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1. A STATE HIGHWAY PATROLMAN MAKING AN ARREST FOR OFFENSES NOTED IN CHAPTER 5503., R.C. IS ACTING AS A PEACE OFFICER. IF HE ARRESTS A PERSON FOUND VIOLATING THE LAWS OF THIS STATE FOR WHICH HE IS AUTHORIZED TO MAKE AN ARREST, HE MUST DO SO IN ACCORDANCE WITH THE PROCEDURES PRESCRIBED BY 2935.03, ...05, ...08, and ...13, R.C.

2. IF A HIGHWAY PATROLMAN ARRESTS A PERSON, AND SAID PERSON POSTS BOND BUT DOES NOT APPEAR ON THE SPECIFIED DATE IN COURT, AND THE JUDGE ISSUES A WARRANT FOR SAID PERSON'S ARREST, THE PATROLMAN IS BOUND BY DUTY TO SERVE THE WARRANT—CHAPTER 5503., CHAPTER 2935., §§2935.03, 2935.05, 2935.08, 2935.13, 2935.01, R.C.

SYLLABUS:

1. A member of the state highway patrol in making arrests for those offenses noted in Chapter 5503., Revised Code, is a peace officer for the purposes of Chapter 2935., Revised Code, and where a highway patrolman arrests a person found violating a law of this state, for which violation he is authorized to arrest, he must follow the procedure prescribed by Sections 2935.03, 2935.05, 2935.08, and 2935.13, Revised Code.

2. Where a person arrested by a highway patrolman under authority of Section 2935.03, Revised Code, posts bond in a municipal court for his appearance for trial at a later date, but does not appear on the date specified and the judge issues a warrant for his arrest and requests the highway patrolman to serve the warrant, the highway patrolman has a duty to serve the warrant as requested, such service being "service of process" in the prosecution within the purview of division (B) of Section 2935.01, Revised Code.

Columbus, Ohio, May 26, 1961

Hon. J. Grant Keys, Director  
Department of Highway Safety, 240 Parsons Avenue  
Columbus 5, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"A question has arisen in the Columbus Municipal Court with reference to the duty and authority of an Ohio State Highway Patrol Officer to serve certain warrants issued by that court.

"When a Patrol Officer stops a violator and an arrest is to be made, the officer may act in one of two ways:

- "1. He may place the subject under arrest and take him into custody.
- "2. He may issue the subject a written citation ordering him to appear in court at a later date.

"The subject arrested and taken into custody is brought directly to the court (the Clerk of Courts) where he is booked, the affidavit is filed by the officer and the subject is required to post a bond for his appearance for trial at a later date set by the court.

"Subjects who were issued citations by an officer to appear on the date specified in the citation, may appear in court but for some cause the case is continued and no plea entered. These subjects are released after the posting of an appearance bond, or are sometimes released on their own recognizance to appear for trial at a later date set by the court. Often the subjects fail to appear on the date specified for trial. As a result, in some cases the court does not choose to accept a bond forfeiture and a bench warrant is issued ordering the subject brought in. Also in cases where the subject was released on his own recognizance a warrant is issued to have the subject brought before the court.

"In referring to Attorney General's Opinion No. 1040, dated December 17, 1959, concerning State Highway Patrolmen serving certain warrants, it reads in part:

“ ‘Section 2903.01, R.C., does authorize State Highway Patrolmen to initiate and serve process relating to the offenses which they have witnessed or investigated. Such authorization, however, clearly deals with ministerial duties required to *initiate* criminal actions and does not include ministerial functions after arraignment.’

“The Columbus Municipal Court has indicated a defendant is not ‘arraigned’ until he stands before the court, the charge or indictment is read to him and he must enter a plea of ‘guilty’, ‘not guilty’, ‘no contest’ or refuse to plead, at which time the court automatically enters a ‘not guilty’ plea for the defendant. Further, the forfeiture of a bond in open court does not constitute an arraignment. In view of this interpretation, this court has requested that the State Highway Patrol Officers serve the warrants issued in the above described circumstances.

