

OPINION NO. 77-079

Syllabus:

1. The county sheriff is directed by R.C. 5577.13 to detail a deputy to enforce R.C. Chapter 5577 and the county engineer does not possess the authority to hire an individual for the purpose of enforcing these provisions.
2. The board of county commissioners may compensate and equip a deputy detailed to enforce R.C. Chapter 5577 from either the Annual License Tax fund established by 4505.05 or the County Motor Vehicle License Tax established by R.C. 4502.02. (1954 Op. Att'y Gen. No. 3998, p. 319, and paragraph one of the syllabus of 1931 Op. Att'y Gen. No. 3305, p. 779, modified.)

To: B. Edward Roberts, Marion County Pros. Atty., Marion, Ohio
By: William J. Brown, Attorney General, November 25, 1977

Your request for my opinion concerns the manner in which the highway load limitations set forth in R.C. Chapter 5577 are to be enforced and the proper source of funding for such enforcement. Specifically, you have raised the following questions:

1. Does the engineer and/or the sheriff have the power to hire a person who would have police powers to enforce sections 5577.01 to 5577.14, inclusive, of the Ohio Revised Code, pursuant to section 5577.13 of the Ohio Revised Code?
2. Can funds derived from the registration of motor vehicles and the Five Dollar Permissive Tax that go into the M & R Fund be used to pay a person and for equipment pursuant to section 5577.13 of the Ohio Revised Code?
3. If the answer to question 2 is "no", can funds be used from any other source in the engineer's appropriation to pay

a person pursuant to section 5577.13 of the Ohio Revised Code?

Enforcement of the highway load limitation statutes set forth in R.C. Chapter 5577 is provided for in R.C. 5577.13. That section provides as follows:

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 sections 5577.01 to 5577.14, inclusive, of the Revised Code. 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.

In answer to your first question, it is apparent that the county sheriff may detail one of his deputies to enforce the provisions of R.C. Chapter 5577. In fact, the use of the word "shall" imposes a duty upon him to do so. One of my predecessors, in 1937 Op. Att'y Gen. No. 136, p. 185, had occasion to consider the powers of the county sheriff under a statute that was, for the purposes of this opinion, identical to R.C. 5577.13. In concluding that a sheriff had no authority to deputize a person for the express purpose of enforcing R.C. 5577.13, he noted as follows:

This section carries no power to appoint. It does command the sheriff to detail one of his deputies for the duty prescribed in said section. The question of appointment of deputies by the sheriff is a small matter inasmuch as the sheriff can appoint as many deputies as the Judge of the Court of Common Pleas of his county sees fit to approve.

Thus a county sheriff may appoint deputies pursuant to R.C. 331.04, and following such appointment, he may detail the deputy to perform the duties enumerated in R.C. 5577.13.

R.C. 5577.13 does not, however, confer similar enforcement powers upon the county engineer. R.C. Chapter 5533 authorizes the county engineer to exercise jurisdiction over county roads and highways. R.C. 5543.01, which generally defines the powers and duties of the county engineer, provides in pertinent part as follows:

The county engineer shall have general charge of the following:

(A) Construction, reconstruction, improvement, maintenance, and repair of all bridges and highways within his county, under the jurisdiction of the board of county commissioners;

(B) Construction, reconstruction, resurfacing, or improvement of roads by boards of township trustees under sections 5571.01, 5571.06, 5571.07, 5571.15, 5573.01 to 5573.15, inclusive, and 5575.02 to 5575.09, inclusive, of the Revised Code.

R.C. 5543.19 authorizes the county engineer to hire persons to carry out these duties and provides in pertinent part as follows:

(A) The county engineer may, when authorized by the board of county commissioners and not required by this section or other law to use competitive bidding, employ such

laborers and vehicles, use such county employees and property, lease such implements and tools, and purchase such materials as are necessary in the construction, reconstruction, improvement, maintenance, or repair of roads by force account.

Although it might be argued that R.C. 5543.19 authorizes the county engineer to hire persons to enforce the highway load limitation imposed by R.C. Chapter 5577 because such enforcement contributes to the maintenance and repair of county highways, the express provisions of R.C. 5577.13 must control over the very general language of R.C. 5543.19. I must conclude, therefore, that a county engineer is without statutory power to hire an individual for the enforcement of highway load limitations.

Your second question raises the problem of funding for the enforcement provisions of R.C. 5577.13. Since the section directs that the ". . . 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 answer to your question turns upon the meaning of "road fund". That term is not, however, defined in the Ohio Revised Code.

Despite a lack of a statutory definition of the term, it must be assumed that when the General Assembly used "road fund" it meant to have the county commissioners draw upon some fund, whatever it might be. Indeed, without such an assumption, the enforcement provisions of R.C. 5577.13 would be rendered inoperative. The obvious question, then, is what monies constitute county "road funds".

