

OPINION NO. 75-076**Syllabus:**

A Patrol Officer's search and seizure power with respect to the enforcement of criminal laws of the state when the Patrol is called by the Governor to assist local enforcement officials pursuant to R.C. 5503.02(B) is the same as other peace officers with respect to felony arrests, but limited to a search for deadly or dangerous weapons on misdemeanor arrests.

To: Frank R. Blackstone, Supt., Ohio State Highway Patrol, Columbus, Ohio
By: William J. Brown, Attorney General, October 27, 1975

I have before me your request for my opinion, which reads in part as follows:

"In Opinion No. 066, Opinions of the Attorney General for 1970, your predecessor was asked to define the rights of officers of the Patrol in effecting search and seizure on State-owned or leased property. We were advised that Patrol Officers had the same search and seizure powers as other peace officers for any felony arrests, but that these powers were limited on misdemeanor arrests.

"Our question to you is, inasmuch as your predecessor's opinion was rendered at a time when Patrol jurisdiction was limited to crimes occurring on State-owned or leased property, what is a Patrol Officer's search and seizure power with respect to the enforcement of the criminal laws of the State when the Patrol is called by the Governor to assist local law enforcement officials pursuant to Section 5503.02(B), Revised Code?"

When 1970 Op. Att'y Gen. No. 70-066 was published the powers and duties of the State Highway Patrol were contained in R.C. 5503.02 which provided in pertinent part:

"The Superintendent of the State Highway Patrol or any Patrolman may arrest without warrant any person, who is the driver of or a passenger in any vehicle operated or standing on a state highway whom he has reason to believe is guilty of a felony, under the same circumstances and with the same power that any peace officer may make such arrest."

Paragraph four of the same section, reads in part as follows:

"Patrolmen shall have no other right or power of search or of seizure except to take from any person, under arrest or about to be arrested, deadly or dangerous weapons in the possession of such person."

As noted in your request, in Op. No. 70-066, supra, my predecessor was requested to determine the search and seize powers of Patrol Officers on State property. The opinion noted that, "along with the responsibility of making arrests in felony cases there is a concomitant duty to collect and preserve evidence upon which a conviction may be dependent, as well as to prevent the loss or destruction thereof." The Highway Patrol was therefore advised that with respect to any felony arrest which by law the Patrol is authorized to make, they have the same powers of search and seizure as other peace officers. When the arrest is for a misdemeanor, the search and seizure powers are limited to a search for deadly or dangerous weapons.

In 1972 the General Assembly amended R.C. 5503.02, and added paragraph (B), authorizing the Governor to order the State Highway Patrol to enforce the criminal laws within an area threatened by civil disorder. However, the paragraph concerning search and seizure powers by Patrol Officers remained unchanged.

Inasmuch as this paragraph concerning search and seizure was contained in R.C. 5503.02 prior to the addition of paragraph (B), it is reasonable to assume that the General Assembly did not consider this paragraph to specifically limit and delineate those powers of search and seizure available to Patrol Officers when ordered by the Governor to enforce the criminal laws of the state pursuant to paragraph (B). The addition of paragraph (B) does not change the search and seizure powers of the Highway Patrol, but only increases the scope of their lawful jurisdiction.

In specific answer to your request it is my opinion, and you are so advised that a Patrol Officer's search and seizure power with respect to the enforcement of criminal laws of the state when the Patrol is called by the Governor to assist local law enforcement officials pursuant to R.C. 5503.02(B) is the same as other peace officers with respect to felony arrests, but limited to a search for deadly or dangerous weapons on misdemeanor arrests.