October 13, 2009

The Honorable Jessica A. Little
Brown County Prosecuting Attorney
200 East Cherry Street
Georgetown, Ohio 45121

SYLLABUS: 2009-039

1. In a county having forty miles or more of improved intercounty or state highways, the sheriff has a mandatory duty under R.C. 5577.13 to detail one or more deputies for the work of enforcing vehicle weight and size limits established under R.C. 5577.01-.14. The board of county commissioners has a mandatory duty under R.C. 5577.13 to appropriate from the county road fund the amount necessary to equip and compensate each such deputy. A failure to fulfill these duties may result in the lack of county enforcement of R.C. 5577.01-.14 and may subject the sheriff or the board of county commissioners to an action in mandamus.

2. R.C. 5577.13 authorizes the county sheriff to deputize (for purposes of enforcing R.C. 5577.01-.14) officials who patrol the county highways as employees of bodies located within the county. R.C. 5577.13 does not authorize the county sheriff to deputize State Highway Patrol troopers.

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

October 13, 2009

OPINION NO. 2009-039

The Honorable Jessica A. Little
Brown County Prosecuting Attorney
200 East Cherry Street
Georgetown, Ohio 45121

Dear Prosecutor Little:

We have received your request for an opinion regarding county enforcement of highway load limits under R.C. 5577.01-.14. You have asked about the consequences of a failure by the county sheriff to implement a Weight Scale Program mandated by R.C. 5577.13. You have also asked if R.C. 5577.13 authorizes the county sheriff to assign to State Highway Patrol troopers the responsibility of carrying out the enforcement of R.C. 5577.01-.14.

Sections 5577.01 to 5577.14 of the Ohio Revised Code relate to traffic regulation and pertain principally to the establishment and enforcement of restrictions regarding the maximum weight, length, width, and height of vehicles operated on public highways, streets, bridges, or culverts. R.C. 5577.12 creates a civil liability for damages resulting to any street, highway, bridge, or culvert by reason of a violation of weight or size limits, and R.C. 5577.99 provides criminal penalties (fines and imprisonment) for violations. *See* 1979 Op. Att'y Gen. No. 79-035, at 2-118 (violations of R.C. Chapter 5577 "occurring on any road or highway in the state are punishable under R.C. 5577.99").

R.C. 5577.13 states:

> In those counties having forty miles or more of improved intercounty or state highways, *the sheriff of each such county shall, and in all other counties may, detail one or more deputies for the work of enforcing [R.C. 5577.01-.14]*. The board of *county commissioners shall appropriate such amount of money annually, from the road fund of the county,* as is necessary to equip and

> compensate such deputy. *The patrolmen of the county highways may be deputized by the sheriffs of the counties in which they are employed,* as deputy sheriffs, but shall receive no extra compensation. (Emphasis added.)

Thus, in a county having forty miles or more of improved intercounty[1] or state highways (including Brown County), the sheriff "shall" detail one or more deputies to enforce vehicle weight and size limits, and the board of county commissioners "shall" use road fund money to equip and compensate the deputy or deputies. *See* R.C. 5535.01(A) (state highway system).

The word "shall" is mandatory absent an indication that a different meaning is intended. *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph 1). "Shall" is used in the mandatory sense in relation to the sheriff's duties under R.C. 5577.13, in contradistinction to "may," which appears in the same statute. *See United States ex rel. Siegel v. Thoman*, 156 U.S. 353, 359-60 (1895). Thus, in a county having forty miles or more of improved intercounty or state highways, the sheriff has a mandatory duty to detail one or more deputies to enforce vehicle weight and size limits, while in a county with fewer miles of those highways, the sheriff has the option of providing that enforcement. R.C. 5577.13; 1977 Op. Att'y Gen. No. 77-079, at 2-271 (the word "shall" in R.C. 5577.13 imposes upon the sheriff the duty to detail a deputy to enforce R.C. 5577.01-.14); *see also* 1979 Op. Att'y Gen. No. 79-035, at 2-117.

