

3039

COMMISSIONERS, COUNTY; SHERIFF'S TRANSPORTATION ALLOWANCE—EMERGENCY AMBULANCE AND TOWING SERVICE, FUNDS EXPENDIBLE FOR FURNISHING OF SAME ON CONTRACT OF SHERIFF—REIMBURSEMENT ITEMS AUTHORIZED BY COUNTY COMMISSIONERS—§325.07 R. C.—§307.55 R. C.—2169 OAG 1958, p. 330; 713 OAG 1939, p. 878 *modified*.

SYLLABUS:

1. A board of county commissioners is required, to the extent that funds are available, by Section 325.07, Revised Code, to make a monthly allowance to the sheriff for all expenses of maintaining transportation facilities necessary to the proper conduct of his official duties.

2. The monthly allowance for transportation facility expense made available to the sheriff by the board of county commissioners as provided by Section 325.07, Revised Code, may be expended for the furnishing of emergency ambulance and towing service required for the preservation of the public peace by removing motor vehicles and injured motorists from the public highways. Opinion No. 2169, Opinions of the Attorney General for 1958, p. 330, Opinion No. 713, Opinions of the Attorney General for 1939, p. 878, modified.

3. The sheriff may contract for the rendition of such emergency service and may arrange for such equipment and service to be furnished at his own summons or by his deputies.

4. The board of county commissioners, acting pursuant to Sections 325.07 and 307.55, Revised Code, is authorized to make the initial determination that any amount submitted by the sheriff as an expense of maintaining transportation facilities necessary to the proper administration of his official duties and thereby is a proper item for reimbursement.

Columbus, Ohio, Nov. 7, 1958

Hon. Ralph A. Hill, Prosecuting Attorney
Clermont County, Batavia, Ohio

Dear Sir:

I have received numerous inquiries relative to my Opinion No. 2169, Opinions of the Attorney General for 1958, p. 330, May 27, 1958, issued at your request. By way of clarification of the issues presented by your former inquiry and those received subsequent thereto I now offer the following discussion.

The syllabus of Opinion No. 2169, *supra*, reads as follows :

“Where a sheriff or state highway patrolman, in the investigation of a highway accident, or other emergency case, calls a funeral director, fire department or other ambulance operator for the removal of injured persons to a hospital, or where a private individual requests ambulance service in such a case, the county commissioners are without authority to pay the expense of such ambulance service. (Opinion No. 713, Opinions of the Attorney General for 1939, p. 878, approved and followed.)”

I invite your attention initially to the following language of Section 325.07, Revised Code:

“In addition to the compensation and salary provided by section 325.06 of the Revised Code, the board of county commissioners *shall make allowances monthly* to each sheriff * * * for all expenses of maintaining transportation facilities *necessary to the proper administration of the duties of his office.*” (Emphasis added)

Section 4513.39, Revised Code, provides :

“The state highway patrol and sheriffs or their deputies shall exercise, to the exclusion of all other peace officers except within municipal corporations, the power to make arrests for violations, on all state highways, of section 4503.11, 4503.21, 4511.14 to 4511.16, inclusive, 4511.20 to 4511.24, inclusive, 4511.26 to 4511.40, inclusive, 4511.42 to 4511.58, inclusive, 4511.58, 4511.59, 4511.62 to 4511.71, inclusive, 4513.03 to 4513.13, inclusive, 4513.15 to 4513.22, inclusive, 4513.24 to 4513.34, inclusive, 4549.01, 4549.04, and 4549.07 to 4549.12, inclusive, of the Revised Code.”

