

annually appropriate and cause to be raised by taxation, an amount for the purpose of maintaining and operating playgrounds, playfields, gymnasiums, public baths, swimming pools and recreation centers.”

It is significant to note that the statutes referred to above, Sections 4065-1 to 4065-7, both inclusive, were enacted in 1921 (109 O. L., page 609), whereas Section 3427-1, General Code, was enacted in 1915 (106 O. L., page 279) and yet no authority is extended to township trustees by the terms of the later act to engage in or foster any recreational activities whatever, either alone or in co-operation with counties, municipalities or school districts and I am of the opinion that boards of township trustees are not authorized by Section 3427-1, or any other provision of law to expend township funds under their control for the purpose of constructing, maintaining and operating a swimming pool within a park located in the township which is not under the direct supervision of a board of park commissioners.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1557.

MOTOR VEHICLES ON HIGHWAYS—OPERATION AND USE
—STREETS OF MUNICIPALITY—UNDER SECTION 1181-3
G. C. STATE HIGHWAY PATROL HAS AUTHORITY TO
ENFORCE STATE LAWS REGULATING SAME—NO AU-
THORITY TO MAKE ARRESTS, FAILURE TO STOP AT
MAIN THOROUGHFARES OTHER THAN STATE HIGH-
WAYS—FULL STOP—SIGNS—TRAFFIC SIGNALS—JURIS-
DICTION—STATE HIGHWAYS—ROADS WITHIN MUNICI-
PALITY—SEE SECTIONS 6310-31, 6310-35 G. C.

SYLLABUS:

1. *Under the provisions of Section 1181-3, General Code, the State Highway Patrol has authority to enforce the state laws relating to the operation and use of motor vehicles on the highways, including the streets of a municipality.*

2. *The State Highway Patrol has no authority to make arrests for failing to stop at main thoroughfares other than state highways, within a municipality.*

3. *Under the provisions of Section 6310-31, General Code, the operator of a motor vehicle traveling on an intersecting thoroughfare, not a state highway, within a municipality, must bring his vehicle to a full stop before entering on a state highway, regardless of the presence or absence*

of stop signs. Outside of a municipality, the operator of a motor vehicle traveling on an intersecting thoroughfare, not a state highway or a main thoroughfare, must bring his vehicle to a full stop before entering on a state highway, regardless of the presence or absence of stop signs. However, outside of a municipality, at the intersection of state highways or at the intersection of another main thoroughfare with a state highway, it shall not be necessary for such operator to bring his vehicle to a full stop unless signs have been erected in accordance with Section 6310-31, General Code.

4. *It is a violation of Section 6310-35, General Code, to fail to obey an automatic traffic signal even though the same was erected by municipal authorities. Such violation is within the jurisdiction of the State Highway Patrol.*

5. *There is no provision in the statutes of Ohio requiring the operator of a motor vehicle to bring his vehicle to a full stop before crossing or going onto a highway, other than a state highway, outside a municipality, regardless of whether or not stop signs are erected at the intersection of such highway with the other highway.*

6. *There is no provision in the statutes of Ohio requiring the operator of a motor vehicle to bring his vehicle to a stop before entering on a highway not a state highway within the municipality, even though stop signs have been erected at such intersection.*

7. *There is no provision in the statutes of Ohio requiring the operator of a motor vehicle traveling on a state highway within a municipality to bring his vehicle to a stop before entering on another state highway.*

COLUMBUS, OHIO, December 9, 1939.

COLONEL LYNN BLACK, *Superintendent, State Highway Patrol, Columbus, Ohio.*

DEAR SIR: Your request for my opinion reads as follows:

“Certain questions have arisen with respect to the jurisdiction of the Patrol inside incorporated municipalities, among other things with respect to Section 6310-30-31 O. G. C. as amended by the last session of the legislature. The questions set forth herein refer to the operation of motor vehicles.

1. What is the jurisdiction of the Patrol with reference to making arrests to enforce stopping at main thoroughfares other than state highways within an incorporated municipality where appropriate stop signs are erected by the municipality, and under what Code section may such violation be charged?

2. What is the jurisdiction of the Patrol to make arrests to enforce stopping at state highways within a municipality where

appropriate stop signs are erected by the municipality, and under what Code section may such violation be charged?

3. What is the jurisdiction of the Patrol to make arrests for failure to obey traffic signals (lights) erected by an incorporated municipality and within such municipality at the intersection of two main thoroughfares neither of which is a state highway? Under what Code section may such violation be charged?

4. What is the jurisdiction of the Patrol to arrest for failure to obey traffic signals (lights) erected by a municipality at the intersection of two State Highways within such municipality? Under what Code section may such violation be charged?

