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1. MOTOR VEHICLES—COUNTY OWNED—IDENTIFICATION MARK—REQUIREMENT OF SECTION 2412-2 G. C. IS ONLY FOR THE PURPOSE OF PROPERTY IDENTIFICATION.
2. AUTHORITY GIVEN TO SHERIFF TO DETERMINE COLOR AND MARKINGS OF MOTOR VEHICLES USED BY HIM IS TO ENHANCE GREATER EFFICIENCY TO DETECT AND APPREHEND LAW VIOLATORS AND TO PROTECT LAW ABIDING CITIZENS—COUNTY COMMISSIONERS MAY NOT INFRINGE ON SUCH AUTHORITY—MAY NOT PRESCRIBE UNREASONABLE IDENTIFICATION MARKS AND LETTERING.

SYLLABUS:

1. Requirement of identification mark on county owned motor vehicles under Section 2412-2, General Code, is for property identification purpose only.

2. Authority given to sheriff to determine color and markings of motor vehicles used by him for various purposes is given to enhance greater efficiency in detection and apprehension of law violators and the protection of law abiding citizens, and such authority may not be infringed upon by unreasonable identification marks and lettering prescribed by the county commissioners.

Columbus, Ohio, March 9, 1949

Hon. George M. Monahan, Prosecuting Attorney
Auglaize County, Wapakoneta, Ohio

Dear Sir:

You have submitted for my opinion a question involving the interpretation of Sections 2412-2 and 12616 of the General Code of Ohio. Your communication reads as follows:

“The County Commissioners, under G. C. Section 2412-2 have purchased an automobile for the Sheriff’s office and have under the clause:

‘All such vehicles shall be plainly and conspicuously lettered as the property of the county.’

have asked for bids for same.

The sheriff claims this is his duty and province under G. C.

Section 12616 under clause:

‘* * * the sheriff of a county * * * shall determine the marking and color of the motor vehicles for their respective departments.’

The commissioners maintain that such car is not for the exclusive or main purpose of enforcing the motor vehicle laws but that such may be only incidental to the real requirement of the office of sheriff.

An opinion is requested as to whether the sheriff or the county commissioners have the right to mark an automobile purchased for the use of the sheriff, generally, and not for any specific purpose.”

The General Code contains numerous sections authorizing and governing the purchase of property by or for the use of counties and county officers. Among the different sorts of property the county commissioners are authorized to purchase provided the statutory conditions are met, are automobiles, motorcycles or other conveyances for the use of the sheriff. Section 2412-1 of the General Code gives such commissioners authority to purchase motor vehicles for the sheriff. However, by such section the commissioners must follow a certain prescribed procedure. The county may own property in its corporate or quasi-corporate capacity and when property is purchased by the county it is purchased in the name of the county commissioners. When property is purchased the commissioners among other requirements, must determine the necessity for such property, determine the amount of money to be paid for same, etc. They are responsible for the reasonable and business-like expenditure of public funds in the public interests.

It follows that after the county commissioners have purchased property they have a responsibility to regulate its use and direct such use for the purposes intended. They must be vigilant against waste, abuse of use, etc. To specifically place such responsibility on the county commissioners, the legislature, among other provisions of law, enacted Section 2412-2 of the General Code, which reads as follows:

“When purchased, such vehicle or vehicles shall be for the use of the county commissioners, or other county officials, such use to be subject to the regulation of the county commissioners. Such vehicles shall be used by such officials or said deputies and employes in lieu of hiring vehicles, in the manner otherwise provided by law unless the county vehicles are not available for such

use. When vehicles are so purchased, the county commissioners may purchase such supplies as may be necessary. Any vehicles heretofore acquired and now owned by the county shall be used as herein provided. All such vehicles shall be plainly and conspicuously lettered as the property of the county. No official or employe shall use or permit the use of any such vehicle or any supplies therefor, except in the transaction of public business or work of such county."

