

**OPINION 65-26**

**Syllabus:**

Members of a township district police force created pursuant to Section 505.48, et seq., Revised Code, have no power to make

arrests for violations enumerated in Section 4513.39, Revised Code, on state highways within the township.

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**To: Edwin T. Hofstetter, Geauga County Pros. Atty., Chardon, Ohio**  
**By: William B. Saxbe, Attorney General, February 11, 1965**

I have your request for my opinion as to whether township police constables acting within a township have authority equal to that of a deputy sheriff upon the state highways passing through the particular township.

Section 505.48, et seq., Revised Code, effective September 24, 1963, provides for the establishment of a township police force. The enactment of Section 505.48, et seq., Revised Code, appears to have been for the purpose of giving townships additional protection through the vehicle of an improved township police system. These sections do not, however, give members of the district police force enforcement powers in addition to those given all township constables under Section 509.01, Revised Code.

This conclusion is substantiated by Section 505.49, Revised Code, as well as previous rulings of the Attorney General concerning the authority of constables in Ohio.

Section 505.49, Revised Code, provides in pertinent part as follows:

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"\* \* \* The township trustees may include in the township police district and under the direction and control of the chief of police, any constable appointed pursuant to section 509.01 of the Revised Code, or designate the chief of police or any patrolman appointed by him as a constable, as provided for in section 509.01 of the Revised Code, for the township police district."

In Opinion No. 6025, Opinions of the Attorney General for 1955, branch 1 of the syllabus reads:

"1. A police constable designated under Section 509.16, Revised Code, does not have authority under Section 4513.39, Revised Code, to make arrests on state highways even though such officer is deputized by the sheriff of the county."

The then Attorney General reasoned at page 651:

"In this connection it is important to note that it has been consistently ruled by my predecessors in Opinion No. 4489, Opinions of the Attorney General for 1941, page 925, and Opinion No. 2573, Opinions of the Attorney General for 1948, page 7, that a constable is a 'peace officer', as that term is used in the above quoted statute, and he is therefore precluded from making arrests on the state highways outside municipalities, for violations of the sections enumerated in Section 4513.39, Revised Code.

"Not only does the foregoing statute bestow authority upon certain officers, namely the state highway patrol, sheriffs or their deputies, to make arrests on state highways, but the statute expressly and unequivocally excludes all other peace officers. Thus, to permit a constable to exercise authority on state highways by virtue of a purely technical appointment as a special deputy sheriff would result in the circumvention of Section 4513.39, Revised Code, thereby defeating the very purpose of the exclusionary clause contained therein. Any construction of a statute should be avoided which affords an opportunity to evade the act or to defeat compliance with its terms or any attempt to accomplish by indirection what the statute forbids. See 50 American Jurisprudence, 365, Section 361."

Section 505.48, et seq., Revised Code, contains no exception by implication to the restriction contained in Section 4513.39, Revised Code.

Any other conclusion would mean that a township police constables' authority as provided for in Sections 509.05 and 509.10, Revised Code, would be more extensive by virtue of being appointed to the township police district. As no such authority exists in Section 505.48, et seq., Revised Code, I therefore conclude that township constables whether they be appointed to the township police department or not, have only the authority granted by Sections 505.09 and 505.10, Revised Code.

Therefore, it is my opinion and you are hereby advised that members of a township district police force created pursuant to Section 505.48, et seq., Revised Code, have no power to make arrests for violations enumerated in Section 4513.39, Revised Code, on state highways within the township.