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STATE CAPITOL  
PHOENIX, ARIZONA

April 4, 1967

DEPARTMENT OF LAW LETTER OPINION NO. 67-19-L (R-66)

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REQUESTED BY: RALPH L. CRULL, Assistant District Engineer  
Arizona Highway Department

QUESTION: May the Highway Patrol cite persons apprehended  
while defacing the surface of rocks adjacent to  
the highway:

ANSWER: Yes.

Arizona Highway Patrolmen are generally charged with the  
duty of enforcing laws relating to the use of the highways and the  
operation of vehicles thereon. Such authority is conferred by A.R.S.  
§ 28-231(C) which states:

"The patrol superintendent and patrolmen are  
vested with the authority of peace officers,  
primarily for the purpose of enforcing laws  
relating to the use of highways and operation  
of vehicles thereon, but they shall never be  
used as peace officers in connection with a  
strike or labor dispute." (Emphasis supplied)

It is evident from the above-quoted statute that highway  
patrolmen have the primary duty to enforce highway and traffic laws.  
However, it is also evident that notwithstanding their primary duty,  
they have been granted the general authority of peace officers and  
may act accordingly.

Further, A.R.S. § 13-1403 provides in part:

"A peace officer may, without a warrant, arrest  
a person:

"1. When the person to be arrested has committed  
a felony or misdemeanor in his presence. If the  
arrest is for a misdemeanor, the arrest shall be  
made immediately or on fresh pursuit." (Emphasis  
supplied)

Opinion No. 67-19-L  
(R-66)  
April 4, 1967  
Page Two

This statutory section is obviously addressed to arresting individuals who commit misdemeanors in the presence of designated peace officers. Under the general powers and duties outlined above, highway patrolmen may enforce such provisions.

As it pertains to your situation where the public has defaced the surface of rocks adjacent to the highway by painting names, initials, etc. on them, your attention is directed to A.R.S. § 13-501 relating to the crime of "malicious mischief" which states:

"A person who maliciously injures or destroys real or personal property not his own, when the conduct or punishment is not otherwise provided is guilty of a misdemeanor." (Emphasis supplied)

Also, A.R.S. § 13-712 pertaining to trespass upon property provides in part as follows:

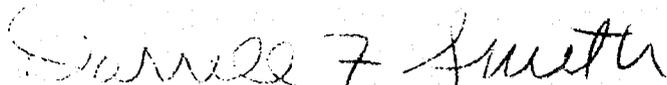
"A person is guilty of a misdemeanor who willfully commits any trespass by either:

\* \* \*

"5. Putting up, affixing, fastening, painting or painting upon any private or public property, without license from the owner, a notice, advertisement or designation of, or a name for any commodity, whether for sale, or otherwise, or any picture, sign or device intended to call attention thereto." (Emphasis supplied)

It may, therefore, be concluded that Arizona Highway Patrolmen may apprehend and cite persons defacing public property in the above-described manner.

Respectfully submitted,



DARRELL F. SMITH  
The Attorney General