The word "shall" also imposes upon the board of county commissioners a mandatory duty to appropriate from the county road fund enough money to equip and compensate the deputy or deputies for their service pertaining to the enforcement of vehicle weight and size limits. *See State v. Hartford*, No. C-75476, 1976 Ohio App. LEXIS 6188, at *2 (Hamilton

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[1] Intercounty highways predated the state highway system and, although references to intercounty highways continue to appear in the Ohio Revised Code, that classification is no longer in common use. *See* R.C. 5535.01. In 1915, the General Assembly enacted legislation that included as state roads "such part or parts of the inter-county highways and main market roads as have been or may hereafter be constructed by the state" or taken over by the state. 1914-1915 Ohio Laws 574, 648 (Am. S.B. 125, filed June 5, 1915). Under G.C. 7465 (now R.C. 5535.06), intercounty roads constructed or improved by a county or township "shall at once become state roads" upon being constructed or improved to meet standards established by the state. *Id.* at 649. Under G.C. 5538 (now R.C. 5535.07), the state took over, for maintenance purposes, any portions of intercounty highways outside of municipal corporations that had not been constructed by the state or taken over by the state for maintenance. 1925 Ohio Laws 294, 300 (H.B. 44, filed Apr. 21, 1925) (title includes among purposes: "to transfer to the state the duty of maintaining the entire main market road and inter-county highway systems thereof"). *See generally* R.C. 4504.03; R.C. 5541.02; R.C. 5543.04-.05, .18; R.C. 5561.01-.03, .14; R.C. 5571.01, .02; R.C. 5577.03; R.C. 5589.31; *Hanks v. Bd. of Comm'rs*, 35 Ohio App. 246, 172 N.E. 423 (Adams County 1929).

County July 19, 1976) (a sheriff who is obligated under R.C. 5577.13 to enforce R.C. 5577.01-.14 "has a right to have a board of county commissioners appropriate an amount of money annually from a county road fund to equip and compensate a deputy for performance of that duty"); *State ex rel. Trussell v. Bd. of County Comm'rs*, 155 Ohio App. 3d 230, 2003-Ohio-6084, 800 N.E.2d 381, at ¶13 (Meigs County) (the board of county commissioners has no discretion with regard to funding when there is a constitutional provision or statute requiring full funding); 2008 Op. Att'y Gen. No. 2008-014, at 2-157; 2006 Op. Att'y Gen. No. 2006-013, at 2-109 to 2-110.

You have explained that your county sheriff has approached the board of county commissioners for funding under R.C. 5577.13 but has not received it, so the sheriff and the commissioners are at an impasse. Your letter states: "[O]ur county, like many others, is in the midst of a budget crisis and the Commissioners are struggling to keep our county operating, so they have not appropriated any funds." You have told us that Brown County has not implemented a weight scale program in the past and has no equipment for weighing motor vehicles. It is our understanding that this is a common situation in Ohio counties. Officials at the State Highway Patrol informed us that it is difficult for counties to do their own weight limit enforcement. The equipment is extremely expensive and special trucks are required to carry the equipment. Notwithstanding the mandatory language of R.C. 5577.13, it thus appears that few Ohio counties assign deputies to do load enforcement or have the resources to purchase all the necessary equipment.

Consequences of County's Failure to Provide Funding Under R.C. 5577.13

In the matter before us, the board of county commissioners has a mandatory duty to fund a vehicle weight limit enforcement program under R.C. 5577.01-.14, and the board's failure to fund that program, for whatever reason, is a failure to perform a statutory duty. Because deputies under R.C. 5577.13 are to be equipped and compensated from the county road fund, the sheriff is not able to implement R.C. 5577.13 if no county road fund moneys are appropriated for that purpose. The consequent failure of the sheriff to implement a vehicle weight limit enforcement program under R.C. 5577.13 is the necessary result of the sheriff's lack of road funds to pay for the program. *See generally* 1937 Op. Att'y Gen. No. 136, vol. I, p. 185, at 187 (with regard to a county that had no road fund with which to fund a deputy under G.C. 7251-1 (predecessor to R.C. 5577.13), stating, in part: "However mandatory the language of a statute may be, it cannot require a vain thing. . . . The sheriff cannot be required to detail one of his deputies for traffic duty without pay").

