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STATE HIGHWAY PATROLMEN, AUTHORIZED TO FILE AND SERVE PROCESS FOR OFFENSES WITNESSED OR INVESTIGATED BY THEM, SUCH PROCESS IS ONLY MINISTERIAL DUTY AUTHORIZED.

PATROLMEN NOT AUTHORIZED TO DELIVER PRISONERS TO COUNTY JAIL OR TO DELIVER PRISONERS FROM COUNTY JAIL TO COUNTY COURT FOR HEARING—SECS. 2935.01 ; 5503.02 R.C.

SYLLABUS :

1. Under Section 2935.01, Revised Code, state highway patrolmen are authorized to file and serve process relating to those offenses witnessed or investigated by them, such filing and service of process being the only ministerial duties which they are authorized to perform in county court procedures.

2. Section 5503.02, Revised Code, does not require or authorize state highway patrolmen to deliver prisoners, who have failed to post bond in a county court, to the county jail or to deliver prisoners from the county jail to the county court for hearings of their cases.

Columbus, Ohio, December 17, 1959

Hon. G. William Brokaw, Prosecuting Attorney
Columbiana County, Lisbon, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“A situation has arisen in Columbiana County, and perhaps in other counties, as a result of recent changes in the laws by the State Legislature which will require an opinion from your office as to the status of State Highway Patrolmen. In Columbiana County there are three county courts, located at East Palestine, Salem and Lisbon. The County is divided into the eastern district, the northwestern district and the southwestern district.

“When arrests are made by State Highway Patrolmen within Columbiana County, the person arrested is brought by the Highway Patrolmen to the Court in which district the arrest is made. State Patrolmen making such arrests take the arrested person to the Court, sign an affidavit, and, when that has been done, they feel that their duty has ended at that point. Since the County Sheriff is the only ministerial officer of the County Courts, named

in the law, the Highway Patrolmen disclaim any responsibility to take a person arrested from County Court to the County Jail, or to take the defendant from the County Jail to the proper County Court for hearing.

“To the credit of the Highway Patrolmen involved, their only objection to delivering prisoners to the County Jail and to the proper Courts for hearings are based on a fear of individual personal liability in case of an auto accident or some other misfortune. The Patrolmen involved would be quite willing to deliver prisoners to and from the County Jail and to and from the proper Courts for hearings, were it not for this fear of personal liability. If the County Sheriff is required to deliver prisoners from Courts to the County Jail and to the proper Court for hearing, it will be a terrific burden on said Sheriff.

“Your opinion is therefore respectfully solicited on the question of whether or not it is within the official duties of the State Highway Patrolmen, as peace officers (Section 5503.01 R.C.) to deliver prisoners who have failed to post bond at the proper County Court to the County Jail and to deliver said prisoners from the County Jail to the proper County Courts for the hearing of their cases.”

Section 5503.01, Revised Code, reads in part :

“* * *

“The superintendent and patrolmen shall be vested with the authority of peace officers for the purpose of enforcing the laws of the state which it is the duty of the patrol to enforce, and may arrest, without warrant, any person who, in the presence of the superintendent or any patrolmen, is engaged in the violation of any such laws. * * *”

Section 5503.02, Revised Code, clearly sets forth the duties and powers of the state Highway patrol and the only reference found in this section to courts is as follows :

“* * * The superintendent of the state highway patrol or any patrolman may arrest without a warrant any person, who is the driver of or a passenger in any vehicle operated 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 may make such arrest. The superintendent or any patrolman may enforce the criminal laws on all state properties and state institutions, owned or leased by the State.

“Any person arrested by the superintendent or a patrolman shall be taken before any court or magistrate having jurisdiction of the offense with which such person is charged. * * *”

The only other provision of the Revised Code which mentions the duties of the highway patrol in connection with court actions is Section 2935.01(B), Revised Code, which reads:

“ ‘Peace officer’ includes a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of any municipality, a police constable of any township, and, for the purpose of arrests within those areas, and for those offenses authorized by Chapter 55.03., and the filing of and service of process relating to those offenses witnessed or investigated by them shall include the superintendent and patrolmen of the Ohio State patrol.

I am unable to find anything in the above quoted sections of the Revised Code, nor in any other section of the code, indicating that state highway patrolmen are required or authorized to act in the capacity of ministerial officer of a county court for the purpose of transporting prisoners to and from the Court. Section 2935.01, Revised Code, does authorize state highway patrolmen to initiate and serve process relating to those offenses which they have witnessed or investigated. Such authorization, however, clearly deals with ministerial duties required to *initiate* criminal actions and does not include ministerial functions after arraignment.

I might note in passing that both the county officers and the township constables are ministerial officers of the county court. (See Sections 509.05 and 1907.511, Revised Code.) It would appear, therefore, that these court officers should be available for the delivery of prisoners to and from the county courts.

Accordingly, it is my opinion and you are advised:

1. Under Section 2935.01, Revised Code, state highway patrolmen are authorized to file and serve process relating to those offenses witnessed or investigated by them, such filing and service of process being the only ministerial duties which they are authorized to perform in county court procedures.

2. Section 5503.02, Revised Code, does not require or authorize state highway patrolmen to deliver prisoners, who have failed to post bond in a county court to the county jail or to deliver prisoners from the county jail to the county court for hearings of their cases.

Respectfully,
MARK MCELROY
Attorney General