

**OPINION NO. 70-066****Syllabus:**

1. With respect to any felony arrest, which by law the members of the State Highway Patrol are authorized to make, they have the same powers as are conferred upon any peace officer under like circumstances with regard to the right of search and seizure, namely, (a) to search for and seize weapons for their own protection or to prevent escape and, (b) to search for and seize evidence upon the arrestee's person or under his control to prevent its concealment or destruction.

2. When the purpose of arrest, on the other hand, is for a misdemeanor, the State Highway Patrol is limited in the search for, and seizure of, deadly or dangerous weapons for their own protection or to prevent escape.

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**To: Robert M. Chiaramonte, Supt. State Highway Patrol, Columbus, Ohio**  
**By: Paul W. Brown, Attorney General, June 12, 1970**

I have before me your request for a formal opinion defining the rights of members of the Ohio State Highway Patrol in effecting search and seizure on state-owned or leased property.

When Opinion No. 1619, Opinions of the Attorney General for 1939, was published, the law of Ohio with respect to the powers and duties of the State Highway Patrol were far more restricted than at present.

Section 1181-2, General Code, provided in pertinent part:

"The superintendent and highway patrolmen shall be vested with the authority of peace officers for the enforcing of the laws of the state relating to the registration of motor vehicles and the operation of vehicles upon the highways, and all laws of the state for the protection of the highways, and are authorized to arrest without warrant any person who in the presence of the superintendent or any patrolman is engaged in the violation of any of such laws, \* \* \*"

It is noted that in 1939 the powers of arrest were limited to misdemeanor offenses and it is easily understandable that the general assembly should see fit to limit the powers of search and seizure to the taking of dangerous weapons for the protection of the arresting officer.

In 1945 the general assembly amended Section 1183-2, supra, to increase the powers and duties of the Highway Patrol by adding the following:

"\* \* \* The superintendent or any highway patrolman may arrest without a warrant any person, who is the driver of or a passenger in any vehicle operating or standing in a state highway, whom he has reasonable cause to believe is guilty of a felony, under the same circumstances and with the same power that any peace officer makes such arrest."

The general assembly again in 1953, by enacting Section 5503.02, Revised Code, increased the powers of arrest by adding the following:

"\* \* \* The superintendent or any patrolman may enforce the criminal laws on all state properties and state institutions, owned or leased by the state."

And, in 1968, the general assembly added the additional powers by amendment:

"\* \* \* and, when so ordered by the governor in the event of riot or insurrection may, pursuant to sections 2935.03 to 2935.05 inclusive, of the Revised Code, arrest offenders against the criminal laws wherever they may be found within the state, where the violations occurred upon, or resulted in injury to property on state property or institutions."

When the general assembly increased the powers and duties of the State Highway Patrol to enforce felony crimes it saw fit to enable the enforcement officers to accomplish their duty by conferring upon them the authority to arrest felony violators under the same circumstances and with the same power that any peace officer may make such arrest. I see in this grant of power no conflict with the former restriction placed upon the arresting officer in misdemeanor cases.

Along with the responsibility of making arrests in felony cases there is a concomittant duty to collect and preserve evidence upon which a conviction may be dependant, as well as to prevent the loss or destruction thereof. This right has long been recognized and recently was restated by the Supreme Court of the United States in Chimel v. California, 395 US 752 (1969), at page 763, as follows:

"[When an] arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule.

A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control'-constructing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence."

When, therefore, the general assembly authorized the State Highway Patrol to effect felony arrests under the same circumstances and with the same power that any peace officer may make an arrest, it conferred upon the arresting officer, in addition to the power to remove deadly or dangerous weapons, for self-protection, the power to search for and seize any evidence on the arrestee's person or under his control to prevent its concealment or destruction.

It is noteworthy that despite the many revisions of the laws defining the powers of highway patrolmen, the general assembly did not repeal that part of the original section restricting the powers with respect to search and seizure. It is clear that by retaining that part of the section the general assembly intended that the original restriction with respect to misdemeanor arrests should remain.

It is therefore my opinion, and you are advised:

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2. When the purpose of arrest, on the other hand, is for a misdemeanor, the State Highway Patrol is limited in the search for, and seizure of, deadly or dangerous weapons for their own protection or to prevent escape.