You have asked about the consequences of this situation. If a public official fails to perform a mandatory duty, that official may be subject to an action in mandamus to require the performance of the duty. The sheriff may be subject to such an action if the sheriff does not "detail one or more deputies for the work of enforcing [R.C. 5577.01-.14]" under R.C. 5577.13. The board of county commissioners may be subject to such an action if the board does not appropriate from the county road fund the amount of money necessary to equip and compensate a deputy for the work of enforcing R.C. 5577.01-.14. In mandamus actions, the courts decide

whether to compel performance by particular public officials. *See, e.g., Geauga County Bd. of County Comm'rs v. Geauga County Sheriff*, 2003-Ohio-7201, 2003 Ohio App. LEXIS 6508, at ¶58, 60, 66, 82 (Geauga County) (an action in mandamus may be brought to determine whether there has been an abuse of discretion in funding the office of the county sheriff and to compel compliance with the appropriate funding standard); 1988 Op. Att'y Gen. No. 88-096, at 2-471 (provision that board of county commissioners "shall levy taxes and make appropriations sufficient" to fund the functions of the county MR/DD board imposes a duty on the board of county commissioners and allows the county MR/DD board to bring an action in mandamus to compel performance of that duty).

In interpreting statutory mandates to fund particular non-judicial functions,[2] courts have not regarded financial hardship as an excuse for failure to comply with the duty to fund, but they have recognized the defense of impossibility in some circumstances. *See, e.g., State ex rel. Mishler v. Bd. of Township Trustees*, Nos. 8723, 8730, 1978 Ohio App. LEXIS 7939 (Summit County May 24, 1978) (lack of money in road fund was good defense to mandamus action); 1988 Op. Att'y Gen. No. 88-096, at 2-471 to 2-472 (discussion of various cases involving lack of sufficient funds); *see also* 2001 Op. Att'y Gen. No. 2001-019, at 2-109 to 2-110. The right to a writ of mandamus might also be affected by a finding that others share responsibility for providing funding. *See Jackson County Bd. of MR/DD v. Bd. of County Comm'rs*, 49 Ohio St. 3d 63, 551 N.E.2d 133 (1990). Whether a particular argument will prevail in a specific case must be decided by the judiciary.[3]

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[2] Cases pertaining to the funding of judicial functions involve constitutional and separation of powers issues that require a somewhat different analysis than that applicable to non-judicial functions. *See* 1988 Op. Att'y Gen. No. 88-096, at 2-472 n.9.

[3] *See, e.g., State ex rel. Brown v. Bd. of County Comm'rs*, 21 Ohio St. 2d 62, 255 N.E.2d 244 (1970) (mandamus is a high prerogative writ that does not lie if the act requested cannot be performed; thus, the court denied mandamus for the county to make mandatory payments for public assistance when granting mandamus would require the county to neglect the performance of other statutory duties); *accord State ex rel. Johns v. Bd. of County Comm'rs*, 29 Ohio St. 2d 6, 278 N.E.2d 19 (1972); *see also State ex rel. Trussell v. Bd. of County Comm'rs*, 155 Ohio App. 3d 230, 2003-Ohio-6084, 800 N.E.2d 381, at ¶26-27 (Meigs County) (financial hardship may be considered in determining appropriations and is particularly relevant when an abuse of discretion is at issue; on facts presented, board of county commissioners was faced with a difficult choice between equally desirable allocations of funds and the choice it made was not an abuse of discretion); 2006 Op. Att'y Gen. No. 2006-048, at 2-463 to 2-464. *See generally Geauga County Bd. of County Comm'rs v. Geauga County Sheriff*, 2003-Ohio-7201, 2003 Ohio App. LEXIS 6508, at ¶66 (Geauga County) (when a court orders funding for mandatory duties of a county official, the board of county commissioners must find a way to provide the funding, unless there is a total collapse of the county budget).

