

OPINION NO. 86-023**Syllabus:**

1. The county sheriff may, pursuant to R.C. 311.07 and R.C. 311.08, declare a snow emergency and temporarily close county and township roads within his jurisdiction when such action is reasonably necessary for the preservation of the public peace. Any person who knowingly hampers or fails to obey a lawful order of the county sheriff declaring a snow emergency and temporarily closing county and township roads for the duration of the snow emergency may be subject to criminal prosecution under R.C. 2917.13.
2. The county engineer has no authority to declare a snow emergency and close county and township roads for the duration of the emergency.

To: William F. Schenck, Greene County Prosecuting Attorney, Xenia, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 6, 1986

I have before me your request for my opinion concerning the authority of a county sheriff or county engineer to declare and enforce a snow emergency. In your letter of request, you ask about "the appropriate statutory authority, if any, for the declaration of a snow emergency and the enforcement of such an emergency if individuals choose not to comply with such emergency orders." Specifically, you would like to know whether "there is statutory authority for the County Sheriff or County Engineer to declare county and township roads within their jurisdiction closed upon determining there to be a snow emergency."

I begin the inquiry by noting that it is established in the basic law of this state that, "roads...shall be open to the public." Ohio Const. art. I, §19. In Clark v. Fry, 8 Ohio St. 358 (1858), the Supreme Court of Ohio noted, however, that a temporary closing of roads to public use in certain instances may be permitted. In Fry, the court stated:

The right of the public in the use of a highway, is the right of transit to every person who has occasion so to use it. This right is, however, subject to such incidental and temporary, or partial obstructions as manifest necessity may require.... [T]he repair or improvement of streets, and the deposit of the materials for the same, often create obstructions to the uninterrupted transit by the public.... These are not invasions of, but simply incidents, to or rather qualifications of, the right of transit; the limitation upon them is, that they must not be unnecessarily and unreasonably interposed or prolonged....

These incidental and temporary encroachments on the highway, however, must be necessary and reasonable. (Emphasis in original.)

8 Ohio St. at 373-74. Thus, under Fry, every person who uses a highway has a right of transit thereon which is subject to necessary and reasonable obstructions or encroachments. I believe that your question must be analyzed with these constitutional principles in mind.

In turning to your question whether a county sheriff may close county and township roads upon determining that a snow emergency exists, I note that the office of county sheriff is a creature of state statute, see R.C. 311.01 ("[a] sheriff shall be elected quadrennially in each county, who shall hold his office for a term of four years..."). The Supreme Court of Ohio has stated that, "[t]he sheriff is the chief law enforcement officer in the county, with jurisdiction coextensive with the county, including all municipalities and townships." In re Sulzmann, 125 Ohio St. 594, 597, 183 N.E. 531, 532 (1932). As a creature of statute, a county sheriff has only such powers as are expressly delegated to him by statute, see R.C. 311.08, and he possesses implied authority "to engage in activities which are reasonably necessary for the due and efficient exercise of the powers expressly granted to him." United States v. Laub Baking Co., 283 F. Supp. 217, 220 (N.D. Ohio 1968). See generally State ex rel. Kautzman v. Graves, 91 Ohio St. 113, 110 N.E. 185 (1914), aff'd sub nom. State ex rel. Davis v. Hildebrandt, 241 U.S. 565 (1916).

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." Thus, by statute, the 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.

The activities which may be encompassed within the authority of the county sheriff to preserve the public peace are not susceptible of precise definition, and thus, the sheriff may exercise reasonable discretion in determining the manner in which he will exercise his power to preserve the public peace. See generally State ex rel. Hunt v. Hildebrant, 93 Ohio St. 1, 112 N.E. 138 (1915). Several opinions of this office have analyzed the breadth of the sheriff's authority with respect to preserving the public peace, however, and are helpful in determining whether the 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 construing R.C. 311.07, one of my predecessors stated in 1958 Op. Att'y Gen. No. 3039, p. 676 at 677-78:

The use of the phrase "preserve the public peace" is indicative of a legislative intent to confer [broad] authority...[upon the sheriff]. Keeping the public highways free from damaged automobiles is admittedly "preserving the public peace." The removal of the injured and unconscious from the highways directly relates to the preservation of the public peace.

In 1979 Op. Att'y Gen. No. 79-027 at 2-92, my predecessor stated: "I have no hesitation...in concluding that the sheriff's duty to preserve the public peace permits him to participate in emergency rescue operations and to incur necessary transportation expenses related thereto."

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. Furthermore, I believe that this result is fully consistent with the principles concerning the rights of the public in the use of the highways as set forth in Fry.

Concerning the enforcement of a county sheriff's order to temporarily close county and township roads within his jurisdiction for the duration of a snow emergency, I note that R.C. 2917.13 provides in pertinent part as follows:

(A) No person shall knowingly:

(1) Hamper the lawful operations of any law enforcement officer...engaged in his duties at the scene of a fire, accident, disaster, riot, or emergency of any kind;

(2) Fail to obey the lawful order of any law enforcement officer engaged in his duties at the scene of or in connection with a fire, accident, disaster, riot, or emergency of any kind.

....

(C) Whoever violates this section is guilty of misconduct at an emergency, a minor misdemeanor. If violation of this section creates a risk of physical harm to persons or property, misconduct at an emergency is a misdemeanor of the fourth degree.

