

OPINION NO. 2007-004

Syllabus:

1. A commercial motor vehicle that is used as a county sheriff's mobile command post vehicle or emergency response team vehicle is a police SWAT team vehicle for purposes of R.C. 4506.03(B)(9) when the vehicle is equipped with audible and visual signals.
2. Under R.C. 4506.03(B)(9) and 49 C.F.R. § 383.3(d)(2), a county deputy sheriff is not required to have a valid commercial driver's license to drive a commercial motor vehicle that is used as a county sheriff's mobile command post vehicle or emergency response team vehicle on the highways in this state when the vehicle is equipped with audible and visual signals.

To: John D. Ferrero, Stark County Prosecuting Attorney, Canton, Ohio
By: Marc Dann, Attorney General, March 30, 2007

You have requested an opinion whether a county deputy sheriff is required to have a valid commercial driver's license to drive a county sheriff's mobile command post vehicle or emergency response team vehicle on a highway in this state when the vehicle is a commercial motor vehicle, as defined in R.C. 4506.01(D).¹ For the following reasons, we conclude that a commercial motor vehicle that is used

¹ R.C. 4506.01(D) defines a "commercial motor vehicle" as follows:

Except when used in [R.C. 4506.25], "commercial motor vehicle" means any motor vehicle designed or used to transport persons or property that meets any of the following qualifications:

(1) Any combination of vehicles with a combined gross vehicle weight rating of twenty-six thousand one pounds or more, provided the gross vehicle weight rating of the vehicle or vehicles being towed is in excess of ten thousand pounds;

(2) Any single vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more, or any such vehicle towing a vehicle having a gross vehicle weight rating that is not in excess of ten thousand pounds;

(3) Any single vehicle or combination of vehicles that is not a class A or class B vehicle, but is designed to transport sixteen or more passengers including the driver;

(4) Any school bus with a gross vehicle weight rating of less than twenty-six thousand one pounds that is designed to transport fewer than sixteen passengers including the driver;

(5) Is transporting hazardous materials for which placarding is required under subpart F of 49 C.F.R. part 172, as amended;

(6) Any single vehicle or combination of vehicles that is designed to be operated and to travel on a public street or highway and is

as a county sheriff's mobile command post vehicle or emergency response team vehicle is a police SWAT team vehicle for purposes of R.C. 4506.03(B)(9) when the vehicle is equipped with audible and visual signals. We conclude, further, that, under R.C. 4506.03(B)(9) and 49 C.F.R. § 383.3(d)(2), a county deputy sheriff is not required to have a valid commercial driver's license to drive a commercial motor vehicle that is used as a county sheriff's mobile command post vehicle or emergency response team vehicle on the highways in this state when the vehicle is equipped with audible and visual signals.

Except as Otherwise Provided by Statute, a Person May Not Drive a Commercial Motor Vehicle on the Highways in this State Without a Commercial Driver's License

R.C. Chapter 4506 regulates the operation of commercial motor vehicles on the highways of Ohio. Except as provided in this chapter, a person must possess a valid commercial driver's license to drive a commercial motor vehicle on the highways in this state. R.C. 4506.03(A); R.C. 4506.05(A); *see also* 49 C.F.R. § 383.23. Concerning this requirement, R.C. 4506.03(A) states, in part:

Except as provided in divisions (B) and (C) of this section, the following shall apply:

(1) *No person shall drive a commercial motor vehicle on a highway in this state unless the person holds, and has in the person's possession, a valid commercial driver's license with proper endorsements for the motor vehicle being driven, issued by the registrar of motor vehicles, a valid examiner's commercial driving permit issued under [R.C. 4506.13], a valid restricted commercial driver's license and waiver for farm-related service industries issued under [R.C. 4506.24], or a valid commercial driver's license temporary instruction permit issued by the registrar and is accompanied by an authorized state driver's license examiner or tester or a person who has been issued and has in the person's immediate possession a current, valid commercial driver's license with proper endorsements for the motor vehicle being driven. (Emphasis added.)*

See also 49 C.F.R. § 383.23.

