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CONSTABLE — NOT PROHIBITED FROM MAKING ARREST — WHERE MOTORIST FAILED TO STOP BEFORE ENTERING INTERSECTION OF STATE HIGHWAY — NOT APPLICABLE WHERE MOTORIST APPROACHING SUCH INTERSECTION IS TRAVELLING ON STATE HIGHWAY — SECTION 6297 G.C.

## SYLLABUS:

The provisions of section 6297, General Code, do not prohibit a constable from arresting a person found to be in violation of the statute requiring a motorist to stop before entering an intersection of a state highway, unless such motorist when approaching such intersection is travelling on a state highway.

Columbus, Ohio, June 10, 1942.

Hon. Nicholas F. Nolan, Prosecuting Attorney,  
Dayton, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“Where a constable makes an arrest upon the failure of a motorist to stop before entering a State Highway, would that arrest be in violation of the law prohibiting a constable from making an arrest for traffic violations on State Highways?”

Section 6297 of the General Code, which relates to arrests on state highways, reads as follows:

“The state highway patrol created by virtue of section 1181-2 of the General Code and county sheriffs or their duly appointed deputies shall exercise, to the exclusion of all other peace officers except within municipalities, the power to make arrests for violations, on all state highways, of sections 6310-1, 6310-2, 6310-17, 6310-17c, 6310-31, 12603, 12603-1, 12605, 12613, 12613-1, 12614, 12614-2, 12614-3, 12618, 12618-1, 12618-2, 12618-3, 12619, 12620, 12622 of the General Code and sections 14, 15, 16, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 46, 56, 57, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 93, 94, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106 of Substitute Senate Bill No. 29 as passed by the 94th General Assembly.”

The provisions of law requiring the operator of a motor vehicle to stop before entering an intersection of a state highway are contained in section 63 of Substitute Senate Bill No. 89, referred to above. Said section 63 has been codified as section 6307-63 of the General Code.

Obviously, therefore, if the violation of section 6307-63 occurs on a state highway, a constable, under the express provisions of section 6297, would be without power to make the arrest.

Section 6307-63, General Code, in so far as the same is pertinent hereto, reads:

“(a) All state routes and all sections of streets and highways on which are operated street cars, trackless trolleys and other electric cars, or motor coaches for carrying passengers for hire along a fixed or regular route under authority granted by the municipal corporation in which such route lies, are hereby designated as through highways provided that stop signs shall be erected at all intersections with such through highways by the state highway department as to highways under its jurisdiction and by local authorities as to highways under their jurisdiction; provided, however, that where two or more through highways intersect and no traffic control signal is in operation stop signs shall be erected at one or more entrances thereto by the department or local authorities having jurisdiction. \* \* \*

“(c) Every said sign shall bear the word ‘stop’ in letters not less than six inches in height. Every stop sign shall be located as near as practicable at the property line of the highway at the entrance to which the stop must be made, or at the nearest line of the crosswalk thereat, or, if none, at the nearest line of the roadway.

(d) Every operator of a vehicle, street car or trackless trolley shall stop at such sign or at a clearly marked stop line before entering an intersection except when directed to proceed by a police officer or traffic-control signal.”

From the above, it is apparent that the failure to stop before entering an intersection constitutes the offense. In such case, the violation of the statute occurs not on a state highway, but on the intersecting highway, at a point outside of the intersection, unless of course the two intersecting highways are both state highways.

Since the provisions of section 6297 have application only to violations on all state highways, it would follow that a constable in the exercise of the general powers conferred upon him would have authority to make an arrest under the facts submitted.

In this connection, it should also be pointed out that section 6297 is a statutory exception to the operation of the general law and should therefore receive a strict consideration. In regard thereto, it is stated in 37 O. Jur., pages 781 and 782:

“Statutory exceptions to the operation of laws, especially if such laws are entitled to a liberal construction, should receive a strict, but reasonable, interpretation. In the absence of direct language, they should not, it has been declared, be carried further than the spirit of the law requires, or enlarged from considerations of apparent hardship or inconvenience.”

Under the provisions of section 13432-1, General Code, it is the duty of a constable, within the limits of his township, to arrest and detain any person found by him in the commission of a misdemeanor, until a warrant may be obtained. Section 6297 is an exception to the general provisions of this section and should therefore, under the above rule, receive a strict construction and consequently the provisions thereof are not to be extended beyond the express language contained therein.

You are therefore advised that in my opinion the provisions of section 6297, General Code, do not prohibit a constable from arresting a person found to be in violation of the statute requiring a motorist to stop before entering an intersection of a state highway, unless such motorist when approaching such intersection is traveling on a state highway.

Respectfully,

THOMAS J. HERBERT  
Attorney General.