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OHIO ATTORNEY GENERAL

MEMORANDUM

TO: PETE TOBIN, CHAIR, OSHP MISSION REVIEW TASK FORCE

FROM: JEFF CLARK, ASSISTANT ATTORNEY GENERAL

DATE: APRIL 14, 2010

SUBJECT: OSHP AUTHORITY TO ASSIST OTHER JURISDICTIONS

ISSUE

Although broader issues of Ohio State Highway Patrol (“OSHP”) trooper and officer jurisdiction have been raised in the OSHP Mission Review Task Force, this memorandum provides only an overview of applicable sections of the Ohio Revised Code and related case law regarding the authority OSHP troopers and officers have to assist other law enforcement jurisdictions at the request of an outside jurisdiction. This is intended to further inform Task Force members as they begin the process of formulating recommendations in the areas of operational efficiency, overlapping service and service consolidation.

BACKGROUND

The OSHP is empowered by statute to enforce various laws upon roads and/or highways, and to enforce laws and provide security on state property and in state institutions. R.C. 5503.02. The OSHP is a creature of statute, within the Ohio Department of Public Safety, and has only such powers as are authorized by the Ohio General Assembly.

In addition to its primary enforcement authority, the superintendent and troopers of the OSHP have conditional authority outside of their jurisdiction under specified circumstances at the request of the governor, sheriffs, or other peace officers. (e.g., R.C. 5503.02(B)(riot, civil disorder or insurrection); R.C. 5503.02(D)(2)(emergency assistance to any other peace officer who has R.C. 2935.03 arrest authority); R.C. 5503.02(F)(major criminal investigations that involve state property interests)).

The authority of an OSHP trooper to provide assistance to any other peace officer who has R.C. 2935.03 arrest authority is set out at R.C. 5503.02(D)(2) and (3), and includes a requirement that the OSHP establish “a policy that sets forth the manner and procedures by which a state highway patrol trooper may render [such] emergency assistance ...” R.C. 5503.02(D)(2)(b) The full text of the statutory authority is:

(2)(a) A state highway patrol trooper, pursuant to the policy established by the superintendent of the state highway patrol under division (D)(2)(b) of this section, may render emergency assistance to any other peace officer who has arrest authority under section 2935.03 of the Revised Code, if both of the following apply:

(i) There is a threat of imminent physical danger to the peace officer, a threat of physical harm to another person, or any other serious emergency situation;

(ii) Either the peace officer requests emergency assistance or it appears that the peace officer is unable to request emergency assistance and the circumstances observed by the state highway patrol trooper reasonably indicate that emergency assistance is appropriate.

(b) The superintendent of the state highway patrol shall establish, within sixty days of August 8, 1991, a policy that sets forth the manner and procedures by which a state highway patrol trooper may render emergency assistance to any other peace officer under division (D)(2)(a) of this section. The policy shall include a provision that a state highway patrol trooper never be used as a peace officer in connection with any strike or labor dispute.

(3)(a) A state highway patrol trooper who renders emergency assistance to any other peace officer under the policy established by the superintendent pursuant to division (D)(2)(b) of this section shall be considered to be performing regular employment for the purposes of compensation, pension, indemnity fund rights, workers' compensation, and other rights or benefits to which the trooper may be entitled as incident to regular employment.

(b) A state highway patrol trooper who renders emergency assistance to any other peace officer under the policy established by the superintendent pursuant to division (D)(2)(b) of this section retains personal immunity from liability as specified in section 9.86 of the Revised Code.

(c) A state highway patrol trooper who renders emergency assistance under the policy established by the superintendent pursuant to division (D)(2)(b) of this section has the same authority as the peace officer for or with whom the state highway patrol trooper is providing emergency assistance.

Members of the Task Force have raised questions regarding the scope and boundaries of this statutory authority, including the definition of "emergency" and "serious emergency" as used in the statute, and whether the physical presence of the requesting peace officer is required during the provision of assistance.

CASE LAW AND OAG OPINIONS

One Ohio Attorney General Opinion sets out the primary and conditional authority of the Ohio State Highway Patrol as it existed at the time of the opinion. 1996 OAG 055 The opinion

addresses the applicability of the domestic violence arrest provisions of R.C. 2935.03(B)(3), and R.C. 2935.032 (domestic violence policy) to the OSHP, and does not specifically address the issues raised herein.