As a practical matter, any judicial proceedings will result in delays and will use county resources that might better be applied to the performance of necessary county functions. Accordingly, the interested parties might seek agreement on the current difficulty of funding county functions and proceed to make the most effective use of those resources that are available. In establishing governmental priorities, there is generally discretion to determine the manner and extent of the enforcement of particular laws. *See, e.g.*, 2007 Op. Att'y Gen. No. 2007-029, at 2-307.

Practical consideration of the issue requires consideration of other means by which weight and size limits may be enforced. R.C. 5577.13 requires the capability for enforcement—that is, equipment and the designation of at least one deputy—but does not prescribe the level of enforcement required and thus permits the exercise of discretion in this regard. In an ideal situation, one or more full-time deputies would be employed and equipped under R.C. 5577.13. However, R.C. 5577.13 does not prohibit using road funds to pay deputies for part-time vehicle weight enforcement.

Further, although R.C. 5577.13 authorizes the expenditure of road fund moneys for costs pertaining to the enforcement of R.C. 5577.01-.14, it does not prohibit the sheriff from using moneys appropriated for general law enforcement to enforce vehicle weight and size limits. Provisions other than R.C. 5577.13 permit the sheriff to assign deputies the duty of patrolling roads and enforcing traffic laws, including weight and size limits established under R.C. 5577.01-.14. *See, e.g.*, R.C. 311.04 (sheriff's authority to appoint deputies); R.C. 311.07 (sheriff's duty to preserve the public peace); R.C. 2935.03(A)(1) (authorizing a sheriff or deputy sheriff to arrest a person violating a state law within the county); R.C. 4513.39 (authorizing sheriffs or their deputies to enforce various state laws, including vehicle weight and size limits, on state highways); *see also Geauga County Bd. of County Comm'rs v. Geauga County Sheriff* at ¶41, 43, 47-48, 83 (the sheriff's duty under R.C. 311.07 to preserve the public peace provides discretion for the sheriff to determine whether to use non-road funds for the purpose of allowing the sheriff's department to patrol the county roads and perform other acts which, although broadly related to keeping the peace, do not fall within the narrow duty defined in R.C. 311.07(A)); *State v. Hartford* at *2-3 (failure by the county commissioners to appropriate money under R.C. 5577.13 "does not deprive [the] sheriff of his general authority to enforce the laws and ordinances of Ohio pursuant to [R.C. 2935.03]").[4] Thus, in the absence of the provision of road fund moneys to pay particular deputies, a sheriff might achieve minimal compliance with R.C. 5577.13 by using non-road fund moneys to secure the equipment necessary to enforce R.C. 5577.01-.14 and to pay one or more deputies who are trained to enforce vehicle weight and size limits if the need for enforcement should arise.

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[4] *Cf.* 1937 Op. Att'y Gen. No. 136, vol. I, p. 185, at 187 (under law then in effect, finding no fund other than the road fund referenced in G.C. 7251-1 (predecessor to R.C. 5577.13) from which a deputy sheriff could be paid for services as a traffic officer and concluding that, because the county had no road fund, the sheriff was unable to detail a deputy for traffic duty).

The practical consequences of a failure to fund a vehicle weight limit enforcement program under R.C. 5577.13 may depend upon the traffic patterns of a particular county and may be affected by the existence of other officials with authority to enforce vehicle weight and size limits. A factor that counties may consider in determining whether to establish their own weight limit enforcement programs is the extent to which enforcement is available from other officials.

