

OPINION NO. 79-065**Syllabus:**

1. A county sheriff who is under contract to provide police protection to a township has the authority to enforce that township's parking regulations which have been promulgated pursuant to R.C. 505.17.
2. A board of township trustees may adopt regulations, subject to the limitations set forth in R.C. 505.17(A), to control parking on fixed or settled roadways proximate to buildings on private property used for

commercial purposes, even though such roadways have not been dedicated to public use or established pursuant to R.C. 5553.04 et seq.

To: James R. Unger, Stark County Pros. Atty., Canton, Ohio
By: William J. Brown, Attorney General, September 27, 1979

I have before me your request for my opinion which relates to the enforcement of township parking regulations enacted pursuant to R.C. 505.17. That section, as amended by Am. H.B. No. 300 (1973), provides, in part, as follows:

(A) Except in a township or portion thereof that is within the limits of a municipal corporation, the board of township trustees may make such regulations and orders as are necessary to control all vehicle parking in the township, including parking on established roadways proximate to buildings on private property as necessary to provide access to the property by public safety vehicles and equipment, if the property is used for commercial purposes, the public is permitted to use such parking area, and accommodation for more than ten motor vehicles is provided. All such regulations and orders shall be subject to the limitations, restrictions, and exceptions in sections 4511.01 to 4511.76 and 4513.02 to 4513.37 of the Revised Code.

(B) After the establishment of such regulations and orders by the board, they shall be posted by the township clerk . . . and shall be published in a newspaper

(C) Such regulations and orders may be enforced where traffic control devices conforming to section 4511.09 of the Revised Code are prominently displayed. This section does not apply to any state highway unless such parking regulations are approved by the director of transportation.

(D) Whoever violates any regulation adopted pursuant to this section is guilty of a minor misdemeanor

Significantly, this section was originally a part of the General Code, and prior to 1973 the first sentence of paragraph (C) read as follows:

Such regulations and orders may be enforced by any peace officer where traffic control devices, conforming to section 4511.09 of the Revised Code, have been prominently displayed. (Emphasis added.)

The emphasized portion of that sentence was omitted in Am. H.B. No. 300 (1973).

Your questions arise from the legislative action outlined above. They can be stated as follows:

1. Does the omission in division (C) of Section 505.17 of the words "by any peace officer" limit the authority of the county sheriff and/or his deputies to enforce the township motor vehicle parking regulations when the township contracts for police protection from the sheriff under Section 505.411 of the Ohio Revised Code?
2. If such authority does exist on the part of the county sheriff, does it extend to the enforcement of regulations

setting forth parking prohibitions as to the entrances and exits to shopping centers, driveways to commercial establishments, and access areas to commercial establishments, all of which are located on private roadways which have not been dedicated to public use?

Before I address your first question, it is appropriate to note the general enforcement powers of the township. Police protection for townships may be provided in any of three ways. First, the board of township trustees may designate township constables. Under R.C. 509.10 such constables have the authority to "apprehend . . . and bring to justice . . . violators of the criminal laws of this state . . ." Parking regulations promulgated pursuant to R.C. 505.17 are, under R.C. 505.17(D), criminal laws of the state; thus, constables are empowered to enforce them. A second method by which the township may provide police protection is through the formation of a police district pursuant to R.C. 505.48 and 505.49. The enforcement powers of members of such police force are the same as those of township constables. See 1965 Op. Att'y Gen. No. 65-26. Third, a board of township trustees is authorized by R.C. 505.441 to contract for police protection with other townships, municipal corporations, or county sheriffs. The powers and duties of the county sheriff acting pursuant to such a contract are defined in R.C. 311.29, which reads, in part, as follows:

Upon the execution of such agreement and within the limitations prescribed by it the sheriff may exercise the same powers as the contracting subdivision, authority, or county possesses with respect to such policing which by such agreement the sheriff undertakes to perform or render, and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the contracting subdivision, authority or county directly.

Since, under R.C. 509.01, the township trustees can designate a constable to enforce parking regulations promulgated pursuant to R.C. 505.17, it would seem that a county sheriff, acting pursuant to contract, could exercise those same powers by virtue of R.C. 311.29. Therefore, even absent a specific grant of authority to enforce such parking regulations, such as had been granted to "any peace officer" under the earlier version of R.C. 505.17, the county sheriff, when acting pursuant to contract, could enforce such regulations. Nonetheless, the action of the General Assembly in Am. H.B. No. 300 (1973), which deleted the phrase "any peace officer" from R.C. 505.17(C), deserves analysis.

