

6201

AIR RAID EMERGENCIES, ACTUAL OR THREATENED:

1. "POLICE, AUXILIARY, OF A DEFENSE CORPS"—TO EXERCISE POWER OF LAW ENFORCEMENT SHALL BE APPOINTED DEPUTIES OR PEACE OFFICERS BY SHERIFF, OR MAYOR OR DIRECTOR OF PUBLIC SAFETY.
2. DEFENSE, OHIO STATE COUNCIL OF — NO AUTHORITY TO APPOINT AUXILIARY POLICE WITH POWER OF LAW ENFORCEMENT — SUCH OFFICERS APPOINTED BY SHERIFF WITH APPROVAL OF COMMON PLEAS COURT JUDGE, BY MAYOR OR DIRECTOR OF PUBLIC SAFETY FOR CITIES, BY VILLAGE MAYOR IN VILLAGE.
3. AUXILIARY POLICE WHEN APPOINTED OR AUTHORIZED BY MUNICIPALITIES OR SHERIFF HAVE POWER OF LAW ENFORCEMENT.

SYLLABUS:

1. "Auxiliary police of a defense corps" do not have power of law enforcement during actual or threatened air raid emergencies unless they have been appointed as deputies or peace officers by the sheriff, or a mayor or director of public safety.

2. The Council of Defense, created by the statutes of Ohio, has no authority to appoint auxiliary police with power of law enforcement during actual or threatened air raids. Such officers may be appointed by sheriffs with the approval of a judge of the Common Pleas Court, by the mayor, or director of public safety for cities, and in the case of a village, by the mayor thereof.

3. Auxiliary police when appointed or authorized by municipalities or the sheriff have the power of law enforcement in actual or threatened air raid emergencies.

Columbus, Ohio, July 9, 1943.

Ohio State Council of Defense,
Columbus, Ohio

Gentlemen:

I acknowledge receipt of your letter asking my opinion as to certain questions, which reads as follows:

"1. Do the Auxiliary Police of a Defense Corps have the power of law enforcement and arrest during an actual or threat-

ened air raid emergency? Does Senate Bill No. 155 give them such authority?

2. If not, who may deputize or delegate such authority to auxiliary police to operate during an actual threatened air raid emergency,

(a) In incorporated cities and villages

(b) In the county and outside the limits of incorporated cities and villages?

3. Does the Ohio State Council of Defense possess the authority to deputize or clothe auxiliary police with the power to make arrests for violation of law during any actual or threatened air raid emergency?"

As the above questions are interrelated and concern the same general subject, to wit, the power or authority to appoint "auxiliary police", as a part of the citizens defense corps, who may make arrests during an actual or threatened air raid emergency, I shall discuss and answer these questions together.

There is nothing in the Defense Act in its original or amended form which provides directly for any such "auxiliary police". The only specific mention of such police officers is in Section 5288-7, General Code, being a part of the new act above referred to. The reference in that section is as follows:

"The police, sheriffs or deputy sheriffs, or any auxiliary police duly authorized by the regular police officials according to law, are authorized to enter upon any property or premises upon which a light or lights are visible from the outside during an actual or threatened air raid, etc."

Under Section 5285-1 of this act "civilian protection forces or services" is so defined as fairly to include all members of the police forces of any governmental division or subdivision of the state excepting only the organized militia of Ohio, pertinent provision in said section reading:

"'Civilian protection forces or services' shall mean any or all of the persons * * * used or available for use * * * by any governmental official for protecting life and property or for guarding and preserving the public welfare in the state."

Section 5286 of the General Code provides in part that the state council of defense is for the "general purposes of coordinating, directing

and supervising state and local activities related to national and state defense.”

Section 5288 of the General Code prescribes in sub-section (b) among the powers and duties of the state council power to adopt, “make effective and enforce * * * rules, orders and regulations * * * as may be necessary to insure the success of all air raid protection measures and to protect life and property during times of actual or threatened air raids” and further provides that upon filing in the office of the Secretary of State, such orders, rules and regulations “thereupon shall have the full force and effect of law until amended or rescinded.”

I find no restriction on the above power unless there is a conflict between such orders and regulations and existing law in which case they supersede such laws only when such laws are “regulatory laws, ordinances, orders, rules and regulations relating to traffic and lighting” and then they supersede such laws only “during the period of actual or threatened air raid and such additional periods devoted to air raid protective practice drills or mobilization of the citizens defense corps as may be necessary to prepare for defense and to educate and train the defense forces.” See General Code, Section 5288-4.

Sub-section (d) of Section 5288 of the General Code enumerating the powers of the state council gives such council power “to create committees or agencies, and appoint and designate individual persons either within or without the council, to aid and assist in the discharge of one or more of its powers and duties under this Act.”

Section 5288 (f) of the General Code further gives the state council the power “to require the cooperation and assistance of state and local governmental agencies, officials and local, county and district councils and their compliance with the orders, rules and regulations of the council promulgated under authority of this act.”

Section 5288 (g) provides that during periods of actual or threatened air attack the “council” has power to “require, direct and supervise” the interchange of equipment and manpower of any of the civilian protection forces or services throughout the state and its political subdivisions as it may deem necessary.

Under Section 5288-1 of the General Code each county and district council is given the same powers as the “council” to the extent applicable and enforceable within the territory under the jurisdiction of each county and district council and not in conflict with the general law nor the rules,

orders and regulations of the "council". Under the following section, 5288-2, a local council is empowered and authorized "to administer and regulate the civilian defense activities within its jurisdiction, to organize and maintain the citizens defense corps and citizens service corps and appoint as authorized members thereof such persons as it may deem suited therefor, etc."