Statutory provisions grant certain local officials authority to enforce weight and size limits in specified circumstances. For example, R.C. 4513.33 states that "[a]ny police officer having reason to believe that the weight of a vehicle and its load is unlawful may require the driver of such vehicle to stop and submit to a weighing of it" by means of a portable scale or permanently-installed scale that conforms to statutory standards. Municipal police and certain peace officers of townships have limited authority to enforce weight and size limits on state highways as provided in R.C. 4513.39. *See also* R.C. 2935.03 (authority for local officials to make arrests); R.C. 4511.01(Z); R.C. 4513.01; *City of Elyria v. Swagger*, No. 89CA004731, 1990 Ohio App. LEXIS 3948 (Lorain County Aug. 29, 1990) (city police officer enforces highway weight limits under city ordinance).

More importantly, the State Highway Patrol provides enforcement of load limits in Ohio's counties. R.C. 5503.02 gives the State Highway Patrol authority to enforce traffic laws, including weight and size limits, on all roads and highways in Ohio and states, in part: "The state highway patrol shall . . . enforce and prevent the violation of the laws relating to the size, weight, and speed of commercial motor vehicles and all laws designed for the protection of the highway pavements and structures on the highways." Further, R.C. 5503.03 states that "[t]he patrol may be equipped with standardized and tested devices for weighing vehicles, and may stop and weigh any vehicle which appears to weigh in excess of the amounts permitted by [R.C. 5577.01-.14]." *See* R.C. 4513.39; 1962 Op. Att'y Gen. No. 3406, p. 908 (syllabus) ("[R.C. 5503.02] authorizes the state highway patrol to enforce the limitations of [R.C. 5577.04 (maximum axle load, wheel load, and gross vehicle weights)] on all roads and highways of the state, including roads within municipal corporations, and the patrol is authorized to make arrests for violations of those limitations on all such roads and highways"). As a practical matter, the State Highway Patrol has the equipment and trained personnel to implement weight limit enforcement. We have been informed that the Patrol has one or more weigh scale teams in each of its nine districts in the state.[5]

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[5] *See, e.g.*, *State v. Murphy*, 2005-Ohio-135, 2005 Ohio App. LEXIS 99, at ¶5 (Huron County) (State Highway Patrol trooper called for district scales team; inspector arrived and they proceeded to appropriate location to weigh truck); *State v. Miller*, 2004-Ohio-2873, 2004 Ohio App. LEXIS 2532 (Vinton County) (trooper followed a truck in two counties and weighed the truck in a third county); *State v. Osborne*, 2002-Ohio-5362, 2002 Ohio App. LEXIS 5379, at ¶8 (Athens County) (trooper was assigned to weights and measures division of the Patrol); *State v. Myers*, 63 Ohio App. 3d 765, 580 N.E.2d 61 (Clark County 1990).

Thus, even if no deputy sheriff is detailed to enforce weight limits under R.C. 5577.13, certain local officials and Highway Patrol troopers have authority to enforce vehicle weight and size limits as provided by statute. *See, e.g.*, R.C. 2935.03; R.C. 4513.33, .39; R.C. 5503.02-.03.

Enforcement of Vehicle Weight and Size Limits by Officials Other Than Deputy Sheriffs

Your second question is whether R.C. 5577.13 authorizes the county sheriff to assign to State Highway Patrol troopers the responsibility of carrying out the enforcement of R.C. 5577.01-.14. This question must be answered in the negative.

The final sentence of R.C. 5577.13 states: "The *patrolmen of the county highways* may be deputized by the sheriffs of the *counties in which they are employed*, as deputy sheriffs, but shall receive no extra compensation." (Emphasis added.) Upon an initial reading, the use of the term "patrolmen" might suggest that this sentence applies to members of the State Highway Patrol. Closer examination, however, reveals that the "patrolmen" referenced in this statute are officials employed by subdivisions located in whole or in part within the county.[6]

R.C. 5577.13 was initially enacted in 1923 as G.C. 7251-1. *See* 1923 Ohio Laws 319, 323 (H.B. 612, filed Apr. 19, 1923).[7] At that time, the sheriff's authority to deputize extended to "road superintendents and assistant road superintendents of the state highway department" and to "patrolmen of the county highways." Although there was a State Highway Department at that