Thus, under R.C. 2917.13, no person shall knowingly hamper the lawful operations of a law enforcement officer or knowingly fail to obey the lawful order of a law enforcement officer engaged in his duties at the scene of or in connection with an emergency of any kind. See R.C. 2901.01(K)(1)(including a sheriff or deputy sheriff within the term "law enforcement officer" as used in the Revised Code). Thus, where a county sheriff lawfully orders the temporary closing of a county or township road within his jurisdiction for the duration of a snow emergency, any person who knowingly fails to obey such order or otherwise hampers the sheriff may be subject to criminal prosecution under R.C. 2917.13.¹

Therefore, in sum, I believe that, pursuant to R.C. 311.07 and R.C. 311.08, the county sheriff may declare a snow emergency and order the temporary closing of county and township roads within his jurisdiction when such action is reasonably necessary for the preservation of the public peace. Any person who knowingly hampers the operations of the sheriff or who knowingly fails to obey the lawful order of the county sheriff in taking such actions may be subject to criminal prosecution under R.C. 2917.13.

You also ask whether a county engineer has authority to close county and township roads in the instance of a snow emergency. Like the office of county sheriff, the office of county engineer is a creature of statute, see R.C. 315.01 ("[t]here shall be elected quadrennially in each county a county engineer who ... shall hold office for four years"). Therefore, the county engineer may exercise only such powers as are expressly granted by statute or as may be implied as necessary to carry out such express powers. A.F.S.C.M.E. v. Polta, 59 Ohio App. 2d 283, 394 N.E.2d 310 (Erie County 1977); 1983 Op. Att'y Gen. No. 83-027 at 2-100. No provision of which I am aware expressly authorizes a county engineer to declare a snow emergency and close county and township roads for the

¹ I do not presume to render an opinion as to the guilt or innocence of a particular person. This function rests solely with the judiciary. I can only express my opinion as to whether certain conduct, if proven in court, could constitute a violation of criminal statutory provisions.

duration of the emergency. Various statutory provisions, however, impose general duties upon the engineer with regard to highways. These provisions must be examined to determine whether the county engineer possesses the implied authority to close roads during a snow emergency.

R.C. 5543.01(A) provides that the county engineer shall have general charge of "[c]onstruction, reconstruction, improvement, maintenance, and repair of all bridges and highways within his county, under the jurisdiction of the board of county commissioners." R.C. 5543.09 provides that the county engineer "shall supervise the construction, reconstruction, improvement, maintenance, and repair of the highways, bridges, and culverts under the jurisdiction of the board of county commissioners...."

With regard to township roads, R.C. 5543.01(B) provides that the county engineer shall have general charge of "[c]onstruction, reconstruction, resurfacing, or improvement of roads by boards of township trustees...." The county engineer shall supervise "the construction, reconstruction, resurfacing, and improvement of public roads by boards of township trustees...." R.C. 5543.09. R.C. 5571.05 provides that "[i]n the maintenance and repair of roads, the board of township trustees and any township highway superintendent appointed by it, shall be subject to the general supervision and direction of the county engineer." The county engineer, however, may not perform any duties with regard to repairing or maintaining roads by boards of township trustees, "except that upon the request of any board of township trustees he shall inspect any road designated by it and advise as to the best methods of repairing, maintaining, or dragging such road." R.C. 5543.01.

As set forth above, a county engineer has general charge of and supervises the construction, maintenance and repair of county roads and supervises the construction, maintenance and repair of township roads. I do not believe, however, that such power necessarily implies the authority to close county and township roads in the case of a snow emergency. Cf. Interurban Railway and Terminal Co. v. City of Cincinnati, 94 Ohio St. 269, 114 N.E. 258 (1916) (distinguishing between the duty to protect and safeguard the public by placing barriers or otherwise on roads in need of repair and the duty of actually repairing the road). The duties of a county engineer are explicitly delineated by statute, cf. R.C. 5571.02 ("[t]he board of township trustees shall have control of the township roads"), and there is no express statutory duty of the county engineer from which I may imply the authority to close county and township roads during a snow emergency. See generally R.C. 5501.41 (authorizing a board of county commissioners "to purchase equipment for the removal of and to remove snow and ice" from the roads under their jurisdiction); R.C. 5571.08 (requiring the board of township trustees to "cause all the township roads within the township to be kept free from obstruction by snow").

I note that R.C. 5543.17 authorizes the county engineer to determine the necessity of closing county and township roads during their construction, improvement, or repair. Such statute indicates that if the General Assembly had intended that the county engineer possess the power to close roads during snow emergencies, it would have specifically so provided. See generally 1985 Op. Att'y Gen. No. 85-009; 1984 Op. Att'y Gen. No. 84-093.

In conclusion, it is my opinion, and you are so advised that:

1. The county sheriff may, pursuant to R.C. 311.07 and R.C. 311.08, declare a snow emergency and temporarily close county and township roads within his jurisdiction when such action is reasonably necessary for the preservation of the public peace. Any person who knowingly hampers or fails to obey a lawful order of the county sheriff declaring a snow emergency and temporarily closing county and township roads for the duration of the snow emergency may be subject to criminal prosecution under R.C. 2917.13.
2. The county engineer has no authority to declare a snow emergency and close county and township roads for the duration of the emergency.