5. Is there a legal requirement that a driver stop at highways other than state highways outside of a municipality where stop signs are erected, and if so does the Patrol have jurisdiction to enforce such requirement and under what Code section may such violation be charged? We have in mind, among other things, situations in which stop signs are erected by county commissioners at the intersection of highways other than state highways outside a municipality.

6. Is it an offense under Section 6310-31 or any other section of the Code to (a) proceed into a state highway from a street which is neither a state highway nor a main thoroughfare without stopping at the intersection of said street and a state highway, within an incorporated municipality where no stop signs have been erected, (b) to proceed into a state highway from another state highway without stopping at the intersection of said state highways, within an incorporated municipality where no stop signs have been erected and (c) to proceed into a state highway from another main thoroughfare, not a state highway, without stopping at the intersection of said main thoroughfare and state highway within a municipality where no stop signs have been erected? What is the jurisdiction of the Patrol with reference to enforcing such violations?

In answering the above questions will you please advise as to the jurisdiction of the Patrol to enforce any state law relating to the operation and use of motor vehicles when violations occur within an incorporated municipality."

Five of the questions presented concern the power and jurisdiction of the State Highway Patrol to enforce the laws relating to the operation of motor vehicles within a municipality. Consequently, this general proposition will be first considered.

The State Highway Patrol was established in 1933 (115 O. L. 93, et seq.) as a part of the Department of Highways of the State of Ohio. Section 1178, General Code, provides in part:

"The functions of the department of highways shall be * * * *the enforcement of the laws of the state relating to the registration and licensing of motor vehicles, the laws relating to their use and operation on the highways, and all laws for the protection of the highways.*"

(Emphasis mine.)

Section 1178, *supra*, was amended in 115 O. L. 93 to read as above quoted, the portion emphasized being added at that time.

As a part of the same act, (House Bill No. 270, Ninetieth General Assembly) the State Highway Patrol was established (Sections 1181-2, *et seq.*, General Code). Section 1181-2, General Code, provides in part :

"There is hereby created in the department of highways a division of state highway patrol which shall be administered by a superintendent of state highway patrol hereinafter referred to in this act as the superintendent.

* * * * *

The superintendent and highway patrolmen shall be vested with the authority of peace officers for the purpose of enforcing the laws of the state relating to the registration of motor vehicles and the operation of vehicles upon the highways, and all laws of the state for the protection of the highways, and are authorized to arrest without warrant any person who in the presence of the superintendent or any patrolman is engaged in the violation of any of such laws; but such patrolmen shall never be used as peace officers in connection with any strike or labor dispute."

* * * * *

Section 1181-3, General Code, provides :

"It shall be the duty of the state highway patrol to enforce the laws of the state relating to the registration and licensing of motor vehicles; to enforce the laws relating to the operation and use of vehicles on the highways; to enforce and prevent, on the roads of the state highway system, the violation of laws relating to the size, weight, and speed of commercial motor vehicles and all laws designed for the protection of the highway pavements and structures on such highways; to investigate and report to the public utilities commission violations of its rules and regulations and the laws governing the transportation of persons and property by motor transportation companies and all other motor carriers for hire; to investigate and report violations of all laws relating to the collection of excise taxes on motor vehicle fuels; and to regulate the movement of traffic on the roads of the

state highway system. It shall be the duty of the highway patrol whenever possible to determine persons causing or re-sponsible for the breaking, damaging or destruction of any improved surfaced roadway, structure, sign, marker, guard rail, or any other appurtenance constructed or maintained by the department of highways and to arrest persons responsible therefor and to bring them before the proper officials for prosecution. It shall be the duty of the highway patrolmen to investigate and report all motor vehicle accidents on the state highway system outside of incorporated municipalities.

Any person arrested by a patrolman shall forthwith be taken by such patrolman before any court or magistrate having jurisdiction of the offense whereof such person so arrested is charged, there to be dealt with according to law.

State highway patrolmen shall not have the right or power to search nor shall they have the right or power of seizure except to take from any person under arrest or about to be arrested deadly or dangerous weapons in the possession of such person. No state official shall have any power, right or authority to command, order or direct any patrolman to perform any duty or service not authorized by this act. The powers and duties conferred on the state highway patrol shall be supplementary to and in no way a limitation on the powers and duties of sheriffs or other peace officers of the state."

It will be noted that Section 1181-3, *supra*, provides that it shall be the duty of the State Highway Patrol "to enforce the laws relating to the operation and use of vehicles on the highways." It, therefore, becomes important to ascertain the meaning of the word "highways."

The first three clauses of Section 1181-3, *supra*, indicate the intent of the Legislature in defining the powers of the State Highway Patrol. The first clause provides that it shall be the duty of the Patrol to enforce the state laws relating to the registration and licensing of motor vehicles. No territorial limits are specified. The third clause provides *inter alia*, for the enforcement of the laws relating to the size, weight, etc., of commercial cars on the *state highway system*. However, the second clause limits the Patrol, in the enforcement of the laws relating to the operation and use of vehicles to "highways."

