

## OPINION NO. 70-063

## Syllabus:

1. A peace officer, excluded from making arrests under Section 4513.39, Revised Code, may issue traffic violation citations commanding persons to appear in court.

2. The issuance of a traffic violation citation to appear in court does not constitute an arrest.

3. In an investigation of an accident on a state highway, a peace officer is not prohibited from issuing a citation for a violation of Section 4511.21, Revised Code, prohibiting the operation of a motor vehicle at a greater speed than will permit him to bring it to a stop within the assured clear distance ahead, nor for a violation of any other section restricted by the provisions of Section 4513.19, Revised Code.

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To: Fred V. Skok, Lake County Pros. Atty., Painesville, Ohio  
By: Paul W. Brown, Attorney General, June 11, 1970

I have before me your request for my opinion with regard to certain aspects of Section 4513.39, Revised Code. Your request asks the following questions:

1. "Can a peace officer excluded from making arrests under Section 4513.39 issue citations commanding persons to appear in Court?"
2. "Is the issuance of a citation distinguished from an arrest?"
3. "In an investigation of an accident on a State Highway, is such peace officer prohibited from issuing a citation for failure to stop within the assured clear distance?"

Section 4513.39, supra, 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, or sections \* \* \* 4511.21 (other excluded sections omitted) \* \* \* of the Revised Code."

As I indicated in Opinion No. 69-061, Opinions of the Attorney General for 1969, Section 4513.39, supra, does not prohibit a peace officer who is excluded from making arrests

under said section from swearing out an affidavit for the issuance of an arrest warrant for the arrest of persons who have, in the presence of such peace officer, violated any of the sections enumerated in Section 4513.39, supra.

An issuance of a traffic violation citation is not an arrest. It is an order to appear in court. State v. Frost, 88 Ohio L. Abs. 321 (1961). The citation itself amounts to an affidavit for a warrant for arrest in cases where the recipient neglects to appear and a warrant is deemed proper under the circumstances. Willoughby v. Hugebeck, 2 Ohio App. 2d 36 (1964).

Section 2935.09, Revised Code, provides that in prosecutions for misdemeanors:

"\* \* \* in order to cause the arrest of the prisoner charged a peace officer, or a private citizen having knowledge of the facts, shall file \* \* \* with a magistrate, an affidavit charging the offense committed \* \* \*."

It has been held by court decision that a police officer who has completed an investigation after being called to the scene of an automobile accident, would have the right to file an affidavit charging an offense even though he was not a witness to the event. South Euclid v. Clapacs, 6 Ohio Misc. 101 (1966). The court stated at page 108:

"Although the question before the court in the instant case does not involve the validity of an affidavit executed by a police officer, it seems clear that the language of Section 2935.09, Revised Code, authorizes a police officer to file an affidavit after completing an investigation of a violation of law irrespective of whether or not the source of his information is partially, or entirely, hearsay. For example, an officer called to a scene of an auto accident would have the right to file an affidavit charging an offense after completing his investigation thereof even though he was not a witness to the event."

It is therefore my opinion and you are advised that:

1. A peace officer, excluded from making arrests under Section 4513.39, Revised Code, may issue traffic violation citations commanding persons to appear in court.
2. The issuance of a traffic violation citation to appear in court does not constitute an arrest.
3. In an investigation of an accident on a state

highway, a peace officer is not prohibited from issuing a citation for a violation of Section 4511.21, Revised Code, prohibiting the operation of a motor vehicle at a greater speed than will permit him to bring it to a stop within the assured clear distance ahead, nor for a violation of any other section restricted by the provisions of Section 4513.19, Revised Code.