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1. PATROL, STATE HIGHWAY—AUTHORIZED AND REQUIRED TO ENFORCE LAWS RELATING TO OPERATION AND USE OF VEHICLES ON ALL ROADS AND HIGHWAYS WITHIN AND WITHOUT MUNICIPAL CORPORATIONS.
2. SECTION 1183-2 G. C.—AMENDMENT, H. B. 177, 97 GENERAL ASSEMBLY—DID NOT IN ANY WAY AFFECT POWERS OR DUTIES OF POLICE CONSTABLES.

SYLLABUS:

1. The amendment by the 97th General Assembly of Section 1183-2, General Code, had the effect of authorizing and requiring the state highway patrol to enforce the laws relating to the operation and use of vehicles on all roads and highways within as well as outside of municipal corporations.

2. The amendment by the 97th General Assembly of Section 1183-2, General Code, did not in any way affect the powers or duties of police constables.

Columbus, Ohio, January 10, 1948

Hon. Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Legislature at its last regular session, amended the provisions of Section 1183-2, General Code in several respects. This section now provides, among other things, that the state highway patrol shall enforce the laws relating to the operation and use of vehicles on all roads and highways, and shall regulate the movement of traffic on the roads and highways of the state, notwithstanding the provisions of Section 6297 of the General Code. The last sentence of Section 1183-2, General Code reads as follows:

‘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.’

“Section 6297, General Code, which was enacted by the 94th General Assembly, effective September 6, 1941, provides, in substance that the state highway patrol, sheriffs and other deputies shall exercise to the exclusion of all other peace officers, the power to make arrests on all state highways for the violation of the statutes enumerated therein. The phrase ‘peace officer’ was construed to include a constable in 1941 Opinions of the Attorney General, No. 4489, wherein it was held:

‘A constable is a “peace officer” as that term is used in section 6297, General Code, and is therefore precluded from making arrests for the violation, on state highways outside of municipalities, of the sections enumerated therein.’

“In view of the provisions in Section 1183-2, General Code, supra, that the powers and duties conferred on the state highway patrol shall in no way be a limitation upon the powers and duties of sheriffs or other peace officers, the question arises whether police constables may now make arrests for violations of the motor vehicle laws on state highways outside of municipalities, notwithstanding the provisions of Section 6297, General Code. In other words, does Section 1183-2, General Code, repeal Section 6297, General Code, by implication?”

Section 1183-2, General Code, referred to in your letter, was amended by the 97th General Assembly in House Bill No. 177. That section as amended, reads as follows:

“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, on all roads and highways * * * *notwithstanding the provisions of section 6297 of the General Code*, the laws relating to the operation and use of vehicles on the highways; to enforce and prevent * * * the violation of the 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 and highways of the state * * *, *notwithstanding the provisions of section 6297 of the General Code*.

It shall be the duty of the highway patrol whenever possible to determine persons causing or responsible 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 all roads and highways outside of incorporated municipalities. The superintendent or any state highway patrolman may arrest without a warrant any person, who is the driver of or a passenger in any vehicle operated or standing on a state highway, whom he has reasonable cause to believe is guilty of a felony, under the same circumstances and with the same power that any peace officer may make such arrest. *The superintendent or any state highway patrolman may enforce the criminal laws on all state properties and state institutions owned or leased by the state.*

Any person arrested by the superintendent or a patrolman shall forthwith be taken 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. *Except that any person arrested or apprehended within the municipal corporation limits shall be brought before the municipal court or other tribunal of the municipal corporation.*

State highway patrolmen shall have no other right or power of search or 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 law. 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."

In the above quotation, I have indicated the asterisks and italics as they appear in the bill. At the two points where the asterisks appear, the words "outside of municipal corporations", appearing in the former law, are omitted from the amendment. The words "notwithstanding the provisions of Section 6297 of the General Code", do not appear in the original act. Likewise, the italicized words relating to the right of the superintendent and the state highway patrolmen to enforce the law on state properties and requiring persons arrested within a municipal corporation to be brought before the municipal tribunal, were added to the section as it originally read.

Outside of these omissions and additions, no change whatever was made by the amendment. The obvious purpose and the only possible effect of these changes was to give the state highway patrol the right to enforce the laws of the state relating to motor vehicles and traffic on the highway *within the boundaries of a municipal corporation*, which previously they were forbidden by the terms of said Section 1183-2 to do.

Section 6297, to which reference is made in the section quoted, and which has not been changed, provides in part 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," etc. (Emphasis added.)

There follows an enumeration of the various sections of the statutes relating to traffic, many of which have been repealed and reenacted as a part of the uniform traffic act.

Manifestly, the General Assembly recognized that the exception made in Section 6297, limiting the powers of the state highway patrol to highways outside of municipalities, was inconsistent with the purpose of the

amendment of Section 1183-2, and therefore an express exemption from the provision of Section 6297 was inserted at two places in the new act.

Your letter raises the question whether this legislative change enlarges the power of police constables to make arrests for violation of motor vehicle laws on state highways. I am unable to see wherein these changes in any way affect police constables or have any bearing on their powers. The provisions of Section 1183-2 to the effect that 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 peace officers, was in the old law and remains unchanged in the new.

There may seem to be a contradiction between the provision of Section 6297 above quoted, and that provision found in the last sentence of Section 1183-2, to the effect that the powers and duties conferred upon the state highway patrol are to be in no way a limitation on the powers of sheriffs or other peace officers. If there is any such contradiction, it does not arise by reason of the recent amendment of Section 1183-2. I do not, however, believe that Section 1183-2 operates as a partial repeal of Section 6297. The sentence referred to appeared in old Section 1181-3 enacted in 1933. In that section the powers of the state highway patrol were detailed in terms quite like the provisions of the later Section 1183-2. At that time Section 6297 was not in existence, it having been enacted in 1941. Plainly, therefore, the sentence in question as it then appeared in Section 1181-3, referred to the powers and duties of the state highway patrol which were created by the act of 1933, of which Section 1181-3 was a part. After the enactment of Section 6297, the new state highway act of 1945 was passed, including Section 1183-2, and that section as amended by the last General Assembly, contained as already stated, no changes whatsoever except those intended to open up to the state highway patrolmen the right to make arrests for violation of highway and traffic laws within as well as without a municipal corporation and also on state properties.

It is my opinion, therefore, that the statement which concludes this section that "the powers and duties conferred on the state highway patrol shall be supplementary to and in no way a limitation," etc., has reference to the powers and duties conferred by that section and its predecessors, and not to the powers and duties conferred in Section 6297, the exercise

of which by the terms of that section are limited to the state highway patrol.

I note your reference to Opinion No. 4489 of my immediate predecessor, found in 1941 Opinions of the Attorney General, page 925. I agree with the conclusion announced in that opinion, that a constable is a "peace officer", as that term is used in Section 6297, General Code, and is therefore precluded from making arrests on state highways outside municipalities, for violations of the sections enumerated therein. Since no change in Section 6297 has been made excepting in so far as state highway patrolmen are relieved from its limitation, that section remains in full force and continues to limit the authority of constables as peace officers.

Respectfully,

HUGH S. JENKINS,
Attorney General.