R.C. 4506.05(A) further provides:

Notwithstanding any other provision of law, a person may drive a commercial motor vehicle on a highway in this state if all of the following conditions are met:

(1) *The person has a valid commercial driver's license or com-*

considered by the federal motor carrier safety administration to be a commercial motor vehicle, including, but not limited to, a motorized crane, a vehicle whose function is to pump cement, a rig for drilling wells, and a portable crane.

mercial driver's license temporary instruction permit *issued by any state or jurisdiction in accordance with the minimum standards adopted by the federal motor carrier safety administration under the "Commercial Motor Vehicle Safety Act of 1986," 100 Stat. 3207-171, 49 U.S.C.A. App. for issuance of commercial drivers' licenses;*

(2) The person's commercial driver's license or permit is not suspended, revoked, or canceled;

(3) The person is not disqualified from driving a commercial motor vehicle;

(4) The person is not subject to an out-of-service order. (Emphasis added.)

A person who violates R.C. 4506.03(A) or R.C. 4506.05(A) is guilty of a misdemeanor of the first degree. R.C. 4506.03(D); R.C. 4506.05(B). The language of R.C. 4506.03 and R.C. 4506.05 thus clearly indicates that, except as provided therein, a county deputy sheriff must have a valid commercial driver's license to drive a county sheriff's mobile command post vehicle or emergency response team vehicle on the highways in this state when the vehicle is a commercial motor vehicle, as defined in R.C. 4506.01(D).

A County Deputy Sheriff May Drive a Police SWAT Team Vehicle Without a Commercial Driver's License

Various exceptions to the prohibition against operating a commercial motor vehicle on the highways in this state without a valid commercial driver's license are set forth in R.C. 4506.03(B).² Under R.C. 4506.03(B)(9), a county deputy sheriff may drive a commercial motor vehicle that is used as "[a] police SWAT team vehicle" on the highways in this state without a valid commercial driver's license.

This exception was enacted by the General Assembly in Am. Sub. H.B. 66, 126th Gen. A. (2005) (eff. June 30, 2005, with certain sections effective on other dates) because "[f]ederal law authorizes this exemption in 49 C.F.R. [§] 383.3."³

² Under the conditions set forth in R.C. 4506.03(B), specified commercial motor vehicles may be operated on the highways in this state without a commercial driver's license. These vehicles include farm trucks, fire equipment, public safety vehicles, recreational vehicles, vehicles used for snow or ice removal, vehicles operated for military purposes, vehicles operated for nonbusiness purposes, and motor vehicles that are designed primarily for the transportation of goods and not persons.

³ In order "[t]o avoid having amounts withheld from apportionment under [49 U.S.C. § 31314]," Ohio must "authorize an individual to operate a commercial motor vehicle only by issuing a commercial driver's license containing the information described in [49 U.S.C. § 31308(3)]." 49 U.S.C. § 31311(a)(4); *see also* 49 C.F.R. § 383.23 (requiring a person to have a commercial driver's license to operate a commercial motor vehicle). *See generally* 49 U.S.C. § 31314 (when a state does

Ohio Legislative Service Comm'n, 126-HB66 LSC Analysis, at 489 (final analysis). In accordance with 49 C.F.R. § 383.3(d), the General Assembly may permit police and fire personnel to drive specified commercial motor vehicles on the highways in this state without a commercial driver's license:

A State may, at its discretion, exempt individuals identified in paragraphs (d)(1), (d)(2), and (d)(3) of this section from the requirements of this part....

....

(2) Firefighters and other persons who operate [commercial motor vehicles] which are necessary to the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals and are not subject to normal traffic regulation. These vehicles include fire trucks, hook and ladder trucks, foam or water transport trucks, police SWAT team vehicles, ambulances, or other vehicles that are used in response to emergencies.

Because 49 C.F.R. § 383.3(d) applies to all states, *see* 49 C.F.R. § 383.3(a), and R.C. 4506.03(B)(9) was enacted under the authority of 49 C.F.R. § 383.3(d), Ohio Legislative Service Comm'n, 126-HB66 LSC Analysis, at 489 (final analysis); *see also* 49 U.S.C. § 31311(a)(4), it follows that the criteria a police SWAT team vehicle must satisfy to be included within the exception set forth in 49 C.F.R. § 383.3(d)(2) have been incorporated into Ohio law by R.C. 4506.03(B)(9). *See generally* 1980 Op. Att'y Gen. No. 80-090 at 2-350 (“[b]ecause the federal government has given [the] terms [bond and debenture] commercial meaning, and because the General Assembly has used them in a technical sense, it must be presumed that the legislature incorporated the governmental definitions. To find otherwise would be to find that the General Assembly enacted a broad and loose term in an otherwise precise statute” (citations omitted)). *See generally also* 1996 Op. Att'y Gen. No. 96-011 at 2-46 (“[t]he federal criteria referred to in R.C. 4511.21 ... became incorporated into the body of Ohio law as if the General Assembly had adopted such criteria itself and thereby retain a state law vitality separate and apart from their federal counterparts”).

