

April 1, 1997

OPINION NO. 97-015

The Honorable W. Duncan Whitney
Delaware County Prosecuting Attorney
15 West Winter Street
Delaware, Ohio 43015

Dear Prosecutor Whitney:

You have requested an opinion concerning whether a county sheriff may temporarily close state roads and municipal streets within his jurisdiction during a snow emergency. In addition, you wish to know, if the county sheriff is not authorized to close state roads and municipal streets, is the sheriff subject to liability in the event of an accident on a state road or municipal street when the sheriff has closed county and township roads.

Our research reveals that the statutory law is silent as to whether a particular governmental entity is solely responsible for closing state roads and municipal streets during a snow emergency. Absent any statutory clarification, we must rely upon our earlier opinions and the common law authority of the county sheriff. In this regard, 1986 Op. Att'y Gen. No. 86-023 concluded that a county sheriff is authorized to close county and township roads within his jurisdiction during a snow emergency. In reaching this conclusion, the opinion noted that, pursuant to R.C. 311.07 and R.C. 311.08,¹ a "county sheriff possesses common law powers as well as those powers expressly granted by statute, has the general duty to preserve the public peace and may call to his aid such power of the county as is necessary to carry out his duty to preserve the public peace," and that "the sheriff may exercise reasonable discretion in determining the manner in which he will exercise his power to preserve the public peace." 1986 Op. Att'y Gen. No. 86-023 at 2-120 and 2-121. Based on the sheriff's duty to preserve the public peace, the opinion determined that a county sheriff may reasonably determine that his power to preserve the public peace includes the power to close county and township roads during a snow emergency. In this regard, the opinion stated:

¹ R.C. 311.07 and R.C. 311.08 delineate the general powers of the county sheriff. R.C. 311.08(A) provides in pertinent part that, "[t]he sheriff shall ... exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law." R.C. 311.07(A) states in part that, "[e]ach sheriff shall preserve the public peace.... In the execution of the duties required of him, the sheriff may call to his aid such ... power of the county as is necessary."

In 1958 Op. No. 3039 and Op. No. 79-027, the sheriff's power pursuant to R.C. 311.07 to "preserve the public peace" was broadly construed to encompass such activities as participation in emergency rescue operations, keeping public highways free from damaged automobiles and removal of the injured and unconscious from the highways. The purpose in engaging in those activities discussed in 1958 Op. No. 3039 and Op. No. 79-027 is clearly to protect and preserve the safety of the traveling public on the roads, and I agree with my predecessors that *it appears reasonable to include within the scope of the power to "preserve the public peace" the authority to take those steps reasonably necessary to protect and preserve the safety of the traveling public on the roads. A sheriff's action to temporarily close county and township roads during weather conditions which render driving hazardous clearly falls within the purpose of protecting the safety of the traveling public.* I believe, therefore, that in an emergency situation arising from severe weather conditions, a county sheriff may declare a snow emergency and order the temporary closing of county and township roads within his jurisdiction for the duration of the snow emergency when the sheriff reasonably determines that such action is necessary to protect and preserve the safety of the traveling public on the roads and thus, to preserve the public peace.

Id. at 2-121 (emphasis added).

1986 Op. Att'y Gen. No. 86-023 thus found that, in order to preserve the public peace, a county sheriff is authorized to take those steps reasonably necessary to protect and preserve the safety of the traveling public on the roads. The opinion provides a correct interpretation of the powers of a county sheriff, and is both well reasoned and persuasive with respect to the sheriff's authority to close county and township roads.

Moreover, under the rationale used in 1986 Op. Att'y Gen. No. 86-023, there is no reasonable basis for distinguishing between the different types of roads and streets that are located within the county. As stated in the opinion, "[t]he sheriff is the chief law enforcement officer in the county, with jurisdiction coextensive with the county, including all municipalities and townships." 1986 Op. Att'y Gen. No. 86-023 at 2-120 (quoting *In re Sulzmann*, 125 Ohio St. 594, 597, 183 N.E. 531, 532 (1932)); see R.C. 2935.03(A). Accordingly, a county sheriff's duty to "preserve the public peace" extends throughout the entire county. As such, the county sheriff is not only required to "preserve the public peace" on county and township roads during a snow emergency, but is also required to do the same on state roads and municipal streets. Because the power to "preserve the public peace" includes the authority to take those steps reasonably necessary to protect and preserve the safety of the traveling public, 1986 Op. Att'y Gen. No. 86-023 at 2-121, the county sheriff may, pursuant to R.C. 311.07 and R.C. 311.08, declare a snow emergency and temporarily close the state roads and municipal streets within his jurisdiction when such action is reasonably necessary for the preservation of the public peace.²

² As a practical matter, a county sheriff is required to exercise his discretion to close state roads

Your second question asks whether, if the county sheriff is not authorized to close state roads and municipal streets, the sheriff is subject to liability in the event of an accident on a state road or municipal street when the sheriff has closed county and township roads. Because a county sheriff is authorized to close municipal streets and state roads within his jurisdiction during a snow emergency, it is unnecessary for me to answer your second question.

Based on the foregoing, it is my opinion, and you are advised that the county sheriff may, pursuant to R.C. 311.07 and R.C. 311.08, declare a snow emergency and temporarily close the state roads and municipal streets within his jurisdiction when such action is reasonably necessary for the preservation of the public peace. (1986 Op. Att'y Gen. No. 86-023, approved and followed.)

Respectfully,

BETTY D. MONTGOMERY
Attorney General

and municipal streets in the event of a snow emergency in a reasonable manner. *See generally State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39, 40 (1918) ("[e]very officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty"). It is, therefore, imperative that communication be maintained between the sheriff and the other governmental entities responsible for the safety of the traveling public on the streets and roads of a county to ensure that any inconvenience to the public during a snow emergency is minimized.

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Delaware County Prosecuting Attorney
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SYLLABUS:

97-015

The county sheriff may, pursuant to R.C. 311.07 and R.C. 311.08, declare a snow emergency and temporarily close the state roads and municipal streets within his jurisdiction when such action is reasonably necessary for the preservation of the public peace. (1986 Op. Att'y Gen. No. 86-023, approved and followed.)