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September 1, 1961
Opinion No. 61-64

REQUESTED BY: Mr. Gene B. McClellan
State Representative
8307 N. 29th Drive
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: On state or interstate highways within the incorporated limits of a city or town, whether they be controlled access or not, which law enforcement agency has primary responsibility for traffic law enforcement, State Highway Patrol, County Sheriff's Department, or the Municipal Police Department?

CONCLUSION: (see Body of Opinion)

"A.R.S. §18-102. Highway department and highway commission; highway districts; members; qualifications; vacancies; compensation

A. The highways of the state shall be administered by the highway department. Control of the department is vested in the highway commission."

"A.R.S. §18-106. Powers and duties of commission

The commission shall:

* * * * *

7. Exercise complete and exclusive control and jurisdiction of the state highways, and prescribe such rules and regulations to govern the use of state highways as it deems necessary for public safety and convenience, and to prevent the abuse and unauthorized use of the highways."

"A.R.S. §28-231. Arizona Highway Patrol; employees; authority; compensation

A. The highway department shall maintain a division known as the Arizona Highway Patrol.

* * * * *

C. 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)

"A.R.S. §28-233. Duties of highway patrol

The highway patrol shall patrol the highways of the state, both day and night, and enforce the laws relating to the use of the highways. The highway patrol shall also investigate accidents which occur upon the highways, procure the names of drivers and descriptions and license numbers of the motor vehicles involved and transmit forthwith to the vehicle superintendent a copy of the report of the investigation."

It is stated in Clayton v. State, (1931) 38 Ariz. 135 as follows:

"The state acting through its legislature has plenary power over the highways of the state including those within cities and towns."

From the foregoing it is evident that the Arizona State Highway Patrol is the law enforcement arm of the Highway Department for the purpose of enforcing laws relating to the use of State Highways and operation of vehicles thereon; that the Highway Commission is vested with the control of the Highway Department of which the Highway Patrol is a division; that the Commission is vested with the power and shall exercise complete and exclusive control and jurisdiction of the State highways.

However, in addition, the legislature has enacted the Uniform Act Regulating Traffic on Highways, Title 28, Chapter 6, A.R.S. §28-626, which states:

"28-626. Provisions of chapter uniform throughout state

The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter, unless expressly authorized by this chapter. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter."

"§28-627. Powers of local authorities

A. The provisions of this chapter shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from:

1. Regulating the standing or parking of vehicles.
 2. Regulating the traffic by means of police officers or traffic-control signals.
 3. Regulating or prohibiting processions or assemblages on the highways.
 4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction.
 5. Regulating the speed of vehicles in public parks.
 6. Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to the intersection.
 7. Restricting the use of highways as authorized in §28-1012.
 8. Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee.
 9. Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections.
 10. Altering the prima facie speed limits as authorized by this chapter.
 11. Adopting such other traffic regulations as are specifically authorized by this chapter.
- B. No local authority shall erect or maintain any stop sign or traffic-control signal at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the commission.
- C. No ordinance or regulation enacted under paragraphs 4, 5, 6, 7, 9 or 10 of subsection A of this section shall be effective until signs giving notice of the local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate."

It is apparent, therefore, that the legislature has not pre-empted to the State Highway Department complete control over the highways, particularly in the area of traffic law enforcement. In addition to the statute cited above, we have the following statutes:

A.R.S. §11-441 A, dealing with the powers of the sheriff states that:

"A. The Sheriff shall:

1. Preserve the peace.
2. Arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have committed a public offense."

This clearly gives sheriffs officers powers to arrest traffic violators anywhere within their county. As far as municipal police officers are concerned there is no specific statute, but we do have A.R.S. §22-402, dealing with the jurisdiction of city police courts:

"§22-402 Establishment and jurisdiction

- A. In each city or town incorporated under the general laws of this state, there shall be a police court.
- B. Every court established pursuant to subsection A, and every court established in a city incorporated under the provisions of article 5, chapter 2, title 9¹, or incorporated under the provisions of a special act or charter, has jurisdiction of all cases arising under the ordinances of the city or town, and has jurisdiction concurrently with justices of the peace of precincts in which the city or town is located, of violations of laws of the state committed within the limits of the city or town."

It is therefore clear that if the city police courts have jurisdiction over traffic offenses the police officers operating under that court would also have jurisdiction.

In conclusion, it cannot be said with any accuracy that any law enforcement agency has primary responsibility for traffic law enforcement. All three agencies have concurrent jurisdiction and the matter of who actually assumes the bulk of the enforcement is a matter of comity and not a matter of substantive law.

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