

870.

STATE HIGHWAY PATROL—MEMBERS—DO NOT HAVE GENERAL AUTHORITY OF PEACE OFFICER—WITHOUT AUTHORITY, UPON APPREHENSION OF INTOXICATED DRIVER OF AUTOMOBILE TO ARREST INTOXICATED OCCUPANT OR OCCUPANTS OF CAR—NO AUTHORITY TO ARREST INTOXICATED PERSON WALKING ON HIGHWAY MERELY BECAUSE INTOXICATED.

SYLLABUS:

1. *Members of the State Highway Patrol do not have authority upon apprehending a person driving an automobile while intoxicated, to arrest another occupant or occupants of said automobile who are also intoxicated, merely because such occupant or occupants are intoxicated.*

2. *Members of the State Highway Patrol do not have authority to arrest persons who are found in an intoxicated condition walking on the highways, merely because they are intoxicated.*

COLUMBUS, OHIO, July 10, 1939.

COL. LYNN BLACK, *Superintendent, State Highway Patrol, Columbus, Ohio.*

DEAR SIR: Your recent request for my opinion reads as follows:

“Under Sections 1181-2 and 1181-3, Ohio General Code, State Highway patrolmen are vested with the authority of peace officers for the purpose of enforcing among other things the laws of the state relating to the operation of vehicles upon the highways. Upon many occasions our patrolmen will apprehend a drunken driver who also has passengers in the automobile with him who are intoxicated.

Also, at and about certain ‘night clubs’ in the state, intoxicated persons walk out on to the highways and in some instances interfere with traffic.

We desire to inquire:

(1) Does the State Highway Patrol have authority, upon apprehending a person driving an automobile while intoxicated, to arrest other occupants of the car who are also in an intoxicated condition?

(2) Does the State Highway Patrol have authority to arrest persons who are found in an intoxicated condition walking on the highways?” .

The division of State Highway Patrol was created by an act of the legislature found in 115 O. L., 93, et seq., which became effective June 29, 1933, and to which were assigned Sections 1181-2, et seq., General Code. The title of the act read in part as follows:

“To provide for the establishment of a division of state highway patrol in the department of highways to enforce the laws relating to the registration of motor vehicles and their use and operation on the highways.”

Some of the sections of the act have since been amended. Section 1181-2, General Code, now provides in part as follows:

“The superintendent and highway patrolmen shall be vested with the authority of peace officers for the purpose of enforcing 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; but such patrolmen shall never be used as peace officers in connection with any strike or labor dispute.”

Section 1181-3, General Code, reads as follows:

“It shall be the duty of the state highway patrol to enforce the laws of the state relating to the registration and licensing of motor vehicles; to enforce the laws relating to the operation and use of vehicles on the highways; to enforce and prevent, on the roads of the state highway system, 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 such highways; to investigate and report to the public utilities commission violations of its rules and regulations and the laws governing the transportation of persons and property by motor transportation companies and all other motor carriers for hire; to investigate and report violations of all laws relating to the collection of excise taxes on motor vehicle fuels; and to regulate the movement of traffic on the roads of the state highway system. It shall be the duty of the highway patrol whenever possible to determine persons causing or responsible for the breaking, damaging or destruction of any improved surfaced roadway, structure, sign, marker, guard rail, or any other appurtenance constructed or maintained by the department of highways and to arrest persons responsible therefor and

to bring them before the proper officials for prosecution. It shall be the duty of the highway patrolmen to investigate and report all motor vehicle accidents on the state highway system outside of incorporated municipalities.

Any person arrested by a patrolman shall forthwith be taken by such patrolman before any court or magistrate having jurisdiction of the offense whereof such person so arrested is charged, there to be dealt with according to law.

State highway patrolmen shall not have the right or power of search nor shall they have the right or power of seizure except to take from any person under arrest or about to be arrested deadly or dangerous weapons in the possession of such person. No state official shall have any power, right or authority to command, order or direct any patrolman to perform any duty or service not authorized by this act. The powers and duties conferred on the state highway patrol shall be supplementary to and in no way a limitation on the powers and duties of sheriffs or other peace officers of the state."

These provisions of the statutes give to the state highway patrolmen authority to make arrests without warrant of any persons whom they find violating the laws of the state relating to the registration of motor vehicles, the operation of vehicles upon the highways, and the laws for the protection of the highways. They are also given authority to make arrests where signs, markers, guard rails or any appurtenance constructed or maintained by the Department of Highways is damaged or destroyed.

Clearly, being found in a state of intoxication in a moving automobile driven by another person is not a violation of the laws relating to the operation and registration of motor vehicles or of the laws for the protection of the highways or the appurtenances thereto.

Likewise, persons who are intoxicated and walk along the highways of the state do not violate the laws relating to the registration or operation of motor vehicles and if they do nothing more than walk along the highways, they do not violate the laws relating to the protection of the highways and the appurtenances thereto.

However, in this connection, I direct your attention to the provisions of Section 1181-6, General Code, which I quote as follows:

"It shall be the duty of the operator or driver of any vehicle traveling on the highways of this state to stop on signal of any state highway patrolman and to obey any other reasonable signal or direction of such patrolman given in directing the movement of traffic on the highways. Any person who wilfully fails or refuses to obey such signals or directions or who wilfully resists or opposes a patrolman in the proper discharge of his duties

shall be fined not more than \$25.00 and for a second offense shall be fined not less than \$25.00 nor more than \$100.00.”

Since Section 1181-3, General Code, requires the State Highway Patrol to regulate the movement of traffic on the roads of the state highway system, if any person, whether intoxicated or not, wilfully resisted or opposed a state highway patrolman in the performance of such duty, he would be guilty of the violation of Section 1181-6, supra, and might be arrested by such patrolman.

It would therefore, seem that the members of the State Highway Patrol do not have the general authority of peace officers to make arrests and it is obvious that the legislature intended to give to the State Highway Patrol authority to make arrests only in cases involving laws relating to the registration and operation of motor vehicles, laws designed for the protection of the highways and structures appurtenant thereto, where the operator or driver of any vehicle wilfully fails or refuses to obey reasonable signals or directions of a highway patrolman, and where any persons wilfully resists or opposes a patrolman in the proper discharge of his duties.

Specifically answering your question, I am of the opinion that:

1. Members of the State Highway Patrol do not have authority upon apprehending a person driving an automobile while intoxicated, to arrest another occupant or occupants of said automobile who are also intoxicated, merely because such occupant or occupants are intoxicated.

2. Members of the State Highway Patrol do not have authority to arrest persons who are found in an intoxicated condition walking on the highways, merely because they are intoxicated.

Respectfully,

THOMAS J. HERBERT,
Attorney General.