

3109

THE DIRECTOR OF HIGHWAYS MAY USE EVERY LEGAL MEANS POSSIBLE TO REMOVE AN ILLEGAL ADVERTISING DEVICE ON PRIVATE PROPERTY—THE SHERIFF HAS THE DUTY TO PROVIDE POLICE PROTECTION AND ASSISTANCE FOR THE DIRECTOR OF HIGHWAYS IN GAINING ACCESS TO PROPERTY—§§5516.99, R.C., 5516.04, R.C., 311.07, R.C.

SYLLABUS:

1. Where pursuant to division (A) of Section 5516.04, Revised Code, the director of highways proceeds to remove or destroy an advertising device in violation of Sections 5516.02 and 5516.03, Revised Code, and the owner of the land refuses to allow the director to enter his land to so proceed, the director may continue with such procedure, using all available legal remedies to obtain access, or, in his discretion, he may elect to proceed by filing a complaint in court as provided by division (B) of that section.

2. Under Section 311.07, Revised Code, the county sheriff is the chief law enforcement officer of the county. Where in proceeding under division (A) of Section 5516.04, Revised Code, the director of highways is in need of police protection and assistance to gain access to property, and calls upon the sheriff for such assistance, the sheriff has a duty to provide such protection and assistance.

Columbus, Ohio, June 29, 1962

Hon. Donald D. Simmons, Prosecuting Attorney  
Wood County, Bowling Green, Ohio

Dear Sir :

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

“On March 12, 1962, the Wood County Sheriff was contacted by the Division No. 2 office of the Ohio Department of Highways situated in Bowling Green, Ohio. The Wood County Sheriff was informed that several property owners in Wood County had been notified pursuant to Revised Code Section 5516.04 (A), by the Director of Highways, to remove, obliterate or abate certain advertising devices. The property owners have refused to remove their signs pursuant to the notification from the Director of Highways. (A copy of the letter from the Director of Highways is enclosed.)

“No other determination has yet been made as to whether or not the billboards are located along an interstate highway and all determinations of fact have been made by the Director of Highways.

“Under Revised Code Section 5516.04 the Director of Highways, or any of his duly authorized agents, may proceed under subdivision (A) or (B) of that section. Apparently the Director of Highways has decided not to proceed under subdivision (B) and has requested assistance from the Wood County Sheriff under subdivision (A) to remove the advertising devices from the property owners' lands. The property owners have refused to allow the Director of Highways and his agents to enter upon the lands to remove the advertising devices.

“Your opinion is respectfully requested on the following questions :

“1. If a property owner, under subdivision (A) of 5516.04 refuses to admit an agent or employee of the Director of Highways to enter upon his lands, is the director forced to proceed against the alleged violation under subdivision (B) of 5516.04?

2. Is the sheriff required to assist the Director of Highways, or his agents, in any proceedings under Chapter 5516?

“3. If the County Sheriff has a duty to assist the Director of Highways, under what authority does he operate?”

Sections 5516.02 and 5516.03, Revised Code, deal with the regulation of advertising devices within 660 feet of the edge of the right of way of

highways on the interstate system. Under these sections, all such devices, except those specifically exempted, are barred.

Section 5516.99, Revised Code, provides a criminal penalty where advertising devices are erected or maintained contrary to Section 5516.02, *supra*. Said Section 5516.99, reads as follows:

“Whoever erects or maintains an advertising device in violation of section 5516.02 of the Revised Code shall be fined not less than one hundred dollars nor more than one thousand dollars.”

Section 5516.04, Revised Code, provides further remedies where devices are in violation of law. That section reads:

“Any advertising device which violates sections 5516.02 and 5516.03 of the Revised Code, is a public and private nuisance, and the director of highways shall give thirty days notice, by registered or certified mail, to the owner or lessee of the land on which such advertising device is located, to remove such advertising device.

“If any such advertising device has not been removed on or before the expiration of thirty days following the receipt of the said notice by the owner or lessee of the land upon which the advertising device is located, the director of highways, or any of his duly authorized agents, may, at his discretion, either:

“(A) Remove, obliterate, or abate the advertising device. The cost of expense of such removal, obliteration, or abatement, shall be paid by the director out of any appropriation of the department of highways available for the establishment, using, maintaining, or repairing of highways and the amount thereof shall be certified to the attorney general for collection by civil action against the person maintaining or erecting such advertising device.