Section 311.07, Revised Code, provides :

“Each sheriff *shall preserve the public peace* and cause all persons guilty of any breach of the peace, within his knowledge or view, to enter into recognizance with sureties to keep the peace and to appear at the succeeding term of the court of common pleas, and the sheriff shall commit such persons to jail in case they refuse to do so. * * *” (Emphasis added)

The use of the phrase “preserve the public peace” is indicative of a legislative intent to confer authority broader than that given by the phrase “apprehend and bring to justice felons and disturbers of the peace.” Keeping the public highways free from damaged automobiles is admittedly “preserving the public peace.” The removal of the injured and uncon-

scious from the highways directly relates to the preservation of the public peace. The sheriff is required to "preserve the public peace"; the board of county commissioners is required, insofar as it is financially possible, to make allowance to the sheriff for expenses incurred in the maintenance of transportation facilities necessary for the performance of the duties of the office of sheriff.

"Breach of the Peace" is defined in 8 American Jurisprudence, pp. 834, 835:

"In general terms, a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence or tending to provoke or excite others to break the peace, or, as sometimes said, it includes any violation of any law enacted to preserve peace and good order. It may consist of an act of violence or an act likely to produce violence. It is not necessary that the peace be actually broken to lay the foundation for a prosecution for this offense. If what is done is unjustifiable and unlawful, tending with sufficient directness to break the peace, no more is required. Nor is actual personal violence an essential element in the offense. If it were, communities might be kept in a constant state of turmoil, fear, and anticipated danger from the wicked language and conduct of a guilty party, not only destructive of the peace of the citizens but of public morals without the commission of the offense. The good sense and morality of the law forbid such a construction.

"By 'peace,' as used in the law in this connection, is meant the tranquility enjoyed by citizens of a municipality or community where good order reigns among its members, which is the natural right of all persons in political society. It is, so to speak, that invisible sense of security which every man feels so necessary to his comfort, and for which all governments are instituted."

I have no hesitation in classifying the removal of damaged motor vehicles and injured persons blocking the public highways as a proper duty of the sheriff in preserving the public peace. To perform this duty the sheriff is given an allowance for his expenses actually incurred, subject to the accounting procedure set forth in Section 325.07, *supra*. To the extent permitted by the allowance made available by the board of county commissioners the sheriff is authorized to receive reimbursement for the funds so expended for ambulance and fire equipment service.

The question of the use of this procedure for calls made by such emergency summoned by a highway patrolman, constable or private citizen is another matter, however. If such persons and officers summon

such equipment at the direction of the sheriff no problem is presented. Constables and highway patrolmen, being police officers, have a direct interest insofar as the performance of their official duties are concerned with the subject matter here involved. In the absence of statutory authority constables or highway patrolmen cannot create an obligation binding on the county. The sheriff may, however, arrange for such emergency service to be furnished upon his request or that of one of his deputies.

It is to be noted, however, that it is the "necessary" expenses which are authorized to be paid. This issue is one which will properly be determined in the first instance by the board of county commissioners. See Section 325.07, *supra*.

Therefore, it is my opinion and you are accordingly advised that:

1. A board of county commissioners is required, to the extent that funds are available, by Section 325.07, Revised Code, to make a monthly allowance to the sheriff for all expenses of maintaining transportation facilities necessary to the proper conduct of his official duties.

2. The monthly allowance for transportation facility expense made available to the sheriff by the board of county commissioners as provided by Section 325.07, Revised Code, may be expended for the furnishing of emergency ambulance and towing service required for the preservation of the public peace by removing motor vehicles and injured motorists from the public highways. Opinion No. 2169, Opinions of the Attorney General for 1958, p. 303, and Opinion No. 713, Opinions of the Attorney General for 1939, p. 878, modified.

3. The sheriff may contract for the rendition of such emergency service and may arrange for such equipment and service to be furnished at his own summons or by his deputies.

4. The board of county commissioners, acting pursuant to Sections 325.07 and 307.55, Revised Code, is authorized to make the initial determination that any amount submitted by the sheriff as an expense of maintaining transportation facilities necessary to the proper administration of his official duties and thereby is a proper item for reimbursement.

Respectfully,

WILLIAM SAXBE
Attorney General