Accordingly, under R.C. 4506.03(B)(9) and 49 C.F.R. § 383.3(d)(2), a police SWAT team vehicle that is a commercial motor vehicle may be driven on the highways in this state by a county deputy sheriff without a valid commercial driver's license when the vehicle is (1) necessary to the preservation of life or property or the execution of emergency governmental functions; (2) equipped with audible and visual signals; and (3) not subject to normal traffic regulation.

A County Sheriff's Mobile Command Post Vehicle or Emergency Response Team Vehicle Is a Police SWAT Team Vehicle

Let us now consider whether a county sheriff's mobile command post vehicle not comply substantially with a requirement of 49 U.S.C. § 31311(a), the Secretary of Transportation shall withhold federal funds to be apportioned to the state under 23 U.S.C. § 104(b)(1), 23 U.S.C. § 104(b)(3), and 23 U.S.C. § 104(b)(4)).

cle or emergency response team vehicle is a police SWAT team vehicle, as used in R.C. 4506.03(B)(9), that satisfies the criteria of 49 C.F.R. § 383.3(d)(2). The phrase “police SWAT team vehicle” is not defined for purposes of R.C. Chapter 4506. Thus, the phrase is to be accorded its common, everyday meaning. R.C. 1.42. The operative word in this phrase is the acronym, “SWAT.” According to *Merriam-Webster’s Collegiate Dictionary* 1261 (11th ed. 2005), this word means “special weapons and tactics ... a police or military unit specially trained and equipped to handle unusually hazardous situations or missions.” *Accord Webster’s Unabridged Dictionary* 1920 (Random House deluxe ed. 2001). In light of the commonly accepted definition of the word “SWAT,” the phrase “police SWAT team vehicle,” as used in R.C. 4506.03(B)(9), means a commercial motor vehicle that is used to transport specially trained law enforcement personnel and equipment to emergencies and dangerous situations. *See generally* 49 C.F.R. § 383.3(d)(2) (indicating that “police SWAT team vehicles ... are used in response to emergencies”).

A county sheriff’s mobile command post vehicle and emergency response team vehicle are designed and used to transport specially trained law enforcement personnel and equipment to emergencies and dangerous situations. As explained in supplemental information provided to us, the county sheriff’s mobile command post vehicle and emergency response team vehicle are used for the following purposes:

The first vehicle at issue is our Sheriff’s Emergency Response Team (SERT) vehicle. This vehicle *will be used as a police tactical unit* and also to transport prisoners to prisons throughout the State of Ohio. The vehicle will be able to transport approximately twenty inmates. It is equipped with bench seating and seatbelts....

The second vehicle is what we refer to as our mobile command post. This is a 39-foot fifth-wheel travel trailer pulled by a conventional single axle day cab tractor. *The command post contains equipment necessary to provide emergency radio communications with public safety (police and fire) personnel throughout the State of Ohio.* The mobile command post is also used to respond to disasters and to assist at DUI sobriety checkpoints. (Emphasis added.)

Mobile command post vehicles and emergency response team vehicles thus are used by county sheriffs to transport specially trained law enforcement personnel and equipment to emergencies and dangerous situations. These vehicles, therefore, are police SWAT team vehicles for purposes of R.C. 4506.03(B)(9). And, as such, under R.C. 4506.03(B)(9), a county deputy sheriff is not required to have a valid commercial driver’s license to drive a commercial motor vehicle that is used as a county sheriff’s mobile command post vehicle or emergency response team vehicle on the highways in this state when the criteria set forth in 49 C.F.R. § 383.3(d)(2) are satisfied.

A County Sheriff’s Mobile Command Post Vehicle or Emergency Response Team Vehicle Satisfies the Criteria Set Forth in 49 C.F.R. § 383.3(d)(2) when the Vehicle Is Equipped with Audible and Visual Signals

49 C.F.R. § 383.3(d)(2) provides that the exception for a police SWAT

team vehicle does not apply unless the vehicle is (1) necessary to the preservation of life or property or the execution of emergency governmental functions; (2) equipped with audible and visual signals; and (3) not subject to normal traffic regulation. With respect to the first criterion, we earlier established that the mobile command post vehicles and emergency response team vehicles of county sheriffs are police SWAT team vehicles that are designed and used to transport specially trained law enforcement personnel and equipment to emergencies and dangerous situations. These vehicles enable a county sheriff to protect lives and property and efficiently and effectively discharge law enforcement responsibilities during emergencies and dangerous situations. These vehicles thus are necessary to the preservation of life or property and the execution of emergency governmental functions, and, as such, these vehicles satisfy the first criterion established by 49 C.F.R. § 383.3(d)(2).