There is a well defined distinction between the meaning of the term "state highway system" and the term "highways." Section 1189, General Code, provides in part :

"The state highway routes into or through municipal corporations, as the same are now designated or indicated by state

highway route markers erected thereon, or as the same may hereafter be designated or indicated as provided herein, are hereby declared to be state highways and a part of the state highway system."

It follows, therefore, that those streets within municipalities which are not state routes, are not a part of the state highway system.

The term "highway" so far as it relates to the streets of a municipality, is usually broader in its meaning. In 29 C. J. at pages 364 and 365, the following statement is made:

"In its broad sense, the term 'highway' may include public ways of every description, * * * including * * * streets * * *."

In the case of *Sullivan vs. Columbus*, 12 O. D. (N. P.) 650, the first headnote reads:

"The term 'highway' is the generic name for all kinds of public ways, streets, alleys, etc., and is a way open to all people."

In view of the usual meaning of the term "highway", it appears that Section 1181-3, *supra*, gives to the State Highway Patrol the authority to enforce the laws relating to the operation of motor vehicles on city streets. This conclusion is strengthened, as indicated hereinbefore, by the fact that the Legislature apparently did not intend to use the terms "state highway system" and "highways" synonymously.

Having arrived at the above conclusion, I shall now consider your specific questions:

1. Section 6310-32, General Code, provides:

"Local authorities shall have the right to designate by ordinance or resolution additional main thoroughfares and to designate what vehicles shall have the right of way at intersections of main thoroughfares; provided, however, that legible and appropriate signs be erected along the roads and highways intersecting such main thoroughfares, and that such signs outside the corporate limits of a municipality shall not be nearer than one hundred feet from such intersection."

It is obvious that main thoroughfares, excluding state highways, within a municipality, together with the signs relating thereto, are designated and established by municipal ordinance or resolution, under the authority of Section 6310-32, *supra*. There is no state law, as distinguished from municipal ordinance, requiring that the driver of a motor

vehicle bring his vehicle to a stop before entering on a main thoroughfare, not a state highway. Consequently, your first question asks, in effect, the jurisdiction of the State Highway Patrol to enforce local ordinances and resolutions.

As noted above, Section 1181-3, *supra*, grants to the Patrol the authority to enforce the *laws* relating to the operation and use of motor vehicles on the highways. In the case of *Wilson vs. City of Zanesville*, 130 O. S., 286, the court had under consideration the provisions of Section 34 of Article II of the Constitution of the State of Ohio which provides that laws may be passed fixing and regulating hours of labor, etc. The court said at page 288:

“In our judgment the word ‘laws’ does not embrace municipal ordinances and therefore this provision defines the legislative power of the General Assembly of Ohio only.”

In the case of the *Village of Brewster et al. vs. Hill*, 128 O. S., 354, the court was confronted with the question as to whether municipal ordinances are “laws” within the meaning of Section 2 of Article IV of the Constitution of Ohio. The court held as disclosed by the syllabus:

“A municipal ordinance is not a ‘law’ within the meaning of Section 2, Article IV of the Ohio Constitution, requiring the concurrence of at least all but one of the judges of the Supreme Court to declare a law unconstitutional, except in the affirmation of a judgment of the Court of Appeals.”

The court, in the case of *State vs. Collingsworth*, 82 O. S., 154, was concerned with the question as to whether the killing of a person, resulting from the violation of a city ordinance, was an “unlawful” killing within the meaning of the manslaughter statute. The court said at page 159:

“* * * we think it is sufficient to say that the unlawful act being committed which results in the death must be an act prohibited by *law*, as distinguished from an act forbidden by one of the municipalities of Ohio.”

The principle announced in the *Collingsworth* case, *supra*, was affirmed in the case of *Steel vs. Ohio*, 121 O. S., 332.

Since it is clear that the State Highway Patrol only has jurisdiction to enforce the *laws* relating to the operation of motor vehicles, it is my opinion that the State Highway Patrol has no authority to make arrests for failing to stop at main thoroughfares other than state routes within a municipality.

2. Section 6310-31, General Code, provides:

“Vehicles and street cars going on main thoroughfares shall have the right of way over those going on intersecting thoroughfares, except in incorporated municipalities.

The operator of a vehicle on an intersecting thoroughfare must bring his vehicle to a full stop before crossing or going on a state highway except that at the intersection of state highways or at the intersection of another main thoroughfare with a state highway, outside of an incorporated municipality, it shall not be necessary for such operator to bring his vehicle to a full stop unless the director of highways has erected appropriate and legible stop signs at or near such intersections and the director of highways is hereby authorized to erect stop signs at the intersections of state highways or at the intersection of another main thoroughfare with a state highway outside of incorporated municipalities.”

