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1. POLICE CONSTABLE—NO AUTHORITY TO MAKE ARRESTS ON STATE HIGHWAYS—OFFICER DEPUTIZED BY SHERIFF OF COUNTY—SECTIONS 509.16, 4513.39 RC.
2. POLICE CONSTABLE—DEPUTY SHERIFF—OFFICES INCOMPATIBLE—SECTION 509.16 RC.

SYLLABUS:

1. A police constable designated under Section 509.16, Revised Code, does not have authority under Section 4513.39, Revised Code, to make arrests on state highways even though such officer is deputized by the sheriff of the county.
2. The position of police constable under Section 509.16, Revised Code, and the position of deputy sheriff are incompatible.

Columbus, Ohio, December 8, 1955

Hon. William A. Ambrose, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Several of our thickly populated townships are very anxious to furnish better police protection to their residents and children, and to reduce the mounting deaths upon State Highways in their respective townships. They realize fully the good work of the State Highway Patrol, but also recognize that such organization has not sufficient man power to adequately give the protection needed. The appalling death rate on our highways is no doubt a cause of concern to you. Our Juvenile Judge, Henry P. Beckenbach, is very much interested in doing something to curb violations by teen-agers, hot rodders, etc., and he has requested that I secure your opinion on the following as a possible means or solution of the problem.

“May a duly elected Constable, who has been designated by the trustees as a Police Constable, be appointed as a Deputy Sheriff, receiving only the compensation fixed by the trustees, and who will not be called upon by the Sheriff to perform any of the duties of a Deputy Sheriff other than the making of arrests on State Highways for traffic violations?”

The problem here presented may be considered primarily from the standpoint of Section 4513.39, Revised Code, which reads in part:

“The state highway patrol and sheriffs or their deputies shall exercise, *to the exclusion of all other peace officers* except within municipal corporations, the power to make arrests for violations, on all state highways, * * *.” (Emphasis added.)

There follows an enumeration of the various sections of the statutes relating to traffic.

In this connection it is important to note that it has been consistently ruled by my predecessors in Opinion No. 4489, Opinions of the Attorney General for 1941, page 925, and Opinion No. 2573, Opinions of the Attorney General for 1948, page 7, that a constable is a “peace officer,” as that term is used in the above quoted statute, and he is therefore precluded from making arrests on the state highways outside municipalities, for violations of the sections enumerated in Section 4513.39, Revised Code.

Not only does the foregoing statute bestow authority upon certain officers, namely the state highway patrol, sheriffs or their deputies, to make arrests on state highways, but the statute expressly and unequivocally excludes all other peace officers. Thus, to permit a constable to exercise authority on state highways by virtue of a purely technical appointment as a special deputy sheriff would result in the circumvention of Section 4513.39, Revised Code, thereby defeating the very purpose of the exclusionary clause contained therein. Any construction of a statute should be avoided which affords an opportunity to evade the act or to defeat compliance with its terms or any attempt to accomplish by indirection what the statute forbids. See 50 American Jurisprudence, 365, Section 361.

Another criticism of the suggested method for extending authority to the constable is that the ultimate effect would be to leave to the discretion of a county sheriff whether a constable is to have authority to make arrests on state highways. Such a result was hardly intended by Section 4513.39, Revised Code, in view of the failure to confer such authority on constables and particularly in view of the specific exclusionary clause which has been construed to envelop constables.

Even if it could be conceded that a constable would derive power to arrest on the state highways by virtue of his appointment as deputy sheriff, there arises the question of compatibility. It is entirely conceivable that there might arise an instance where an individual holding the two positions in question would be required to decide whether he should pursue a traffic violator on the state highway, or whether he should instead pursue his regular police duties on township roads. As a deputy sheriff he would have a duty to act in behalf of the sheriff to pursue the traffic violator on the state highway for the county, whereas on the other hand, he would also owe the township a duty to police the township roads. The interests in such a situation are clearly conflicting and on such an occasion it would be physically impossible for such individual to discharge the duties of both positions. Thus, the positions are incompatible in light of the common law rule found in *State, ex rel. v. Cobert*, 12 C.C. (N.S.) 274.

Accordingly, in view of the foregoing it is my opinion that in construing Section 4513.39, Revised Code, the statute is to be given its plain meaning with the result that a police constable designated under Section 509.16, Revised Code, does not have authority to make arrests on state highways under Section 4513.39, Revised Code, even though such officer is deputized by the sheriff of the county. Furthermore, it is my opinion that the position of police constable under Section 509.16, Revised Code, and the position of deputy sheriff are incompatible.

Respectfully,

C. WILLIAM O'NEILL
Attorney General