The two taxes about which you inquire, are the five dollar permissive tax established by R.C. 4504.02, known officially as the County Motor Vehicle License Tax, and the Annual License Tax established by 4503.02. Both taxes share a common feature: monies are first collected by the state and then redistributed to the counties by the Treasurer of State. The purposes for which the monies thus returned to the counties may be used are controlled by statute. In neither instance do the enumerated purposes include enforcement of highway load limitations.

The County Motor Vehicle License Tax is redistributed to the counties pursuant to R.C. 4504.05. That section provides, in pertinent part, as follows:

The monies received by a county levying a county motor vehicle license tax shall be allocated and distributed as follows:

(A) First, for payment of the costs and expenses incurred by the county in the enforcement and administration of the tax;

(B) The remainder of such monies shall be credited to funds as follows:

...

(2) The remaining portion shall be placed in the county motor vehicle license and gasoline tax fund and shall be allocated and disbursed only for the purposes specified in section 4504.02 of the Revised Code, . . .

The purpose specified in R.C. 4504.02 for which such funds may be used, are as follows:

For the purpose of paying the costs of enforcing and administering the tax provided for in this section; and for planning, constructing, improving, maintaining, and repairing public roads, highways, and streets, maintaining and repair-

ing bridges and viaducts; paying the county's portion of the costs and expenses of cooperating with the department of transportation in the planning, improvement, and construction of state highways; paying the county's portion of the compensation, damages, cost and expenses of planning, constructing, reconstructing, improving, maintaining, and repairing roads; paying any costs apportioned to the county under section 4907.47 of the Revised Code; paying debt service charges on notes or bonds of the county issued for such purposes; paying all or part of the costs and expenses of municipal corporation in planning, constructing, reconstructing, improving, maintaining, and repairing highways, roads, and streets designated as necessary or conducive to the orderly and efficient flow of traffic within and through the county pursuant to section 4504.03 of the Revised Code; purchasing, erecting, and maintaining street and traffic signs and markers; purchasing, erecting, and maintaining traffic lights and signals; and to supplement revenue already available for such purposes.

In 1931 Op. Att'y Gen. No. 3305, p. 779, my predecessor had occasion to address a question similar to your own. That opinion dealt with whether the funds derived from the county gasoline tax could be used by the county commissioners to support the enforcement provisions of R.C. 5577.13. The opinion concluded as follows:

From the foregoing it would appear that the enforcement of a criminal law which may indirectly tend to preserve the highways cannot be said to be either maintenance or repair or the construction of a highway. While the term 'road fund' as used in the section authorizing the appointment of a deputy to enforce the law might be broad enough to include any funds that could be used for road purposes, the provisions in the tax laws limiting the use to maintenance and construction respectively, would seem to be inconsistent with the use mentioned in Section 7251-1, General Code. [Now R.C. 5577.13.] Therefore, the gasoline tax laws being later in the order of enactment would control over the former ones.

That opinion was again followed in 1954 Op. Att'y. Gen. No. 3998, p. 319. Both opinions are relevant here since at the time they were issued, the gasoline tax fund could only be expended for the purposes of "maintaining and repairing" county roads. In that sense, their statutory purposes were nearly identical to those now embodied in R.C. 4504.02 which controls the expenditure of funds collected by the County Motor Vehicle License Tax.

After due consideration I must depart from those previous opinions. The General Assembly chose to support enforcement of the highway load limits from "the road fund of the county." At the time of the enactment of that provision, at least two "road funds" were in existence, the fund established by the Annual License Tax now embodied in R.C. 4504.05, and fund established by general levies currently in R.C. 5555.92. Both funds were to be used for "maintenance and repair". Neither included enforcement of R.C. Chapter 5577 among its specified purposes. While the order of enactment of these statutory funds has some weight, the purpose of the legislation is of greater importance. Since the only "road funds" in existence when R.C. 5577.13 was enacted were for "maintenance and repair", I must conclude that the General Assembly meant to apply such funds to enforcement of criminal laws which would further that purpose.

Money spent to prevent damage to county roads necessarily contributes to their maintenance and repair. For that reason, I must conclude that the term "road fund" in R.C. 5577.13 includes any fund at the disposal of the county commissioners

that may be used for "maintenance and repair" of roads. To insist upon any other interpretation requires the imposition of an arbitrary rule unwarranted by the clear intent of the legislature to use maintenance and repair funds for enforcement of highway load limitations. Since both the funds about which you inquire are for "maintenance and repair", both may be used for enforcement.

In light of the foregoing, consideration of your third question is unnecessary.

Accordingly, it is my opinion and you are advised that:

1. The county sheriff is directed by R.C. 5577.13 to detail a deputy to enforce R.C. Chapter 5577 and the county engineer does not possess the authority to hire an individual for the purpose of enforcing these provisions.
2. The board of county commissioners may compensate and equip a deputy detailed to enforce R.C. Chapter 5577 from either the Annual License Tax fund established by 4505.05 or the County Motor Vehicle License Tax established by R.C. 4502.02. (1954 Op. Att'y Gen. No. 3998, p. 319, and paragraph one of the syllabus of 1931 Op. Att'y Gen. No. 3305, p. 779, modified.)