

OPINION NO. 86-107**Syllabus:**

1. A minor who, at a theme park, becomes separated from his parents or other person having responsibility for the minor, such that the minor is missing from the care, custody, or control of the parent or other person, is a "missing child," as defined in R.C. 2901.30(A)(3). A minor may be considered a "missing child" under R.C. 2901.30(A)(3), regardless of the length of time he has been separated from his parents or other responsible person.
2. The requirements imposed upon a law enforcement agency by R.C. 2901.30 with regard to missing children are not applicable to those situations where a missing child report is not filed with a

law enforcement agency, even where a law enforcement officer who is on duty with a private employer is contacted to assist in locating the child.

3. A person who has become separated from his child at a theme park must contact the appropriate law enforcement agency in order to file a missing child report, regardless of whether the theme park employs persons who are also law enforcement officers. Upon the filing of a missing child report, a law enforcement agency must fulfill the requirements imposed by R.C. 2901.30.

To: James L. Flannery, Warren County Prosecuting Attorney, Lebanon, Ohio
 By: Anthony J. Celebrezze, Jr., Attorney General, December 19, 1986

I have before me your request for my opinion concerning the reporting of missing children. As indicated in your letter and in subsequent conversations with members of your staff, the facts giving rise to your questions are as follows. A theme park employs various individuals to serve as security personnel within the park. Some of these employees are also employed by various public agencies as law enforcement officers, as defined in R.C. 2901.01(K).¹ You indicate that, "[d]uring the course of a normal operational day at the park, as many as 30,000 individuals attend and numerous children are reported as being separated from the person who has control of the child at the park (typically a parent or guardian). The reports are generally of the 'request for assistance in locating' nature...." Your questions in connection with this situation are:

1. Is such a child considered a "missing child" as defined in O.R.C. Sec. 2901.30?
2. Are law enforcement officers employed by the theme park required to notify other law enforcement agencies within the county and all counties that border the township within which the theme park lies, each time a child is reported as being separated from the person who has control of the child at the park?

R.C. 2901.30 deals with the reporting and collection of information concerning missing children. Subdivision (A)(3) of R.C. 2901.30 defines "missing children" or "missing child" for purposes of that section as either of the following:

- (a) A minor who has run away from or who is otherwise missing from the home of, or the care, custody, and control of, his parents, custodial parent, guardian, legal custodian, or other person having responsibility for the minor;

¹ R.C. 2901.01(K) enumerates various persons who are considered "law enforcement officers," as that term is used in the Revised Code. For example, subdivision (K)(1) states that "law enforcement officer" includes a sheriff, deputy sheriff, constable, marshal, deputy marshal, municipal police officer, and state highway patrolman.

(b) A minor who is missing and about whom there is reason to believe he could be the victim of a violation of section 2905.01, 2905.02, 2905.03, 2905.04, or 2919.23 of the Revised Code.² (Footnote added.)

See R.C. 2901.30(A)(2) (defining "minor" as "a person under eighteen years of age").

Considering the provisions of R.C. 2901.30(A)(3), I believe that a minor who becomes separated from his parents, guardian, or other person having responsibility for the child at a theme park may be considered a "missing child" for purposes of R.C. 2901.30. A child who is not with his parents at a theme park is not necessarily a "missing child." He may, for example, be exploring, with his parents' consent, another area of the park. If, however, a child is missing from the care, custody, or control of his parents, guardian, custodian, or other person having responsibility for him, he is clearly a "missing child." Further, if there is, under the appropriate factual situation, reason to believe that a child who is missing could have been the victim of one of the offenses specified in R.C. 2901.30(A)(3)(b), he is a "missing child." A member of your staff inquired as to the point in time at which a child may be considered to be a "missing child." I note that R.C. 2901.30 does not require that a child be separated from his parents or other responsible person for a particular length of time before he will be considered to be a "missing child." No time element is specified in R.C. 2901.30(A)(3), and further, R.C. 2901.30(B), which requires law enforcement agencies to take missing child reports and take prompt action thereon, states that: "No law enforcement agency in this state shall have a rule or policy that prohibits or discourages the filing of or the taking of action upon a missing child report, within a specified period following the discovery or formulation of a belief that a minor is or could be a missing child." Thus, a child who is missing from the care, custody, or control of his parents or other responsible person at a theme park is a "missing child" for purposes of R.C. 2901.30, regardless of the length of time he has been separated from his parents or other person.

Your second question is whether law enforcement officers who are employed by the theme park as security personnel are required to notify law enforcement agencies within the county and all counties that border the township within which the park lies each time a child is reported as being separated from the person who has control of the child.

Your question arises as a result of the requirements imposed upon law enforcement agencies by R.C. 2901.30. As noted above, division (B) of R.C. 2901.30 requires that when a law enforcement agency that has proper jurisdiction "is informed that a minor is or may be a missing child and that the person providing the information wishes to file a missing child report, the law enforcement agency shall take that report," and then take prompt action upon it. Division (C) requires that if

² R.C. 2905.01 defines the crime of kidnapping; R.C. 2905.02 sets forth the elements of abduction; R.C. 2905.03 prohibits unlawful restraint; R.C. 2905.04 prohibits child stealing; and R.C. 2919.23 prohibits interference with custody.

a missing child report is made to a law enforcement agency with proper jurisdiction, the agency must acquire and gather information about the child and integrate it into the national crime information center computer. Readily available information must be integrated into such system within twelve hours following the making of the report.

