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TWO-WAY RADIO—COUNTY COMMISSIONERS MAY INSTALL IN CORONER'S PRIVATE AUTO.

SYLLABUS:

The board of county commissioners has the authority to authorize the purchase and installation of a two-way radio in the private automobile of an assistant coroner for purposes of official business.

Columbus, Ohio, July 8, 1959

Hon. John S. Ballard, Prosecuting Attorney  
Summit County, Akron, Ohio

Dear Sir:

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

“The members of the Board of Commissioners of Summit County, Ohio, recently requested the opinion of this office as to whether it is lawful for the county commissioners to install a two-way radio in the private automobile of an Assistant Coroner for purposes of county business. This office advised the commis-

sioners that they could not lawfully expend money to purchase and install such radio equipment. Had this office been asked the same question concerning the private automobile of a coroner's investigator, our answer would have been the same.

"Because our County Commissioners and coroner feel that the purchase and installation of this equipment under these circumstances would be desirable, and because they have informed this office that they believe similar problems may exist in other counties, therefore making the matter one of general interest, this office respectfully requests your opinion on this subject so that the matter may be authoritatively decided."

An assistant county coroner is appointed by virtue of section 313.05, Revised Code, which in part provides :

The coroner may appoint, in writing, assistant coroners who shall be licensed physicians of good standing in their profession, one of whom may be designated as the chief deputy coroner. Such coroner may also appoint pathologists as assistant coroners, who shall assist in doing autopsies, make pathological and chemical examinations, and perform such other duties as are directed by the coroner or recommended by the prosecuting attorney. The coroner may appoint any necessary technicians."

Before entering upon any discussion concerning the scope of authority of a board of county commissioners, the general rule by which the scope of such authority is limited should be first stated. This governing principle was expressed in the case of *State, ex rel. Locher v. Menning*, 95 Ohio St., 97, at page 99, as follows :

"The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

The theory upon which this rule is predicated is that the board of county commissioners, being a creature of the legislature, is limited in its authority to those powers expressly granted by statute, or those to be necessarily implied therefrom. 14 Ohio Jurisprudence (2d), 259. Since no express authority to authorize the installation of a two-way radio in

the private automobile of an assistant coroner for purposes of county business may be found, the answer to your question will necessarily depend upon whether the authority may be implied.

Section 313.06, Revised Code, provides:

“The coroner, his deputy, and assistants shall be available at all times for the performance of their duties as set forth in sections 313.01 to 313.22, inclusive, of the Revised Code.”

The intent of the lawmakers in enacting Section 313.06, supra, must be ascertained.

Such intent is to be sought first of all in the language employed, and if the words are free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the lawmaking body there is no occasion to resort to other means of interpretation. The question is not what the reader thinks the General Assembly intended to enact, but what is the meaning of that which they did enact.

The language of Section 313.06, Revised Code, is plain and free from doubt and effect must be given to its clear import which is, that the *coroner, his deputy, and assistants shall be available at all times.*

Regarding this particular request it is assumed that both the board of county commissioners and the coroner feel that the purchase and installation of this equipment under these circumstances would be desirable. There is no question concerning the authority of the county commissioners to make a county-owned motor vehicle and other suitable equipment available to the use of an officer, employee or agent, such use being subject to regulation of the county commissioners.

The use of privately owned motor vehicles in the performance of public duties is a common practice among political subdivisions. At times it is most desirable, both economically and availability-wise to permit the use of privately owned automobiles for official duties. The installation of public equipment in such private automobiles, upon resolution by the proper public officials is an incident to the carrying out of the duties of the public office. The legal title to such property remains with the political subdivision. There is no divesting of title to this property.

The need of such equipment becomes a question of fact which must be resolved by the board of county commissioners. The desirability in

this case, as noted earlier, is made much stronger by virtue of section 313.06, Revised Code.

Therefore, it is my opinion that the board of county commissioners has the authority to authorize the purchase and installation of a two-way radio in the private automobile of an assistant coroner for purposes of official business.

Respectfully,

MARK McELROY

Attorney General