It is very obvious that a motor vehicle purchased by the county commissioners as a matter of sound business and good judgment is in nearly all instances of the standard make and variety. It is delivered with no particular identification marking it as public property. Therefore, being public property, and its use, regulation and preservation being a responsibility of the county commissioners, the above provision of law was enacted that the public might at all times have notice of its ownership and at the same time the county commissioners could observe whether or not it is serving the purpose for which it was intended :

"All such vehicles shall be plainly and conspicuously lettered as the property of the county."

Since the particular motor vehicle in question is for the use of the sheriff it appears that some consideration should be given to the duties and responsibilities of the sheriff in carrying out his duties under the law and the part the motor vehicle must necessarily play in the efficient performance of such duties.

Section 12616 of the General Code, reenacted and effective as of August 3, 1939, reads as follows :

"Any motor vehicle used by a member of the state highway patrol or any other peace officer, while said officer is on duty for the exclusive or main purpose of enforcing the motor vehicle or traffic laws of this state, provided the same may be punishable as a misdemeanor, shall be marked in some distinctive manner or color. The superintendent of the state highway patrol shall specify what shall constitute a distinctive marking or color in accordance with this section except that, the sheriff of a county and the police department of a municipality shall determine the marking and color of the motor vehicles for their respective departments."

I have in mind that the motor vehicle in question has been purchased for the sheriff for general use and not for any specific purpose. I conclude,

however, that since it has been purchased for use by the sheriff and is to be used by him in connection with the performance of his duties, such sheriff may assign such vehicle as in his judgment will most efficiently enable him to carry out the functions of his office and to perform the duties for which he was elected and sworn.

In answering your question, I cannot determine, nor is it material, whether the sheriff, after the vehicle is delivered to him, will detail its use for all the traffic enforcement in the county under his jurisdiction or for only a part of such enforcement. Neither do I deem it pertinent that such a determination should be made for the purpose of answering the question submitted.

The last sentence of Section 12616, *supra*, is again quoted as follows:

“The superintendent of the state highway patrol shall specify what shall constitute a distinctive marking or color in accordance with this section except that, the sheriff of a county and the police department of a municipality shall determine the marking and color of the motor vehicle for their respective departments.”

The duties of the sheriffs in the various counties of the state vary in volume. In counties of greater population the traffic is heavier and requires the full time of one or more deputies for traffic patrol and enforcement, while in other counties the deputy assigned to such duties may also, in conjunction therewith, perform other duties as may be assigned to him. Therefore, it would be unreasonable to set up an exclusive traffic department in such smaller populated counties. Nevertheless, the sheriffs in such counties have the duty to enforce the traffic laws.

The marking of vehicles used in patrolling the highways and enforcing the traffic laws have long since been held by police officials to be of great importance not only as to its bearing on the safety and protection of the law-abiding citizens, but also on the detection and apprehension of law violators. Since the enforcement of the traffic laws are a responsibility of the sheriff and the vehicle in question is to be used at least part of the time by the sheriff in carrying out such duties; and further, since the marking of vehicles used for such purpose is of great importance, I am of the opinion that beyond the prescribing of such identification marks or letters by the county commissioners, sufficient to identify it as county property, such county commissioners have no further duty or obligation under the law.

I am also of the opinion that the sheriff's determination as to color and other markings deemed by him most suitable for the use and/or uses intended, are his lawful prerogative.

To recapitulate, I am of the opinion that the requirements of the county commissioners under Section 2412-2 have been fully met when they have prescribed an appropriate identification mark. I am also of the opinion that the requirements of the sheriff as provided in Section 12616 are fully met when he determines the markings and color of the vehicles to be used in the particular departments; or in counties of lesser population, when he marks such vehicles as he deems advisable for the various uses to which he assigns them. There appears to be no conflict between the two sections.

Respectfully,

HERBERT S. DUFFY,
Attorney General.