Two reported appellate cases address the term “emergency call” in connection with the liability of an OSHP trooper for actions taken outside of their jurisdiction. In *Baum v. OSHP* (1995), 72 Ohio St. 3d 469, the Supreme Court found the voluntary pursuit by OSHP troopers of a vehicle fleeing from local law enforcement, was responding to an emergency call based on the troopers’ duty under R.C. 5503.02(A). In *Golden v. Dept. of Highway Safety* (1996), 1996 Ohio App. LEXIS 2433, the Tenth District upheld the trial court’s factual determination that an OSHP trooper’ actions under circumstances similar to Baum. The *Golden* court noted that although “the responding police officer’s judgment is entitled to some deference. See *Agnew v. Porter* (1970), 23 Ohio St. 2d 18, 260 N.E.2d 830,” *Id.*, at [*10], the existence of an “emergency call as defined by R.C. 2744.01(A) is a question of fact, not of law. Further, “R.C. 2744.01(A) says that an emergency call is “a call to duty *** of inherently dangerous situations that demand an *immediate response* on the part of a peace officer.” (Emphasis added.)” *Id.*, at [*9].

DEFINITION OF TERMS

While there is no definition of “emergency” or “serious emergency” within Chapter 5503, the above-cited definition of “emergency call” in R.C. 2744.01(A) is instructive to the extent that anything which meets the statutory definition of an emergency call would necessarily involve a matter which qualifies as an “emergency.” There is no definition of “emergency” in either the criminal code, Title 29, or in the General Provisions of the Revised Code. This is even the case with a criminal offense such as R.C. 2917.13 *Misconduct at an emergency*, where the existence of “emergency of any kind” is a required element of the offense that follows a non-exhaustive exemplary list of “fire, accident, disaster, [or] riot, ...” R.C. 2917.13(A)(1)

In the absence of a specifically applicable statutory definition, a statute’s “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.” R.C. 1.42 Aside from the analogous but limited definitions discussed above, the word “emergency” holds the common definition and usage of,

1. A serious situation or occurrence that happens unexpectedly and demands immediate action.
2. A condition of urgent need for action or assistance. *The American Heritage College Dictionary*, 3d Edition, 1997

The common definition of “serious,” as a modifier of a situation or occurrence, appears to include,

1. ... d. Not trifling or jesting. ... 3. Concerned with important rather than trivial matters.
- 4.a. Being of such import as to cause anxiety: *serious matters*.
- b. Too complex to be easily answered or solved. *The American Heritage College Dictionary*, 3d Edition, 1997

CONCLUSIONS

It appears that the existence of an emergency is a question of fact for a jury in an action for damages under the Ohio Court of Claims Act, and would be so in any other action in which the existence of an emergency is an element or condition. The only case law available suggests that the officer involved in a purported emergency should be given some deference in their judgment as to whether an emergency exists, and how to respond, but ultimately these will be up to the trier of fact.

Applying these definitions to the dual statutory requirements for authority for a trooper to assist an appropriate peace officer, and using the broadest elements of the dual statutory requirements, there must exist as an objective matter a “serious emergency situation,” and, “[e]ither the peace officer requests emergency assistance or it appears that the peace officer is unable to request emergency assistance and the circumstances observed by the state highway patrol trooper reasonably indicate that emergency assistance is appropriate.” R.C. 5503.02(D)(2)(a)

Although the concept of “seriousness” is part of the definition of “emergency,” the term “serious” in R.C. 5503.02(D)(2)(a)(i) cannot be dismissed as redundant. However, even applying the rules of statutory interpretation to give every part of a statute some effect, “serious” appears to be a somewhat subjective and marginal modifier along the spectrum of “emergency” situations or conditions. Still, it should be possible to clarify and categorize the types of assistance actually rendered by OSHP troopers with the assistance of these definitions.

The statutory language does not expressly require the physical presence of the peace officer requesting assistance at the location or time when an OSHP trooper is providing assistance. The OSHP policy may of course limit the rendering of emergency assistance according to the presence of the requesting officer, if it chooses.

LEGISLATIVE OPTION

Statutory authority for any state agency may be expanded, limited, or clarified by amendment. To the extent that this group believes jurisdictional issues of OSHP assistance to other law enforcement agencies would benefit from further clarification, they could embrace their unique charge as a Task Force on the subject, and recommend to the legislature that specific changes be made in the Ohio Revised Code.

DISCLAIMER

The above memorandum intentionally omits specific examples of emergency assistance situations, and does not attempt any definition of the absolute limits of the authority available under R.C. 5503.02(D)(2). This memorandum does not constitute either a formal opinion of the Ohio Attorney General, or legal advice to any person.