“Your opinion is respectfully solicited on the question as to whether or not it is within the official duties and authority of an Ohio State Highway Patrol Officer to serve these warrants.”

The fact situation here presented is concerned with the case where an arrest is made by a state highway patrolman, the accused posts bond in municipal court, the accused does not appear on the date set for trial, and a warrant is issued to have the accused brought into court. The question is whether the state highway patrol should serve the warrant on request of the court.

To adequately cover the question presented, it appears necessary to review the pertinent laws dealing with detection and arrest of persons accused of violating the laws of this state. In this regard, Section 2935.03, Revised Code, reads in part:

“A sheriff, deputy sheriff, marshal, deputy marshal, watchman, or police officer shall arrest and detain a person found violating a law of this state, or an ordinance of a municipal corporation, until a warrant can be obtained.

“\* \* \*

\* \* \*

\* \* \*”

When an arrest is made under Section 2935.03, *supra*, the arresting person follows the procedure prescribed by Section 2935.05, Revised Code, reading:

“When a person named in Section 2935.03 of the Revised Code has arrested a person without a warrant, he shall, without unnecessary delay, take the person arrested before a court or magistrate having jurisdiction of the offense, and shall file or cause to be filed an affidavit describing the offense for which the

person was arrested. Such affidavit shall be filed either with the court or magistrate, or with the prosecuting attorney or other attorney charged by law with prosecution of crimes before such court or magistrate and if filed with such attorney he shall forthwith file with such court or magistrate a complaint, based on such affidavit.”

Further procedure is found in Section 2935.08, *supra*, reading :

“Upon the filing of an affidavit or complaint, as provided in Sections 2935.05 or 2935.06 such judge, clerk, or magistrate shall forthwith issue a warrant to the peace officer making the arrest, or if made by a private person, to the most convenient peace officer who shall receive custody of the person arrested, and all further detention and further proceedings shall be pursuant to such affidavit or complaint and warrant.”

And Section 2935.13, Revised Code, provides :

“Upon the arrest of any person pursuant to warrant, he shall forthwith be taken before the court or magistrate issuing the same, if such court be in session or such magistrate available, and proceedings had as provided in Sections 2937.01 to 2937.46, inclusive, of the Revised Code. If such court be not in session and a misdemeanor or ordinance violation is charged, he shall be taken before the clerk or deputy clerk of the court and let to bail, as provided in Sections 2937.22 to 2937.46, inclusive, of the Revised Code, if the magistrate be not available, or if the defendant is arrested in a county other than that of the issuing court or magistrate he shall forthwith be taken before the most convenient magistrate, clerk, or deputy clerk of a court of record, and there let to bail for his appearance before the issuing court or magistrate within a reasonable time to be set by such clerk.”

Also to be considered is Section 2935.01, Revised Code, reading in part :

“As used in Sections 2935.01 to 2935.45, inclusive, of the Revised Code :

“(A) The definition of ‘magistrate’ set forth in Section 2931.01 of the Revised Code applies to Chapter 2935. of the Revised Code.

“(B) ‘Peace officer’ includes a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of any municipality, a police constable of any township, and, *for the purpose of arrests within those areas, and for those offenses authorized by Chapter 5503., and the filing of and service of process relating to those offenses witnessed or investigated*

by them shall include the superintendent and patrolmen of the Ohio state patrol.

\* \* \*

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\* \* \*'

(Emphasis added)

Section 2931.01, Revised Code, defines "magistrate" as follows:

\* \* \*

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\* \* \*

"(A) 'Magistrate' includes county court judges, police judges or justices, mayors of municipal corporations, and judges of other courts inferior to the court of common pleas.

\* \* \*

\* \* \*

\* \* \*'

The first question to consider in this matter is whether a highway patrolman is a sheriff, deputy sheriff, marshal, deputy marshal, watchman, or police officer within the purview of Section 2935.03, *supra*. If so, he must follow the procedure prescribed by Sections 2935.03, 2935.05, 2935.08, and 2935.13, *supra*, in making arrests where he finds a person violating a law of this state.

