency equipment at the scene of an accident. Similarly, a State Highway Patrol trooper's general duty and authority as a peace officer to enforce the laws of the state under R.C. 5503.01 provides neither express nor implied authority over the placement of emergency equipment. Rather, since the township fire department emergency squad is engaged in the performance of a statutory duty in responding to an injury accident, R.C. 5503.01 would appear to impose an obligation to facilitate, rather than control, the emergency squad in the performance of its specific statutory duties.

Although the statutes governing the State Highway Patrol do not vest the patrol with control over the placement of emergency equipment of a township fire department emergency squad, the provisions of R.C. 5503.02(A) do vest the State Highway Patrol with authority over the traffic and vehicles not involved in the delivery of emergency services. A trooper has a statutory duty to protect the public safety by managing non-emergency traffic at the scene. This duty involves not only managing traffic in such a way as to accommodate the needs of the emergency squad, but also managing traffic in such a way as to prevent additional injuries or accidents. To the extent that placement of emergency equipment creates additional hazards, such placement creates a legitimate public safety concern on the part of the State Highway Patrol.

Where a Duty to Provide Emergency Services Exists, a Township Fire Department Has Authority to Control Their Personnel and Equipment in Responding to an Emergency

There is no statute that expressly defines the relationship between township fire department emergency squad personnel and the State Highway Patrol, when both are engaged in the performance of statutory duties at the scene of an injury accident on a road or highway. Various powers and responsibilities conferred upon state and local fire officials generally are specified in R.C. Chapter 3737 (fire marshal; fire safety) and the administrative regulations promulgated thereunder. Pursuant to R.C. 3737.82, the State Fire Marshal is required to adopt a state fire code. *See also* R.C. 3737.22(A)(1)-(2) (requiring the State Fire Marshal to adopt and enforce the state fire code). Section FM-102.8 of the Ohio Fire Code, codified at 4 Ohio Admin. Code 1301:7-1-03(I), provides "[a]uthority at fires and emergencies: The fire chief [of a municipal or township fire department] or his authorized representative shall be in charge at the scene of a fire *or other emergency* involving the protection of life and/or property, and shall remain in charge until authority is relinquished." (Emphasis added.) Although the term "other emergency" in FM-102.8 is not limited, R.C. 3737.82 provides that the state fire code "shall consist of rules relating to all aspects of fire safety. The rules shall be the minimum standards for safeguarding life and property from fire

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no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main traveled part of the highway if it is practicable to stop, park, or so leave such vehicle off the paved or main traveled part of such highway. In every event a clear and unobstructed portion of the highway opposite such standing vehicle shall be left for the free passage of other vehicles....

and explosion." This language arguably limits the scope of FM-102.8 to emergencies related to fire and explosion, although a sound argument also can be made that FM-102.8 applies to all emergencies to which a local fire department is legally authorized to respond, either by statute or by authorization of the appropriate local authority.

Because local authorities, such as townships acting pursuant to R.C. 505.37(A), or municipalities acting pursuant to R.C. 737.11, have the power to expand the duties of a fire department to non-fire-related emergencies, however, it is not necessary to rely solely on FM-102.8 as a source of authority for fire department emergency squad personnel at the scene of such a non-fire-related emergency. It is axiomatic that when legislation confers the authority or duty to perform a task, but does not specify the manner of performance, the responsible public officer has the "implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method of doing the thing commanded." *State ex rel. Hunt v. Hildebrandt*, 93 Ohio St. 1, 12, 112 N.E. 138, 141 (1915), *aff'd*, 241 U.S. 565 (1916). Thus, when a board of township trustees, acting pursuant to R.C. 505.37(A), has designated a township fire department as the provider of emergency medical services in the township, that designation vests in the fire department the authority to accomplish acts necessary and essential to the provision of such services. The effective delivery of emergency services requires at a minimum the authority to control the personnel and equipment directly involved in responding to the emergency.

Additionally, R.C. 4511.041 expressly excepts the drivers of emergency or public safety vehicles that are responding to an emergency call from certain enumerated provisions of state traffic law. In particular, drivers of emergency vehicles are excepted from R.C. 4511.66, which prohibits the blocking of highways. *See* n.4, *supra*. By excepting the drivers of emergency vehicles responding to an emergency call from the prohibition against blocking traffic, the General Assembly has implicitly recognized that the placement of emergency equipment is a matter that must be governed by the exigencies of the particular emergency rather than by the general statutory traffic law provisions. Thus, the provisions of R.C. 4511.041 reinforce the conclusion that the placement of emergency equipment at the scene of an injury accident is within the scope of authority of the entity charged with the duty of providing emergency services, which in your case is the township fire department.

Township Fire Department Control over Personnel and Equipment Responding to an Emergency Should Be Exercised in a Manner that Accommodates Legitimate Concerns of the State Highway Patrol

Although the placement of emergency equipment at the scene of an accident on a road or highway is ultimately dictated by the circumstances of the particular emergency, the interaction of State Highway Patrol troopers and emergency squad personnel at the scene should be marked by cooperation, rather than competition for control. The public safety and welfare is not advanced when emergency squad personnel ignore legitimate concerns of the State Highway Patrol with respect to traffic control and law enforcement at the scene of an injury accident; nor is it advanced when the State Highway Patrol ignores legitimate concerns of emergency squad personnel as they try to provide emergency medical services to injured persons. Such concerns should be accommodated by both parties whenever it is possible to do so, in order to arrive at an amicable resolution of any controversies that may arise, so that all concerned may efficiently carry out their duties. 1987 Op. Att'y Gen. No. 87-039 at 2-264. *See generally* 1992 Op. Att'y Gen. No. 92-072 (discussing need for cooperation between county children services board and common pleas court with respect to visitation orders); 1989 Op. Att'y Gen. No. 89-108 (discussing need for cooperation between various agencies with respect to investigations of alleged child abuse). In particular, emergency squad personnel should exercise their control over personnel and equipment responding to an emergency in such a manner as to accommodate legitimate public safety concerns expressed by State Highway Patrol troopers.

Conclusion

It is my opinion, therefore, and you are hereby advised that when an injury accident occurs on a state highway, and emergency medical services personnel of a township fire department that provides emergency services pursuant to R.C. 505.37(A) respond to the call, the individual designated by the fire department as being in command has the legal authority to control the duties of the emergency medical services personnel and the placement of emergency equipment as needed to provide effective emergency services at the scene; yet such authority should be exercised in such a manner as to accommodate legitimate public safety concerns of other public officials with responsibilities at the scene, including State Highway Patrol troopers.

Respectfully,

LEE FISHER
Attorney General

November 29, 1994

The Honorable William F. Schenck
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45 N. Detroit St.
Xenia, Ohio 45385

SYLLABUS: 94-076

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