The paramount concern in any interpretation of legislative action is, of course, to determine the intent of the General Assembly. The question in this instance is what result was intended by deletion of the phrase "any peace officer" in Am. H.B. No. 300 (1973). The term "peace officer" is defined in R.C. 2935.01 as including:

. . . a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of any municipal corporation, state university law enforcement officer appointed under section 3345.04 of the Revised Code, a police constable of any township . . .

Under this definition, one focusing upon the deletion in Am. H.B. No. 300 might argue that enforcement of township parking regulations, adopted pursuant to R.C. 505.17, could not be undertaken by any of the "peace officers" listed in R.C. 2935.01. A result so unreasonable could hardly have been intended since it would render the regulations virtually unenforceable. Rather, it would appear that the General Assembly considered the phrase "any peace officer" to be too broad. It must be presumed that enforcement is to be undertaken by the officer responsible for law enforcement within the township generally rather than by "any peace officer." Therefore, where the county sheriff is under contract to provide police

protection to a township under R.C. 505.411, he is thereby empowered to enforce parking regulations promulgated by the board of township trustees under R.C. 505.17.

The second question relates to the authority of the county sheriff to enforce parking regulations, adopted pursuant to R.C. 505.17, which regulate parking at entrances and exits to shopping centers, driveways to commercial establishments, and access areas to commercial establishments, all of which are located on private roadways which have not been dedicated to public use. R.C. 505.17(A) specifically allows for promulgation of parking regulations by a board of township trustees as to:

. . . parking on established roadways proximate to buildings on private property as necessary to provide access to the property by safety vehicles and equipment if the property is used for commercial purposes, the public is permitted to use such parking area, and accommodation for more than ten motor vehicles is provided. (Emphasis added.)

Thus, the statute authorizes the board of township trustees to regulate parking on private roadways to the extent indicated in division (A). Whether the specific regulations about which you inquire meet those criteria is a factual question. In making that factual determination, however, it is significant that R.C. 505.17(A) speaks to "established" roadways, rather than to "dedicated" roadways. Clearly, R.C. 505.17(A) applies to all "established roadways," even those which have not been dedicated to public use.

The term "established roadways" is not defined for the purposes of R.C. 505.17, nor is this precise term used in related code provisions. There is, however, a specific statutory procedure to be followed for the establishment of public roads by a board of county commissioners. See R.C. 5553.04 et seq. It might be argued, therefore, that the term "established roadways" as used in R.C. 505.17 refers only to those public roads which have been established in accordance with R.C. 5553.04. I find this argument unpersuasive. If such argument were accepted, a board of township trustees would not have the power to regulate parking on public roadways proximate to residential property or to commercial property if accommodation for less than ten motor vehicles were provided. I find such result unreasonable and, therefore, impermissible under the rules of statutory construction. R.C. 1.47.

It is, therefore, my opinion that the General Assembly intended the term "established roadways" to be construed in accordance with its common meaning. R.C. 1.42. The word "establish" commonly means ". . .[t]o fix, settle, institute, or ordain permanently—to set up on a secure basis, to render stable or firm." Robinson v. Swing, 70 Ohio App. 83, 91 (Hamilton County 1939). Thus, the powers of a board of township trustees pursuant to R.C. 505.17(A) include the power to regulate parking on ". . .[fixed or settled] roadways proximate to buildings on private property . . . used for commercial purposes. . . ." Regulated roadways need not be dedicated to public use nor established in accordance with R.C. 5553.04 et seq. in order to come within this provision.

Accordingly, it is my opinion, and you are advised, that:

1. A county sheriff who is under contract to provide police protection to a township has the authority to enforce that township's parking regulations which have been promulgated pursuant to R.C. 505.17.
2. A board of township trustees may adopt regulations, subject to the limitations set forth in R.C. 505.17(A), to control parking on fixed or settled roadways proximate to buildings on private property used for commercial purposes, even though such roadways have not been dedicated to public use or established pursuant to R.C. 5553.04 et seq.