Obviously, a highway patrolman is not a sheriff, deputy sheriff, marshal, deputy marshal, or watchman. I am of the opinion, however, that he may be considered a police officer. Strengthening my conclusion in that regard is the fact that Section 2935.01, *supra*, provides that a highway patrolman is a "peace officer" for the purposes of Sections 2935.01 to 2935.45, inclusive, Revised Code, when proceeding under authority of Chapter 5503., Revised Code. (Said Chapter 5503, specifies the types of offenses in which a highway patrolman has authority to act.) That all of the officers mentioned in Section 2935.03, *supra*, are considered to be "peace officers" is shown by the language of Section 2935.08, *supra*, reading:

"Upon the filing of an affidavit or complaint, as provided in Sections 2935.05 \* \* \* such judge \* \* \* shall forthwith issue a warrant to the *peace officer* making the arrest \* \* \*."

(Emphasis added)

I conclude, therefore, that, in making arrests which he is authorized to make, a highway patrolman is a police officer within the purview of Section 2935.03, *supra*, and that in making such arrests where he finds a person violating a state law, he is governed by the procedure found in Sections 2935.03, 2935.05, 2935.08, and 2935.13, *supra*.

Section 2937.35, *supra*, reads as follows :

“Upon the failure of the accused or witness to appear in accordance with its terms the bail may in open court be adjudged forfeit, in whole or in part by the court or magistrate before whom he is to appear. But such court or magistrate may, in its discretion, continue the cause to a later date certain, giving notice of such date to him and the bail depositor or sureties, and adjudge the bail forfeit upon failure to appear at such later date.”

Other than the general provision of Section 2937.35, *supra*, I am unable to find any provision of law as to the procedure to follow when a person arrested under Section 2935.03, *supra*, posts bond and fails to appear in court on the date designated, I have no doubt, however, that it is within the authority of a judge of a municipal court to issue a bench warrant ordering said person to be arrested; and the issuance of such a warrant would undoubtedly be part of the service of process in the prosecution. As to the meaning of the word “process” it is stated in 44 Ohio Jurisprudence 2d, Section 2, page 7 :

“Judicial process, in its broadest sense, comprehends all the acts of a court from the beginning of a proceeding to its end. Any writ is process. Process includes writs of attachment, garnishment, execution, etc., and is properly and frequently used to denote the means whereby a court asserts its jurisdiction. A summons, however, is not an exercise of the jurisdiction of the court, but a notification preliminary to its exercise.

“The statutory summons is to be distinguished from the common-law writ of *capias* in that, while the sole object of a summons is to notify the defendant, a *capias* commands the sheriff to take charge of the defendant and have him appear before the court.”

Again referring to Section 2935.01, Revised Code, it is provided in division (B) of that section that a highway patrolman (for offenses under Chapter 5503., Revised Code) is a peace officer for the purpose of arrests and the filing and *service of process* relating to offenses which he witnessed. Accordingly, in a case in which a highway patrolman proceeded under Sections 2935.03, 2935.05, and 2935.08, Revised Code, the service of the bench warrant would be part of the service of process of the prosecution. Thus, I conclude that where the municipal court judge requests that the highway patrolman serve such a warrant, the patrolman has a duty to comply with the request.

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

1. A member of the state highway patrol in making arrests for those offenses noted in Chapter 5503., Revised Code, is a peace officer for the purposes of Chapter 2935., Revised Code, and where a highway patrolman arrests a person found violating a law of this state, for which violation he is authorized to arrest, he must follow the procedure prescribed by Sections 2935.03, 2935.05, 2935.08, and 2935.13, Revised Code.

2. Where a person arrested by a highway patrolman under authority of Section 2935.03, Revised Code, posts bond in a municipal court for his appearance for trial at a later date, but does not appear on the date specified and the judge issues a warrant for his arrest and requests the highway patrolman to serve the warrant, the highway patrolman has a duty to serve the warrant as requested, such service being "service of process" in the prosecution within the purview of division (B) of Section 2935.01, Revised Code.

Respectfully,

MARK McELROY

Attorney General