Section 6310-37, General Code, provides:

“Whoever violates any provision of General Code 6310-15 to 6310-40 respectively, shall be fined not more than \$25.00 and for a second offense shall be fined not less than \$25.00 nor more than \$100.00.”

It will be seen that Section 6310-31, *supra*, requires all vehicles to stop before entering on state highways within a municipality. It will further be noted that this section contains no requirement as to stop signs at state highways within a municipality. Consequently, it must be concluded that it is immaterial what agency has erected the signs since such signs are not required in the first instance. A failure to stop before entering on a state highway within a municipality is a violation of Section 6310-31, *supra*, which violation is within the jurisdiction of the State Highway Patrol.

3. Section 3 of Article XVIII of the Constitution of Ohio, provides:

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws.”

By virtue of this provision, municipalities are authorized to erect traffic lights for the purpose of regulating traffic within such municipalities. Section 6310-35, General Code, provides:

“Pedestrians and drivers of vehicles shall obey and abide by

all signals, signs, whistles and directions of police officers, and shall obey all automatic traffic signals.”

It appears, therefore, that it is a violation of Section 6310-35, *supra*, to fail to obey an automatic traffic signal even though the same was erected by municipal authorities. Such a violation would be within the jurisdiction of the State Highway Patrol.

4. The answer to the preceding question is dispositive of your fourth question.

5. There is no state law requiring that a motor vehicle stop before entering any highway other than a state highway even though stop signs are erected at such intersection. Consequently, in that situation, there would be no *law* for the State Highway Patrol to enforce.

6. (a) Section 6310-31, General Code, has been quoted above. As stated in answer to your second question, it must be concluded that it is immaterial whether stop signs have been erected at the intersection of the state route and another street. By virtue of Section 6310-31, *supra*, a car traveling on a highway, not a state highway, must come to a stop before going on a state route, irrespective of signs.

(b) There is no law requiring motor vehicles traveling on one state route within a municipality to come to a stop before going on an intersecting state highway. Consequently, the only pertinent statute is Section 6310-28a, General Code, which provides:

“Excepting where otherwise hereinafter provided the operator of a vehicle shall yield the right of way at the intersection of its path and the path of another vehicle to the vehicle approaching from the right.”

(c) It appears that under the provisions of Section 6310-31, *supra*, a vehicle traveling on a main thoroughfare, not a state route, within a municipality must come to a full stop before going on a state highway. As stated before, the failure to erect stop signs does not affect the duty to stop.

In specific answer to your inquiries, therefore, I am of the opinion that:

1. Under the provisions of Section 1181-3, General Code, the State Highway Patrol has authority to enforce state laws relating to the operation and use of motor vehicles on the highways, including the streets of a municipality.

2. The State Highway Patrol has no authority to make arrests for failing to stop at main thoroughfares other than state highways, within a municipality.

3. Under the provisions of Section 6310-31, General Code, the

operator of a motor vehicle traveling on an intersecting thoroughfare, not a state highway, within a municipality, must bring his vehicle to a full stop before entering on a state highway, regardless of the presence or absence of stop signs. Outside of a municipality, the operator of a motor vehicle traveling on an intersecting thoroughfare, not a state highway or a main thoroughfare, must bring his vehicle to a full stop before entering on a state highway, regardless of the presence or absence of stop signs. However, outside of a municipality, at the intersection of state highways or at the intersection of another main thoroughfare with a state highway, it shall not be necessary for such operator to bring his vehicle to a full stop unless signs have been erected in accordance with Section 6310-31, General Code.

4. It is a violation of Section 6310-35, General Code, to fail to obey an automatic traffic signal even though the same was erected by municipal authorities. Such violation is within the jurisdiction of the State Highway Patrol.

5. There is no provision in the statutes of Ohio requiring the operator of a motor vehicle to bring his vehicle to a stop before entering on a highway not a state highway within the municipality, even though stop signs have been erected at such intersection.

6. There is no provision in the statutes of Ohio requiring the operator of a motor vehicle traveling on a state highway within a municipality to bring his vehicle to a stop before entering on another state highway.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1558.

C-2 PERMITS ISSUED TO OWNER OR OPERATOR OF RETAIL STORE TO SELL CERTAIN DESIGNATED LIQUORS—SECTION 6064-15, G. C., AMENDED SUBSTITUTE SENATE BILL 74, 93RD GENERAL ASSEMBLY—C-2 PERMITS ISSUED PRIOR TO EFFECTIVE DATE OF STATUTE, JUNE 6, 1939, CARRY ALL PRIVILEGES UNDER SAID SECTION AS SO AMENDED.

SYLLABUS:

C-2 permits, as authorized by Section 6064-15, General Code, as amended by the 93rd General Assembly in Amended Substitute Senate Bill No. 74, issued prior to the effective date of the statute, viz., June 6,