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HIGHWAY PATROL, STATE—SUPERINTENDENT AND MEMBERS—NO AUTHORITY TO ARREST OFFENDER ON STATE HIGHWAY WITHIN MUNICIPAL CORPORATION FOR VIOLATION OF SECTION 6296-30, PARAGRAPH c, G. C.—WHERE OFFENSE OCCURS ON STATE HIGHWAY, WITHIN LIMITS OF MUNICIPALITY—OPERATION, MOTOR VEHICLE—UNDER INFLUENCE OF ALCOHOL, NARCOTICS OR OPIATES.

SYLLABUS:

The superintendent and members of the State Highway Patrol have no authority to arrest on a state highway within a municipal corporation for a violation of paragraph (c) of Section 6296-30, General Code, which occurs on a state highway, within the limits of a municipal corporation.

Columbus, Ohio, November 4, 1946

Hon. Arch R. Hicks, Jr., Prosecuting Attorney  
Georgetown, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I would appreciate your opinion on the following question:

Does a member of the State Highway Patrol have authority under Section 1183-2 of the General Code to make an arrest on a state highway within a municipal corporation for a violation of Section 6296-30c of the General Code—driving a motor vehicle while under the influence of alcohol?"

Since you present no facts to the contrary, I assume that the violation of law giving rise to the arrest, as well as the arrest itself, occurs on a state highway within the limits of a municipal corporation. With this, the question may be restated as follows: Does a member of the State Highway Patrol have authority to make an arrest on a state highway within a municipal corporation for a violation of Section 6296-30(c), General Code, which occurs on a state highway within the limits of a municipal corporation?

The Division of State Highway Patrol exists at the present time by virtue of Section 1183, General Code. This section authorizes highway patrolmen to make arrests under certain circumstances and reads in part as follows:

"There is hereby created in the department of highways a division of state highway patrol which shall be administered by a superintendent of state highway patrol hereinafter referred to in this act as the superintendent. \* \* \*

The superintendent, with the approval of the director, may appoint such number of highway patrolmen \* \* \* as he may deem necessary to carry out the provisions of sections 1183 to 1183-6, both inclusive, \* \* \*

The superintendent and highway patrolmen shall be vested with the authority of peace officers for the purpose of enforcing the laws of the state which it is the duty of the state highway patrol to enforce and are authorized to arrest without warrant any person who in the presence of the superintendent or any patrolman is engaged in the violation of any such laws; \* \* \*

As indicated by the above quoted provisions of the General Code of Ohio, the superintendent of the State Highway Patrol and highway patrolmen are clothed to a certain extent with the authority of peace officers and are empowered to arrest without warrant any person who in their presence is engaged in the violation of any laws of the state which it is the duty of the State Highway Patrol to enforce. In order, then, to determine whether or not, under the circumstances outlined in your inquiry, there exists the authority to arrest, it becomes necessary to determine what are the law enforcement duties assigned to the State Highway Patrol. These are outlined in Section 1183-2, General Code, which reads in part as follows:

“It shall be the duty of the state highway patrol to enforce the laws of the state relating to the registration and licensing of motor vehicles; to enforce, on all roads and highways outside of municipal corporations, the laws relating to the operation and use of vehicles on the highways; to enforce and prevent, on the roads of the state highway system, the violation of the laws relating to the size, weight, and speed of commercial motor vehicles and all laws designed for the protection of the highway pavements and structures on such highways; \* \* \*”

It is clear from the foregoing provisions that it is the duty of the State Highway Patrol to enforce laws of the state relating to the registration and licensing of motor vehicles, laws relating to the operation and use of vehicles on the highways, laws relating to the size, weight and speed of commercial motor vehicles and all laws designed for the protection of the highway pavements and structures on the highways. That the question you have presented to me involves the duty of the State Highway Patrol to enforce the laws relating to the operation and use of vehicles on the highway can readily be seen upon examination of paragraph (c) of Section 6296-30, General Code, which reads as follows:

“(c) Whoever operates a motor vehicle of any kind on any public highway or street while in a state of intoxication, or under the influence of alcohol, narcotics, or opiates, upon conviction thereof shall be punished by a fine of not more than five hundred dollars or imprisonment in the county jail for not more than six months, or both such fine and imprisonment. \* \* \*”

With respect to laws relating to registration and licensing of motor vehicles, the legislature has not specified the territorial limits of the jurisdiction of the State Highway Patrol. In assigning to the State Highway

Patrol the duty to enforce the laws relating to the operation and use of vehicles on the highways, however, the legislature has specifically confined the State Highway Patrol to the roads and highways outside municipal corporations. Consequently, it can not reasonably be urged that it is the duty of the State Highway Patrol to enforce within the limits of a municipal corporation the laws relating to the operation and use of vehicles on the highways.

As I have already pointed out, the superintendent and highway patrolmen are empowered to arrest without warrant for a violation, committed in their presence, of laws which it is their duty to enforce. Although it is their duty to enforce, among other laws, paragraph (c) of Section 6296-30, General Code, "on all roads and highways outside of municipal corporations," this duty does not include the enforcement of this section on a road or highway within the limits of a municipal corporation.

Since it is not the duty of the State Highway Patrol to enforce paragraph (c) of Section 6296-30, General Code, on a road or highway within a municipal corporation, it is my opinion, in answer to your inquiry, that the superintendent and members of the State Highway Patrol have no authority to arrest on a state highway within a municipal corporation for a violation of paragraph (c) of Section 6296-30, General Code, which occurs on a state highway within the limits of a municipal corporation.

Respectfully,

HUGH S. JENKINS  
Attorney General