Your question relates directly to the requirements of division (D) of R.C. 2901.30, which provides in part as follows:

Upon the filing of a missing child report, the law enforcement agency involved promptly shall make a reasonable attempt to notify other law enforcement agencies within its county and, if the agency has jurisdiction in a municipal corporation or township that borders another county, to notify the law enforcement agency for the municipal corporation or township in the other county with which it shares the border, that it has taken a missing child report and may be requesting assistance or cooperation in the case, and provide relevant information to the other law enforcement agencies. The agency may notify additional law enforcement agencies, appropriate county children services boards, and appropriate county departments of human services exercising children services functions, about the case, request their assistance or cooperation in the case, and provide them with relevant information.

R.C. 2901.30(D) thus requires a law enforcement agency which has taken a missing child report to notify other, specified law enforcement agencies.

R.C. 2901.30 places the various responsibilities contained therein, such as the notification requirements of division (D), upon law enforcement agencies in the state. Further, such responsibilities are imposed only after a law enforcement agency is informed that a minor is or may be a missing child and that a person wishes to file a missing child report, whereupon the agency must take the report.

As you state in your letter, the theme park employs security personnel, some of whom also serve as law enforcement officers with public agencies. In applying R.C. 2901.30 to the situation you present, I note that a person who has become separated from his child at a theme park may contact a security officer and request his assistance in locating the child, without wishing to file a missing child report. In such a situation, where no report is filed, the requirements imposed upon law enforcement agencies by R.C. 2901.30 are clearly inapplicable, even where the security officer contacted is also a law enforcement officer. A person who has become separated from his child may, however, wish to file a missing child report. In such an instance, I believe that the requirements of R.C. 2901.30 are best served if the person contacts the proper law enforcement agency in order to file the report. There are instances, depending upon the particular facts, where a law enforcement officer who is also privately employed may be considered to be acting in his official capacity as a law enforcement officer, even though he is on duty with, and being compensated by, his private employer. See, e.g., Darden v. Louisville & Nashville R. R. Co., 171 Ohio St. 63, 167 N.E.2d 765 (1960) (police officer who, while privately employed, arrested a misdemeanor without a warrant was acting in his official capacity, regardless of the fact that he was acting in

the interest of his private employer); New York, Chicago & St. Louis R. R. Co. v. Fieback, 87 Ohio St. 254, 100 N.E. 889 (1912); Republic Steel Corp. v. Sontag, 21 Ohio L. Abs. 358 (App. Mahoning County 1935). See generally 1985 Op. Att'y Gen. No. 85-056. In the instant situation, however, a law enforcement officer who is on duty with a theme park is expected to direct his attention to fulfilling his employment responsibilities with the park, rather than to carry out duties he might be expected to perform if he were on duty as a law enforcement officer. Since R.C. 2901.30 requires that a missing child report be filed with a law enforcement agency, and because of the various responsibilities imposed upon an agency once a report is filed, some of which must be accomplished within a particular time frame, I believe that, regardless of whether a theme park employs persons who are also law enforcement officers, a person must, in order to file a missing child report, contact the proper law enforcement agency, where the appropriate facilities and personnel may be made available to deal most efficiently with the matter. Such a procedure better ensures that the requirements of R.C. 2901.30, such as the notification of other law enforcement agencies, will be promptly and properly carried out.³

In conclusion, it is my opinion, and you are so advised, that:

1. A minor who, at a theme park, becomes separated from his parents or other person having responsibility for the minor, such that the minor is missing from the care, custody, or control of the parent or other person, is a "missing child,"

³ I note that a member of your staff has indicated that in some instances, a parent who has reported a child missing will not inform park or law enforcement personnel when the child is found. If a parent has filed a missing child report under R.C. 2901.30(B), and the child is subsequently located, the parent has an affirmative duty to notify the law enforcement agency with which he has filed the report. Division (G) of R.C. 2901.30 reads:

A missing child's parents, custodial parent, guardian, or legal custodian, or any other persons responsible for a missing child, shall immediately notify the law enforcement agency with which they filed the missing child report whenever the child has returned to their home or to their care, custody, and control, has been released if he was the victim of an offense listed in division (A)(3)(b) of this section, or has otherwise been located. Upon such notification or upon otherwise learning that a missing child has returned to the home of, or to the care, custody, and control of his parents, custodial parent, guardian, legal custodian, or other person responsible for him, has been released if he was the victim of an offense listed in division (A)(3)(b) of this section, or otherwise has been located, the law enforcement agency involved shall promptly integrate the fact that the minor is no longer a missing child into the national crime information center computer.

as defined in R.C. 2901.30(A)(3). A minor may be considered a "missing child" under R.C. 2901.30(A)(3), regardless of the length of time he has been separated from his parents or other responsible person.

2. The requirements imposed upon a law enforcement agency by R.C. 2901.30 with regard to missing children are not applicable to those situations where a missing child report is not filed with a law enforcement agency, even where a law enforcement officer who is on duty with a private employer is contacted to assist in locating the child.
3. A person who has become separated from his child at a theme park must contact the appropriate law enforcement agency in order to file a missing child report, regardless of whether the theme park employs persons who are also law enforcement officers. Upon the filing of a missing child report, a law enforcement agency must fulfill the requirements imposed by R.C. 2901.30.