The second criterion of 49 C.F.R. § 383.3(d)(2) requires a police SWAT team vehicle to be equipped with audible and visual signals. Whether a county sheriff's mobile command post vehicle or emergency response team vehicle is equipped with audible and visual signals is a question of fact that must be answered by local officials. *See generally* 1993 Op. Att'y Gen. No. 93-033 (syllabus, paragraph one) (questions of fact "cannot be determined by means of an Attorney General opinion"); 1983 Op. Att'y Gen. No. 83-057 at 2-232 (the office of the Attorney General "is not equipped to serve as a fact-finding body; that function may be served by your office or, ultimately, by the judiciary"). If a county sheriff's mobile command post vehicle or emergency response team vehicle is equipped with audible and visual signals, the second criterion of 49 C.F.R. § 383.3(d)(2) is satisfied.

49 C.F.R. § 383.3(d)(2)'s final criterion is that a county sheriff's mobile command post vehicle, emergency response team vehicle, or other police SWAT team vehicle not be subject to normal traffic regulation. R.C. 4511.041 excepts the driver of a public safety vehicle from various traffic laws under certain conditions, as follows:

Sections 4511.12, 4511.13, 4511.131, 4511.132, 4511.14, 4511.15, 4511.202, 4511.21, 4511.211, 4511.22, 4511.23, 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.432, 4511.44, 4511.441, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.62, 4511.66, 4511.68, 4511.681, and 4511.69 of the Revised Code do not apply to the driver of an emergency vehicle or public safety vehicle if the emergency vehicle or public safety vehicle is responding to an emergency call, is equipped with and displaying at least one flashing, rotating, or oscillating light visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle and if the driver of the vehicle is giving an audible signal by siren, exhaust whistle, or bell. This section does not relieve the driver of an emergency vehicle or public safety vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

For purposes of R.C. 4511.041, the term “public safety vehicle” includes, *inter alia*, “[m]otor vehicles used by public law enforcement officers or other persons sworn to enforce the criminal and traffic laws of the state.” R.C. 4511.01(E)(2). Because county deputy sheriffs are public law enforcement officers who are sworn to enforce the criminal and traffic laws of this state, *see* R.C. 2901.01(A)(11)(a); R.C. 2935.03(A)(1), mobile command post vehicles and emergency response team vehicles driven by county deputy sheriffs are public safety vehicles that are excepted from normal traffic regulations when the vehicles are driven in accordance with the provisions of R.C. 4511.041. Thus, these vehicles satisfy the final criterion of 49 C.F.R. § 383.3(d)(2).

In light of the foregoing discussion, it is readily apparent that a commercial motor vehicle that is used as a county sheriff’s mobile command post vehicle or emergency response team vehicle is a police SWAT team vehicle, as used in R.C. 4506.03(B)(9), that satisfies the criteria set forth in 49 C.F.R. § 383.3(d)(2) when the vehicle is equipped with audible and visual signals. Under R.C. 4506.03(B)(9) and 49 C.F.R. § 383.3(d)(2), a county deputy sheriff is not required to have a valid commercial driver’s license to drive a commercial motor vehicle that is used as a county sheriff’s mobile command post vehicle or emergency response team vehicle on the highways in this state when the vehicle is equipped with audible and visual signals.

Conclusions

In summary, it is my opinion, and you are hereby advised as follows:

1. A commercial motor vehicle that is used as a county sheriff’s mobile command post vehicle or emergency response team vehicle is a police SWAT team vehicle for purposes of R.C. 4506.03(B)(9) when the vehicle is equipped with audible and visual signals.
2. Under R.C. 4506.03(B)(9) and 49 C.F.R. § 383.3(d)(2), a county deputy sheriff is not required to have a valid commercial driver’s license to drive a commercial motor vehicle that is used as a county sheriff’s mobile command post vehicle or emergency response team vehicle on the highways in this state when the vehicle is equipped with audible and visual signals.