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[6] A conflict of interest may exist if an official who patrols county highways serves under more than one appointing authority, because the official could face conflicting orders and priorities. *See, e.g.*, 1998 Op. Att'y Gen. No. 98-033; 1996 Op. Att'y Gen. No. 96-017; 1989 Op. Att'y Gen. No. 89-044 (position of deputy sheriff is incompatible with position of village police officer or township police constable in same county). The fact that R.C. 5577.13 expressly authorizes the deputization of "patrolmen" indicates that the General Assembly has decided to accept the risk of conflict in the circumstances covered by R.C. 5577.13. *See* 2003 Op. Att'y Gen. No. 2003-007, at 2-43 n.4; *see also* 1992 Op. Att'y Gen. No. 92-024 (no conflict exists if township police officer is commissioned as special deputy sheriff for the limited purpose of exercising countywide arrest powers); 1991 Op. Att'y Gen. No. 91-037, at 2-199 to 2-200.

[7] As originally enacted, the final sentence of G.C. 7251-1 stated: "The road superintendents and assistant road superintendents of the state highway department and patrolmen of the county highways may be deputized by the sheriffs of the counties in which they are employed, as deputy sheriffs, but shall receive no extra compensation." 1923 Ohio Laws 319, 323 (H.B. 612, filed Apr. 19, 1923). The purpose of the legislation, as set forth in the title to H.B. 612, was to protect the improved highways of the state "by limiting the weight and speed of motor vehicles and providing for the appointment of highway police to enforce the traffic laws of the state." *Id.*

time, there was no State Highway Patrol.[8] In fact, it was found by the Attorney General in 1927 that the State Highway Department had no authority to expend its funds to employ persons to patrol state highways, let alone county highways. 1927 Op. Att'y Gen. No. 86, vol. I, p. 124. It was acknowledged that G.C. 7251-1 permitted road superintendents and assistant road superintendents of the State Highway Department to be deputized by county sheriffs, but there was no suggestion that any State Highway Department officials or employees could be included as "patrolmen of the county highways" under G.C. 7251-1. *Id*.

With regard to the deputization of "patrolmen of the county highways," the evident intent of G.C. 7251-1, and now R.C. 5577.13, is to permit the county sheriff to deputize local officials who patrol county highways so that those officials may enforce vehicle weight and size limits. *See* note 7, *supra*. This reading of the statute is supported by the reference to "the counties in which they are employed," which indicates that the authority to deputize extends to officials who are employed within the county to patrol highways within the county. *See, e.g.,* 1942 Op. Att'y Gen. No. 5212, p. 394 (township constable had authority to enforce traffic laws on highways located within the township other than state highways); 1923 Op. Att'y Gen. No. 787, vol. I, p. 641 (prosecuting attorney could use furtherance of justice funds to employ a person to enforce traffic laws).

The State Highway Patrol is a division within the Ohio Department of Public Safety. R.C. 5503.01. State Highway Patrol troopers are employed by the state for the purpose of enforcing certain state laws, and they have authority to operate throughout the state. R.C. 4513.39; R.C. 5503.01-.02. Thus, although troopers may serve or be assigned to patrol within particular counties, they are not "employed" in particular counties within the meaning of R.C. 5577.13. Even though troopers now have enforcement authority on all roads and highways within the state, the State Highway Patrol was, as its name attests, established primarily to enforce state laws and patrol state highways. *See* R.C. 4513.39; 1945-1946 Ohio Laws 455, 518-21 (Am. S.B. 204, filed July 12, 1945). Because of the statewide authority and extensive functions of the State Highway Patrol, troopers cannot reasonably be described as "patrolmen of the county highways" as that term is used in R.C. 5577.13. *See* R.C. 5503.01-.02; R.C. 5535.01 (defining state, county, and township roads); R.C. Chapter 5541 (county highway system).

