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SYLLABUS:

1. A board of township trustees may specify the type of uniform and may designate the markings for the motor vehicles used by township police constables.

2. Unless the superintendent of the state highway patrol approves the markings and design on motor vehicles and uniforms used by township police constables pursuant to Sections 4549.13, 4549.14, 4549.15 and 4549.16, Revised Code, such police constables will be incompetent to testify as a witness in any prosecution against a person charged with a violation of the motor vehicle or traffic laws of the state.

3. A board of township trustees is authorized to appoint police constables for the township but such board has no authority to appoint any other peace officers.

4. The description "township police" may be used on the motor vehicles and uniforms of township constables, provided that if such constable is on duty for the main or exclusive purpose of enforcing the motor vehicle or traffic laws of this state, the approval of such description should be obtained from the superintendent of the highway patrol.

Columbus, Ohio, June 4, 1963

Hon. Paul R. Young
Prosecuting Attorney
Montgomery County
Dayton, Ohio

Dear Sir:

I have your request for my opinion wherein you ask in substance the following questions:

1. May a board of township trustees specify the type of uniforms and the markings for motor vehicles used by township constables?

2. When are township constables incompetent to testify as a witness in a prosecution against a person arrested and charged with a violation of the motor vehicle or traffic laws of Ohio?

3. Are police township constables the only peace officers that can be appointed by a board of township trustees?

4. May the words "township police" in lieu of "constables" be used on the motor vehicles and uniforms of township constables.

Regarding your first question, I direct your attention to section 509.01, Revised Code, which section reads in pertinent part as follows:

"The board of township trustees may designate any qualified persons as police constables, and may provide such police constables, such automobiles, communication systems, uniforms, and police equipment as such board deems necessary. The board may pay each police constable, from the general funds of the township, such compensation as the board by resolution prescribes for the time actually spent in keeping the peace, protecting property, and performing duties as a police constable. * * *"

It will be noted from the above section that a board of township trustees may provide its police constables with automobiles, uniforms and other equipment when such board deems this necessary. Although there is no express statutory authority for such a board to designate or specify the type of uniform or the markings on the motor vehicles used by the township constables, I am nevertheless of the opinion that such authority exists by necessary implication. In this regard see 52 Ohio Jurisprudence 2d, Townships, Section 42 at page 295 wherein it is said:

"Township trustees, who act in a judicial as well as a ministerial capacity in certain instances, possess only such powers as are expressly conferred upon them by statute or are by necessary implication requisite to perform the duties so imposed upon them.

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It therefore follows that there is no official standard design or

color, as such, for uniforms of township constables, nor is there prescribed an official standard design or marking for the motor vehicles used by such peace officers.

In answer to your second question, I direct your attention to Sections 4549.13, 4549.14, 4549.15 and 4549.16, Revised Code, which sections read as follows :

Sec. 4549.13

“Any motor vehicle used by a member of the state highway patrol or by any other peace officer, while said officer is on duty for the exclusive or main purpose of enforcing the motor vehicle or traffic laws of this state, provided the offense is punishable as a misdemeanor, shall be marked in some distinctive manner or color. The superintendent of the state highway patrol shall specify what constitutes such a distinctive marking or color, except that the sheriff of a county and the police department of a municipal corporation shall determine the marking and color of the motor vehicles for their respective departments.”

Sec. 4549.14

“Any officer arresting, or participating or assisting in the arrest of, a person charged with violating the motor vehicle or traffic laws of this state, provided the offense is punishable as a misdemeanor, such officer being on duty exclusively or for the main purpose of enforcing such laws, is incompetent to testify as a witness in any prosecution against such arrested person if such officer at the time of the arrest was using a motor vehicle not marked in accordance with section 4549.13 of the Revised Code.”

Sec. 4549.15

“Every member of the state highway patrol and every other peace officer, while such officer is on duty for the exclusive or main purpose of enforcing motor vehicle or traffic laws of this state, provided the offense is punishable as a misdemeanor, shall wear a distinctive uniform. The superintendent of the patrol shall specify what constitutes such a distinctive uniform, except that the sheriff of a county and the police department of a municipal corporation shall determine the uniform for their respective departments.”

Sec. 4549.16

“Any officer arresting, or participating or assisting

in the arrest of, a person charged with violating the motor vehicle or traffic laws of this state, provided the offense is punishable as a misdemeanor, such officer being on duty exclusively or for the main purpose of enforcing such laws is incompetent to testify as a witness in any prosecution against such arrested person if such officer at the time of the arrest was not wearing a distinctive uniform in accordance with section 4549.15 of the Revised Code.”

As defined by Section 2935.01, Revised Code, the term “peace officer” includes a police constable of any township.

It is seen from the provisions of the above sections that in certain cases, township constables are incompetent to testify as a witness against one being prosecuted for violation of a motor vehicle or traffic law of this state unless such constable was wearing at the time of arrest a distinctive uniform approved by the superintendent of the state highway patrol. If an arrest involves the use of a motor vehicle, it is required by the above provisions that such vehicle be marked in some distinctive manner or color approved by the superintendent of the state highway patrol. It should be noted at this point that the requirements contained in Sections 4549.13, *et seq.*, *supra*, pertain only to distinctive uniforms and motor vehicle markings used by township constables when on duty for the exclusive or main purpose of enforcing the motor vehicle or traffic laws of this state.

In answer to your third question, I have found no provision of law which would authorize a board of township trustees to appoint a peace officer other than a township police constable. As noted above, such board has only those powers expressly granted or necessarily implied.

In answer to your fourth question, and in view of the foregoing, I can see no reason why the descriptive lettering “township police” could not be worn on the uniform or displayed on the motor vehicles used by township constables. If such township constable were on duty for the exclusive or main purpose of enforcing the motor vehicle or traffic laws of this state, however, it would be incumbent upon the board of township trustees, if such law enforcement is to be effectively carried out, to obtain the approval of the

superintendent of the state highway patrol regarding the uniforms and motor vehicle markings.

In summary then, it is my opinion and you are advised that:

1. A board of township trustees may specify the type of uniform and may designate the markings for the motor vehicles used by township police constables.

2. Unless the superintendent of the state highway patrol approves the markings and design on motor vehicles and uniforms used by township police constables pursuant to Sections 4549.13, 4549.14, 4549.15 and 4549.16, Revised Code, such police constables will be incompetent to testify as a witness in any prosecution against a person charged with a violation of the motor vehicle or traffic laws of the state.

3. A board of township trustees is authorized to appoint police constables for the township but such board has no authority to appoint any other peace officers.

4. The description "township police" may be used on the motor vehicles and uniforms of township constables, provided that if such constable is on duty for the main or exclusive purpose of enforcing the motor vehicle or traffic laws of this state, the approval of such description should be obtained from the superintendent of the highway patrol.

Respectfully,
WILLIAM B. SAXBE
Attorney General