

1289.

SHERIFF — DEPUTY SHERIFF — PERFORMANCE OFFICIAL DUTIES — WHERE MOTOR VEHICLE OPERATED IN NEGLIGENT MANNER—DAMAGE—SHERIFF AND SURETIES ON BOND LIABLE — WHERE DEPUTY SHERIFF OPERATES MOTOR VEHICLE AND DAMAGES ANOTHER HE IS LIABLE THEREFOR.

SYLLABUS:

1. *Where a sheriff or one of his deputies operates a motor vehicle in a negligent manner in the performance of his official duties and damages another as a direct and proximate result thereof, the sheriff and the sureties on his bond are liable therefor.*

2. *Where a deputy sheriff operates a motor vehicle in a negligent manner in the performance of his official duties and damages another as a direct and proximate result thereof, such deputy sheriff is liable therefor.*

COLUMBUS, OHIO, October 11, 1939.

HON. GEORGE E. GERHARDT, *Prosecuting Attorney, Circleville, Ohio.*

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

“There has been a question raised here by the Sheriff of our County as to what liability if any the Sheriff or his Deputies would have while driving a county owned vehicle in the performance of their duties, as to whether there would be any liability personally or upon the bond of the Sheriff made in the name of the State of Ohio.

“This question has arisen in this way: Several of the deputies have had minor collisions and they would like to carry some insurance to protect themselves as well as the sheriff.

“There seems to be no decisions that I have in this regard and I am desirous of having some opinion rendered along this line. I know that this is a subject that has aroused quite a bit of comment and speculation among various departments and has long been unsettled. I think that this problem would be of state wide interest inasmuch as the liability of various sheriffs and their deputies has bothered the sheriffs as well as their deputies for sometime.”

Section 2824, General Code, provides that the sheriff within ten days after receiving his commission shall give bond in a sum not less than five thousand dollars nor more than fifty thousand dollars to be fixed by the

county commissioners conditioned for the faithful performance of the duties of his office. Section 2830, General Code, provides that the sheriff may, with the approval of a judge of the common pleas court, appoint in writing one or more deputies. Section 2831, General Code, is quoted in full as follows:

“The sheriff shall be responsible for neglect of duty or misconduct in office of each of his deputies.”

In the case of *Hanratty v. Godfrey*, 44 O. App., 360, at page 363, the court, in explaining Section 2831, *supra*, said:

“By the enactment of this section it was without doubt the intention of the Legislature to place upon a sheriff the responsibility of seeing to it that his choice of deputies be wisely made, and that trustworthy and dependable peace officers be chosen as his aids. It was well recognized that deputies might be over-officious, and might carelessly or wantonly disregard the rights and liberties of those whom they were selected to serve. It was therefore proper to repose responsibility in the appointing officer, to the end that his appointee would not prostitute his office and that the people should be well served.”

In these days of rapid transportation and communication it is convenient, if not absolutely necessary, for the sheriff to have an automobile or automobiles to use in the performance of his official duties. The legislature has recognized this situation by enacting Section 2412-1, General Code, which provides in part as follows:

“That, whenever the board of county commissioners, deems it necessary to purchase a motor vehicle or vehicles for the use of the sheriff or sanitary engineer, their deputies or necessary employes they shall adopt a resolution setting forth the necessity for such purpose, together with a statement of the kind and number of vehicles required and the estimated cost of each such vehicle.”

It is therefore clear that under the law of this State a sheriff and his deputies legally may use an automobile in the performance of their official duties.

The question to be determined is whether the negligence of a sheriff or his deputy in the operation of a motor vehicle used in the performance of official duties constitutes misconduct in office within the meaning of the term as used in the statute. In the case of *Hanratty v. Godfrey*, *supra*, it appeared that two deputy sheriffs had in their custody five persons con-

victed of felonies in Cuyahoga County for the purpose of conveying said persons to the Ohio Penitentiary at Columbus and that the deputy sheriffs were using an automobile belonging to Cuyahoga County for such purpose. It further appeared that one of the deputies was operating the automobile and that due to his negligent operation thereof the plaintiff was injured. At page 363 of 44 O. App., the court said:

“This being true, the inquiry comes, Was the negligence of the deputy official misconduct? We hold that it was.

“In the case of *Rischer v. Meehan*, 11 C. C., 403, 5 C. D., 416, it is said:

“The real question in all such cases is, was the particular act complained of unlawful, and done while engaged in, and in connection with, the performance of an official duty? * * * If it was done in the attempt to perform an official duty, then it was official misconduct.’”

The court further quotes from the case of *United States Fidelity & Guaranty Co. v. Samuels*, 116 O. S., 586, at page 593, as follows:

“Clearly, where in the discharge of an official duty an officer fails to take that precaution or exercise that care which due regard for others requires, resulting in injury, his conduct constitutes a misfeasance.”

It is therefore clear that the courts of this State are committed to the doctrine that the negligent operation of an automobile in the performance of an official duty constitutes misconduct in office. Where it is a deputy sheriff who is guilty of such misconduct, the sheriff is liable therefor by reason of the provisions of Section 2831, General Code, *supra*, and where the sheriff himself is guilty thereof he is liable at common law.

Misconduct in office on the part of either the sheriff or his deputies is also covered by the provisions of his bond and he and his sureties are liable thereon. In the case of *United States Fidelity & Guaranty Co. v. Samuels*, *supra*, the second paragraph of the syllabus is as follows:

“A surety on the bond of a motorcycle police officer, with a condition that he ‘shall faithfully perform the duties of the office of policeman of said city,’ is liable for the negligent operation of a motor vehicle by such officer in the performance of his official duties.”

Where a deputy sheriff is guilty of negligence which proximately results in damage to another, such deputy is, of course, liable to the person so damaged by the principles of the common law.

In your letter you state that the deputy sheriffs desire to insure themselves and the sheriff against the liability herein discussed. An examination of the statutes discloses that there is no authority for the expenditure of public funds for such purpose and if it is desired by the sheriff or his deputies to procure such insurance, public funds may not be used to pay the premiums therefor.

I am therefore of the opinion, in specific answer to your questions, that:

1. Where a sheriff or one of his deputies operates a motor vehicle in a negligent manner in the performance of his official duties and damages another as a direct and proximate result thereof, the sheriff and the sureties on his bond are liable therefor.

2. Where a deputy sheriff operates a motor vehicle in a negligent manner in the performance of his official duties and damages another as a direct and proximate result thereof, such deputy sheriff is liable therefor.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1290.

BOARD OF EDUCATION—JURISDICTION—HAS AUTHORITY TO MAKE RULES AND REGULATIONS APPLICABLE ALIKE TO ALL PATRONS OF SCHOOL—CHILDREN WHO ATTAIN AGE OF SIX YEARS—TIME ADMITTED INTO PUBLIC ELEMENTARY SCHOOLS — COMPULSORY SCHOOL AGE—SIX AND EIGHTEEN YEARS—TIME BEGINS WHEN AGE SIX YEARS ATTAINED—TIME FIXED BY DISTRICT BOARD OF EDUCATION OF CHILD'S RESIDENCE.

SYLLABUS:

1. *The time in a school year when children who have attained the age of six years within the school year, may be admitted into the public elementary schools, is a matter entirely within the sound discretion of the board of education under whose jurisdiction the school is maintained. This discretion is to be manifested by the adoption of rules and regulations with respect to the matter, applicable alike to all patrons of the school.*

2. *The compulsory school age of children is the period between six and eighteen years of age, but this period does not begin for any particular child until the time within the school year that he attains the age of six, fixed by the rules and regulations of the board of education of the dis-*