“(B) File a complaint by petition in the court of common pleas of the county in which such advertising device is located, and, upon a finding by the court that a violation of sections 5516.02 to 5516.04, inclusive, of the Revised Code, exists as alleged in the petition, the court shall enter an order of abatement against the person or persons erecting or maintaining such advertising device, or against the owner or owners of the land upon which such advertising device is situated, as the case may be.”

Thus, the director of highways may remove or obliterate an advertising device which is erected or maintained in violation of Section 5516.02 or Section 5516.03, Revised Code *or* may file a complaint in the court of

common pleas of the county in which the advertising device is located to secure its removal.

As to your first question, the director has sole authority to determine which method he will utilize, and the statute grants complete authority to proceed upon the land of the owner or lessee to remove or destroy an illegal advertising device. The statute is clear and unambiguous, and there is no indication that where the owner denies access to the director, the director has no alternative but to proceed under division (B).

The argument might be raised that the power given to the director under division (A) deprives the property owner of a remedy where the advertising device is not unlawful. This argument is not persuasive, however, since under the law involved, the director must give thirty (30) days notice to the owner, and within that time the owner may take all available legal steps to protect his interest.

Further, if the director had no alternative but to proceed under division (B) where the owner denies access, the procedure of division (A) would be meaningless. Obviously, such a construction would render the summary procedure completely useless, for every owner or lessee would deny the director access, thereby nullifying the procedure of division (A).

Accordingly, where the director in proceeding under division (A) is refused access to the property, he may continue to follow that procedure, using all available legal remedies to enter the property, or, in his discretion, he may elect to proceed under division (B).

Coming to your second and third questions, the county sheriff is the chief law enforcement officer of the county and in such capacity he is required to preserve the public peace and perform the duties prescribed by law. 49 Ohio Jurisprudence 2d, 47, Sheriffs, Marshals and Constables, Section 19. In this regard, 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. He shall return a transcript of all his proceedings with the recognizance so taken to such court and shall execute all warrants, writs, and other process directed to him by any proper and lawful authority. He shall attend upon the court of common pleas and the court of appeals during their sessions,

and, when required, shall attend upon the probate court. In the execution of the duties required of him, the sheriff may call to his aid such persons or power of the county as is necessary. Under the direction and control of the board of county commissioners, such sheriff shall have charge of the court house.”

The Supreme Court of Ohio in *State, ex rel. Attorney General v. Ganson*, 58 Ohio St., 313, at page 320, stated :

“\* \* \* It is the duty of the sheriff, says Lord Coke: ‘To preserve the peace in his bailiwick or county. To this end he is the first man within the county, and it is incident to his office that he apprehend and commit to prison all persons who break or attempt to break the peace. \* \* \*’”

Since the director of highways may legally enter upon the land of an owner or lessee and summarily demolish or remove an illegal advertising device, a person interfering with this procedure would be acting illegally. Thus, if the director (or his agents) was in need of police protection and assistance to perform his duties under Section 5516.04, *supra*, and called upon the sheriff for the same, the sheriff would have an obvious duty under Section 311.07, *supra*, to provide such protection and assistance. The sheriff is the chief law enforcement agent of the county and in this position he is required to maintain the peace in the county and prevent a citizen from committing an illegal act.

Answering your specific questions, it is my opinion and you are advised :

1. Where pursuant to division (A) of Section 5516.04, Revised Code, the director of highways proceeds to remove or destroy an advertising device in violation of Sections 5516.02 and 5516.03 Revised Code, and the owner of the land refuses to allow the director to enter his land to so proceed, the director may continue with such procedure, using all available legal remedies to obtain access, or, in his discretion, he may elect to proceed by filing a complaint in court as provided by division (B) of that section.

2. Under Section 311.07, Revised Code, the county sheriff is the chief law enforcement officer of the county. Where in proceeding under division (A) of Section 5516.04, Revised Code, the director of highways is in need of police protection and assistance to gain access to property,

and calls upon the sheriff for such assistance, the sheriff has a duty to provide such protection and assistance.

Respectfully,

MARK McELROY

Attorney General