That R.C. 5577.13 does not refer to the State Highway Patrol is evidenced also by the fact that the term "patrolmen" is no longer used to refer to members of the State Highway Patrol In 1991, that term was replaced by the term "State Highway Patrol trooper." 1991-1992 Ohio Laws, Part I, 862 (Am. Sub. S.B. 144, eff. Aug. 8, 1991) (per title, purposes include changing "certain terms throughout the Revised Code to make references to members of the State Highway Patrol gender neutral"); *see, e.g.,* R.C. 5503.01-.02; G.C. 1183, 1183-2 (predecessors to R.C. 5503.01-.02). The fact that no change was made to R.C. 5577.13 in 1991 reflects the

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[8] The State Highway Patrol did not come into existence until 1945. *See* 1945-1946 Ohio Laws 455, 518 (Am. S.B. 204, filed July 12, 1945).

understanding of the General Assembly that the word "patrolmen" in that context does not refer to members of the State Highway Patrol.

Further, there is no need for members of the State Highway Patrol to be deputized by county sheriffs in order to enforce vehicle weight and size limits under R.C. 5577.01-.14. As discussed above, State Highway Patrol troopers have express jurisdiction and existing programs for enforcing vehicle weight and size limits on roads and highways throughout Ohio. In contrast, deputization of officials who are employed by bodies within the county and perform the function of patrolling county highways may provide the benefit of expanding the authority and jurisdiction of those officials, thereby increasing the enforcement of vehicle weight and size limits within the county. *See* 1992 Op. Att'y Gen. No. 92-024, at 2-84 (sheriff may commission a township police officer as a special deputy sheriff for the sole purpose of conferring a portion of the sheriff's law enforcement powers); 1991 Op. Att'y Gen. No. 91-037, at 2-199 to 2-200; 1942 Op. Att'y Gen. No. 5212, p. 394; notes 6-7, *supra*. *See generally* 2006 Op. Att'y Gen. No. 2006-048, at 2-463 (if funds to compensate employees are lacking, the sheriff may use unpaid reserve or special deputies).[9]

In times of economic difficulty, county officials must work within the existing statutory provisions to allocate limited resources as required by law. *See State ex rel. Trussell v. Bd. of County Comm'rs* at ¶26. If changes in statutory authority or mandated priorities are desired, the remedy lies with the General Assembly. *See Bd. of Educ. v. Fulton County Budget Comm'n*, 41 Ohio St. 2d 147, 156, 324 N.E.2d 566 (1975); 2006 Op. Att'y Gen. No. 2006-048, at 2-463 to 2-464. Further, law enforcement bodies with concurrent jurisdiction should strive to cooperate in order to utilize personnel and equipment efficiently and effectively. *See, e.g.*, 2009 Op. Att'y Gen. No. 2009-008, at 2-59.

Conclusions

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. In a county having forty miles or more of improved intercounty or state highways, the sheriff has a mandatory duty under R.C. 5577.13 to detail one or more deputies for the work of enforcing vehicle weight and size limits established under R.C. 5577.01-.14. The board of county commissioners has a mandatory duty under R.C. 5577.13 to appropriate from the county road fund the amount necessary to equip and compensate each such deputy. A failure to fulfill these duties may result in the lack of

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[9] Deputization requires appointment by the sheriff, an oath by the deputy, and a filing with the clerk of the court of common pleas, and may occur only with the consent and cooperation of the prospective deputy and that person's employer. R.C. 3.22; R.C. 311.04; *see also* R.C. 311.05 (sheriff's liability for conduct of deputies).

county enforcement of R.C. 5577.01-.14 and may subject the sheriff or the board of county commissioners to an action in mandamus.

2. R.C. 5577.13 authorizes the county sheriff to deputize (for purposes of enforcing R.C. 5577.01-.14) officials who patrol the county highways as employees of bodies located within the county. R.C. 5577.13 does not authorize the county sheriff to deputize State Highway Patrol troopers.

Respectfully,

RICHARD CORDRAY
Ohio Attorney General