By virtue of the above sections it would appear that county and district councils can require the cooperation of local police officials and require their membership and participation in the citizens defense corps in which the local councils are authorized to appoint such local police officers as members.

Under Section 5288-5 of the General Code during times of actual or threatened air attack the state council and any district, county or local council within its territorial limits may order and direct the movement and use anywhere within the state, by the state council, and anywhere within its respective territorial limits, by county, district or local councils, of any of the manpower or equipment of any civilian protection forces or services.

The provisions of Section 5288-7 of the General Code above referred to specifically mention "auxiliary police", wherein it is provided that during an actual or threatened air raid "*auxiliary police duly authorized by the regular police officials according to law*, are authorized to enter upon any property or premises upon which a light or lights are visible from the outside * * * contrary to a rule, order or regulation promulgated pursuant to the provisions of this act, using reasonable force if necessary, and to extinguish such light or lights."

In interpreting and enforcing the provisions of the Defense Act all related provisions should be read together and in the light of their relationship. The above referred to sections and provisions of the Act appear to be directly or indirectly related to the questions which you propound.

It is my opinion that under the Defense Act as amended it was the intent of the legislature which it carried out in the enactment of the Act to provide that all "auxiliary police" to be used with and as a part of the citizens defense corps, are to be appointed, deputized, authorized and directed by the regular police officials under whom they are to work and co-operate as auxiliaries. By the Act it is noted that the state council and the county and district councils within their respective territories have the power to "require" the full cooperation of state and local agencies and officials. But the power to require full cooperation would hardly give the

council the right either to assume the powers committed by law to public officers or to control the discretion of municipal or other officers by ordering the appointment by them of special policemen or dictating their number.

Reference to "auxiliary police" is found nowhere in the original or amended act except in Section 5288-7 above quoted. And there the legislature specifically limits the phrase to those "*duly authorized by the regular police officials.*" I am forced to the conclusion that it was not the legislative intent to grant to the Council of Defense authority to appoint, depute or confer powers of arrest on "auxiliary police". It would have been quite simple for the legislature to have done so by appropriate language if that had been its intent.

Such "auxiliary police" would appear to be such special police or other officers having similar powers as are provided for by the statutes, to be appointed by municipalities or by the sheriff.

Section 4373, General Code, gives the mayor of a city the right in case of riot or other like emergency to appoint additional patrolmen and officers for temporary service.

Section 4375, General Code, gives the director of public safety in cities the right to commission private policemen, under such rules and regulations as the council prescribes.

Section 4385, General Code, relates to the village marshal and provides that the marshal, the deputy marshals, policemen, or nightwatchmen under him shall have the powers conferred by law upon police officers in all villages of the state, and such other powers not inconsistent with the nature of their offices as are conferred by ordinance.

Section 2830, General Code, authorizes a sheriff to appoint deputies as he may deem proper, subject to the approval of a judge of the Common Pleas Court.

As to the power of arrest given by law, I call your attention to the provisions of Section 13432-1, General Code, which I will quote:

"A sheriff, deputy sheriff, marshal, deputy marshal, watchman or police officer, herein designated as 'peace officers' shall arrest and detain a person found violating a law of this state, or an ordinance of a city or village until a warrant can be obtained.

A constable within the limits of the township in which said constable has been appointed or elected, shall arrest and detain a

person found by him in the commission of a misdemeanor, either in violation of a law of this state or an ordinance of a village, until a warrant can be obtained.”

As to members of the state highway patrol, their powers of arrest are practically confined to offenses relating to traffic on the highway. See Section 1181-2, et seq., General Code.

It will be noticed that the section last above quoted covers violations of any law of the state or ordinance of a city or village. I call your attention further to Section 13432-2, General Code, which authorizes any person, whether an officer or not, when a felony has been committed or there is reasonable ground to believe that a felony has been committed, to arrest without any warrant a person whom he has reasonable cause to believe is guilty of the offense and to detain him until a warrant can be obtained. A “felony” is defined as any offense against the law which is punishable by death or by imprisonment in the penitentiary. All offenses not so punishable are classed as misdemeanors.

In this connection, I note the provisions of the State Council of Defense Act which gives to the council the right to adopt and promulgate rules and regulations, the violation of which subjects the offender to a fine of not exceeding \$500.00 or imprisonment not exceeding sixty days, or both. Such violations are, of course, to be classed as misdemeanors.

While you undoubtedly have examined it and given it consideration, I feel that it is fitting to call your attention to the discussion of “Police Mobilization: Auxiliary Police” appearing at pages 28-32, inclusive, of the Civilian Defense Manual on “Legal Aspects of Civilian Protection” prepared by a special committee on civilian defense of the American Bar Association.

Specifically answering your inquiries, it is my opinion that :

1. “Auxiliary police of a defense corps” do not have power of law enforcement during actual or threatened air raid emergencies unless they have been appointed as deputies or peace officers by the sheriff, or a mayor or director of public safety.

2. The Council of Defense, created by the statutes of Ohio, has no authority to appoint auxiliary police with power of law enforcement during actual or threatened air raids. Such officers may be appointed by sheriffs with the approval of a judge of the Common Pleas Court, by the mayor, or director of public safety for cities, and in the case of a village, by the mayor thereof.

3. Auxiliary police when appointed or authorized by municipalities or the sheriff have the power of law enforcement in actual or threatened air raid emergencies.

Very truly yours,

THOMAS J. HERBERT,
Attorney General.