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CONSTABLE — “PEACE OFFICER” — PRECLUDED FROM MAKING ARRESTS ON STATE HIGHWAYS OUTSIDE MUNICIPALITIES FOR VIOLATION OF SECTIONS ENUMERATED IN SECTION 6297 GENERAL CODE.

SYLLABUS:

A constable is a “peace officer” as that term is used in Section 6297, General Code, and is therefore precluded from making arrests for the violation, on state highways outside municipalities, of the sections enumerated therein.

Columbus Ohio, November 29, 1941

Hon. Harold K. Bostwick, Prosecuting Attorney,
Chardon, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion as follows:

“Section 13432-1 defines “peace officers” and that apparently excludes a constable. In other words, from that section the conclusion could be drawn that a constable is not a ‘peace officer.’

“Then section 6297 says in substance that the highway patrol, sheriffs and their deputies shall exercise to the exclusion of all other peace officers except within municipalities certain powers.

“Now the question for your opinion is, does the fact that under section 13432-1 a constable is not a peace officer, is he excluded under section 6297 from the power to make arrests for violations therein stated on State highways?”

Section 13432-1, General Code, to which you refer in your communication provides:

“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.”

It will be noted that in the foregoing section the legislature did not

define generally the term, "peace officers". Such section merely states, in effect, that, for the purposes of the particular act, a sheriff, deputy sheriff, marshal, deputy marshal, watchman or police officer, shall be therein designated as "peace officers".

Section 6297, General Code, which was enacted by the 94th General Assembly, effective September 6, 1941, provides:

"The state highway patrol created by virtue of Section 1181-2, of the General Code and county sheriffs or their duly appointed deputies shall exercise, to the exclusion of all other peace officers except within municipalities, the power to make arrests for violations on all state highways, of sections 6310-1, 6310-2, 6310-17, 6310-17c, 6310-31, 12603, 12603-1, 12605, 12613, 12613-1, 12614, 12614-2, 12614-3, 12618, 12618-1, 12618-2, 12618-3, 12619, 12620, 12622 of the General Code and sections 14, 15, 16, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 46, 56, 57, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 93, 94, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 of Substitute Senate Bill No. 29 as passed by the 94th General Assembly."

Inasmuch as there is no general definition of the term, "peace officer" in Section 13432-1, General Code, and further because said section and Section 6297, General Code, do not appear as part of the same act, the meaning of the term, as used in Section 13432-1, General Code, is not controlling in the situation here under discussion.

The rule applicable to the immediate question is set forth in 37 O. J. at page 542, et seq., as follows:

"As a general rule, words of a statute, in common use or other than terms of art or science, will be construed in their ordinary acceptation and significance and with the meaning commonly attributed to them. Indeed, the intention of the legislature to use statutory phraseology in such manner has even been presumed. Ordinarily, such words are to be given their natural, literal, and full meaning. These rules are applicable unless such an interpretation would be repugnant to the intention of the legislature, as plainly appears from a construction of the entire statute."

The term "peace officer" is commonly defined as a person designated by public authority, whose duty it is to keep the peace and arrest persons guilty or suspected of crime. Restatement, Torts, Section 114.

In 48 C. J. 776, a "peace officer" is defined as follows:

"A conservator of the peace; an officer of the law; a person employed for the preservation and maintenance of the public peace".

It is apparent, from the foregoing, that a peace officer is an officer of the law whose duty it is to preserve and maintain the public peace. That constables fall within this classification is obvious from an examination of Section 3345, General Code, which provides in part:

"Constables shall be ministerial officers of the courts held by justices of the peace, in criminal cases, within their respective counties. They shall apprehend and bring to justice felons and and disturbers of the peace, suppress riots, and keep and preserve the peace within their respective counties."

By virtue of Section 3345, General Code, the primary duty of a constable is to preserve the peace. Consequently, it is clear that such officer is a "peace officer" in the general and accepted meaning of the term. It follows, therefore, that constables are subject to the provisions of Section 6297, General Code, and are precluded from enforcing, on state highways outside municipalities, the laws referred to in such section.

Supporting this conclusion is the statement in 59 C. J. 984, as follows:

"In accordance with the maxim, 'expressio unius est exclusio alterius', where a statute enumerates the things upon which it is to operate, or forbids certain things, it is to be construed as excluding from its effect all those not expressly mentioned; and where it directs the performance of certain things in a particular manner, or by a particular person, it implies that it shall not be done otherwise nor by a different person."

Section 6297, General Code, expressly provides that the state highway patrol, and sheriffs or their duly appointed deputies shall enforce certain specified laws. Applying the above rule to this statute, it appears that it was the intention of the legislature that no other officer should enforce such laws on state highways outside municipalities.

In view of the foregoing, I am of the opinion that a constable is a "peace officer" as that term is used in Section 6297, General Code, and is therefore precluded from making arrests for the violation, on state highways outside municipalities, of the sections enumerated therein.

Respectfully,

THOMAS J. HERBERT,
Attorney General.