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## SYLLABUS:

Giving false information to an investigating highway patrolman does not constitute a violation of Section 2923.42, Revised Code, and is not, in the absence of force, a violation of Section 2917.33, Revised Code.

Columbus, Ohio, October 7, 1963

Hon. Homer B. Gall, Jr.  
Prosecuting Attorney  
Athens County  
Athens, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"I would like your opinion as to the proper interpretation of the words 'call or report' as set forth in Section 2923.42 Ohio Revised Code which provides as follows:

"No person shall knowingly give or assist in giving a false or fictitious call or report to the state highway patrol or to any police department, fire department, sheriff, constable or other law enforcement officer, or to any person dispatching or operating an ambulance or other emergency vehicle with intent to mislead, misdirect or improperly summon said officer or person.'

"My question was prompted due to a person giving false information to a highway patrolman investigating an accident, and the false information was included in the patrolman's report of the accident.

"I would like also your opinion as to the interpretation of the words 'resist, obstruct' as set forth in Section 2917.33 Ohio Revised Code which provides as follows:

"No person shall abuse a judge in the execution of his office, or knowingly and willfully resist, obstruct, or abuse a sheriff, or other officer in the execution of his office.'

"More specifically, my question here is whether giving false information to a highway patrolman investigating an accident would constitute resisting or obstructing under this section."

Section 2923.42, Revised Code, provides in its entirety:

"No person shall knowingly give or assist in giving a false or fictitious call or report to the state highway patrol or to any police department, fire department, sheriff, constable or other law enforcement officer, or to any person dispatching or operating an ambulance or other emergency vehicle with intent to mislead, misdirect or improperly summon said officer or person.

"No person shall knowingly give a false or fictitious call or report to school officials or other persons in charge of locations where groups of persons assemble when the nature of such false or fictitious call or report results in law enforcement action.

"Whoever violates this section shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both."

This statute is of recent origin, having been enacted by the 103rd General Assembly (128 Ohio Laws 623) effective August 19,

1958. Its scope has yet to be considered in either reported court decision or opinion of this office. The answer to your first question, then, must be obtained from the language used by the legislature and from general rules of statutory construction.

The particular term which you have asked me to define, and which I feel is the key to the reach of this section, is "call or report". The word "call" in this context is variously defined as a "summons, invitation, or appeal to undertake a particular course of action" or "a request or command to come or to assemble" or "a summoning". Webster's Third New International Dictionary. The word "report", while often used broadly as meaning something that gives information, has a more limited meaning as well. Thus it is defined in Webster's Third New International Dictionary as "to make known to the proper authorities; give notification of (a fire) (an accident) (a case of diphteria)." In this latter sence, the word "report" has a meaning similar to that of "call" and I am of the opinion that it is in this more restricted sense that the word "report" is used in Section 2923.42, *supra*.

An interpretation thus qualifying the word "report" finds support in that rule of statutory construction referred to as the doctrine of *noscitur a sociis*. The doctrine is discussed in Vol. 2, Sutherland Statutory Construction, Third Edition, 383:

"In case the legislative intent is not clear, the meaning of doubtful words may be determined by reference to their association with other associated words and phrases. Thus, when two or more words are grouped together, and ordinarily have a similar meaning, but are not equally comprehensive, the general word will be limited and qualified by the special word. But this is so, only if the result is consistent with the legislative intent, for the maxim *noscitur a sociis* is a mere guide to legislative intent. The rule will not be applied where there is 'no ambiguity,' or to thwart the legislative intent, or to make general words meaningless.

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My conclusion is not based upon formalized rule alone, however, but also upon the tenor of this statute as a whole. From a close reading of its terms I am convinced that the legislature enacted this section with the intention of proscribing the giving of "false alarm" and not of bearing "false witness".

I am also persuaded by the fact that Section 2923.42, *supra*, is a penal statute and, as such, is to be strictly construed.

In specific answer to your question, it is my opinion and you are advised that giving false information to a highway patrolman investigating an accident is not a violation of Section 2923.42, *supra*.

Your second inquiry concerns an interpretation of section 2917.33, Revised Code. I feel that the giving of false information clearly would not amount to "resistance" or "abuse". These words imply force. While the word "obstruct", standing alone, does not necessarily suggest force, when read with "resist" and "abuse", it takes on a fixed legal signification, force becoming a necessary element of the definition. Although there are cases holding to the contrary, this seems to be the position taken in a majority of the jurisdictions which have considered the question.

In the case of *Davis v. Georgia*, 76 Ga. 721, the court was called upon to construe a statute making it an offense to knowingly and wilfully obstruct, resist or oppose a sheriff in his exercise of certain duties. The court said, at page 722:

"The word 'obstruct' must be construed with reference to the other words in the statute—'resist or oppose'. It is found in the same company with resist and oppose, which mean force."

Similarly, in the case of *State of Maine v. Welch*, 115 Me. 142, 98 A. 119, the court said, at page 144:

"To obstruct ordinarily implies opposition or resistance by direct action, and forcible or threatened means."

(Citations omitted)

Apparently Ohio has taken the position that force is a necessary element of an offense under Section 2917.33, Revised Code, although the force does not necessarily have to be exerted directly on the person of the officer. The syllabus in the case of *Camp v. The State*, 80 Ohio St., 321, reads as follows:

"In a prosecution for violation of section 6908, Revised Statutes, which makes it an offense for one to resist, obstruct, or abuse any officer in the execution of his office, it is not essential to a conviction that the state should

prove the using of direct, active, or forcible or quasi-forcible means against the person of the officer. It is enough in that regard if it is made to appear by the evidence, beyond a reasonable doubt, that the defendant knowingly and wilfully and in the presence of the officer, *used forcible means* to interfere with the custody of property lawfully in the possession of the officer and to take it unlawfully into his own possession.”

(Emphasis added)

It is, therefore, my opinion and you are advised that giving false information to an investigating highway patrolman does not constitute a violation of Section 2923.42, Revised Code, and is not, in the absence of force, a violation of Section 2917.33, Revised Code.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General