

OPINION 65-35**Syllabus:**

Township police officers may not make an arrest for a violation of the speed regulations governing travel upon state highways within the township, as being an arrest for the violation of Section 4511.12, Revised Code, pertaining to traffic devices.

To: Clyde W. Osborne, Mahoning County Pros. Atty., Youngstown, Ohio
By: William B. Saxbe, Attorney General, March 22, 1965

Your letter of request for my opinion presents a question as to whether or not township police officers may properly enforce Section 4511.12, Revised Code, as that section pertains to prima facie lawful speed limit signs on the state highways running through the township in which such officers have jurisdiction.

Section 4513.39, Revised Code, is pertinent to the question presented in your request, and that section provides as follows:

"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 of sections 4503.11, 4503.21, 4511.14 to 4511.16, inclusive, 4511.20 to 4511.24, inclusive, 4511.26 to 4511.40, inclusive, 4511.42 to 4511.48, inclusive, 4511.58, 4511.59, 4511.62 to 4511.71, inclusive, 4513.03, to 4513.13, inclusive, 4513.15 to 4513.22, in-

clusive, 4513.24 to 4513.34, inclusive, 4549.01, 4549.04, and 4549.07 to 4549.12, inclusive of the Revised Code."

Since the above quoted section does not specifically name Section 4511.12, Revised Code, as being among those sections in which the power to make arrests for violations on all state highways is vested exclusively in the state highway patrol and sheriffs or their deputies, it would appear that township police officers may also make arrests for such violations.

Section 4511.12, Revised Code, provides in part that:

"No pedestrian, driver of a vehicle, or operator of a streetcar or trackless trolley shall disobey the instructions of any traffic control device placed in accordance with sections 4511.01 to 4511.78, inclusive, and 4511.99 of the Revised Code, unless at the time otherwise directed by a police officer.
* * *

According to the provisions of subsection (00) of Section 4511.01, Revised Code, "Traffic control devices means all signs, signals, markings, and devices placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic, including signs denoting names of streets and highways." It is apparent to me that a sign designating a prima facie lawful speed limit falls within the definition set out immediately above. Therefore, if arrests for violations of Section 4511.12, supra, may be made by township officers, it would seem to follow that such officers may make arrests for failure to obey signs designating a speed limit. However, it should be noted that the traffic control devices to which reference is made in Section 4511.12, supra, are "traffic control devices placed in accordance with Sections 4511.01 to 4511.78, inclusive, and 4511.99 of the Revised Code." The devices so placed are merely publicizing the mandates of these sections. Therefore, any arrests which are made for the violation of Section 4511.12, supra, are actually made for the violation of a law set forth in Sections 4511.01 to 4511.78, inclusive, and 4511.99, Revised Code.

In regard to the particular question presented in your request, Section 4511.21, Revised Code, sets forth the speed regulations governing travel over the state highways. The prima facie lawful speed limits posted upon the traffic control devices mentioned in Section 4511.12, supra, are governed by the provisions of Section 4511.21, Revised Code. Therefore, when a citation is made by a police officer pursuant to Section 4511.12, supra, for a violation of the speed regulations as posted upon a traffic control device, the citation is, in reality, made for a violation of Section 4511.21, Revised Code, which sets forth the regulations governing speed. This conclusion necessarily follows since in the absence of this latter mentioned Section, Sections 4511.01 to 4511.78, inclusive, and 4511.99, Revised Code, would establish no authority for posting a traffic control device concerning speed, which, if disobeyed, would be a violation of Section 4511.12, supra.

In view of the foregoing, Section 4513.39, supra, governs the situation presented in your request. That section provides that the power to make arrests for violations of Sections 4511.20 to 4511.24, inclusive, upon state highways, shall

be vested exclusively in the state highway patrol and sheriffs or their deputies. Since the arrests contemplated in your request are made, in essence, for violations of Section 4511.21, Revised Code, and since the power to make arrests for such violations upon state highways is vested exclusively in the state highway patrol and sheriffs or their deputies, I am of the opinion that township police officers are without authority to make such arrests.

I am of further opinion that the procedure contemplated in your request, whereby township police officers would be permitted to make arrests for offenses which Section 4513.39, supra, precludes them from making, would result in the circumvention of the provisions of that section, thereby defeating its very purpose. In Opinion No. 6025, Opinions of the Attorney General for 1955, which declared illegal a plan designed to evade the provisions of Section 4513.39, supra, it was stated that:

"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.)"

Therefore, it is my opinion and you are hereby advised that township police officers may not make an arrest for a violation of the speed regulations governing travel upon state highways within the township, as being an arrest for the violation of Section 4511.12, Revised Code, pertaining to traffic devices.