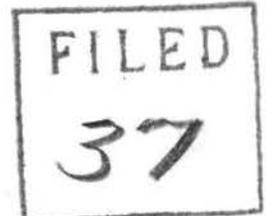


HIGHWAY PATROL: Has authority to enforce regulations on privately owned and maintained roadways used by the public in general

May 17, 1949

5/24/49

Mr. David E. Harrison
Superintendent, Missouri State
Highway Patrol
Jefferson City, Missouri



Dear Sir:

Your opinion request of recent date reads as follows:

"We request an opinion from your department relative to the authority of the patrol to enforce traffic regulations on private roadways. The circumstances involved are as follows:

"The roadway leading from highway 54 just north of Bagnell Dam along the Osage River down to the base of the dam is owned and maintained by the Union Electric Company. However, this roadway is used by the public in general, and the patrol receives numerous calls concerning drunken driving obstructing traffic, careless and reckless driving and other violations. Mr. Bruce James, superintendent of the dam and an employee of the Union Electric Company requests that the patrol investigate all of the numerous complaints made on the people traveling this route.

"In the past, several arrests have been made, but the question has been raised as to the legality of the arrests due to the fact that the roadway was privately owned.

"We request your opinion as to whether or not the patrol has any authority in enforcing the regulations on this route.

The roadway in question is privately owned and maintained. However, it is used by the public in general, which use we assume is with the consent of the owner. The first question to be determined is whether the statutory regulations of the motor vehicle laws extend to such roadways.

The motor vehicle laws sought to be enforced in this instance are valid exercises of the State's police power. This police power of the State extends not only to de jure public roadways, but also extends to de facto public roadways. This principle has recently been recognized in the case of State ex rel. Audrain County v. City of Mexico, 197 S.W.(2d) 301, l.c. 304, 355 Mo. 612, from which we quote:

"As previously ruled in this State: The law of the road extends to all public highways, de jure or de facto, embracing ways on private property if used for public travel. The necessity for regulation inherent in the use permitted gives rise to and makes the police power applicable to private land when used as a de facto public highway. * * *"

In the case of City of Clayton v. Nemours, 182 S.W.(2d) 57, 353 Mo. 61, where the City of Clayton, in the exercise of the police power delegated to it by the State, enacted a parking ordinance applicable to a private street used by the public, the court at l.c. 60, said:

"In the instant case, sufficient for the purpose of this review, Glen Ridge avenue was devoted, although not dedicated, to the public use by acts of the owners. It was not taken over by the municipality. In so devoting the use of their property, the owners constituted Glen Ridge avenue a de facto although not a de jure public street within the meaning of statutory and ordinance provisions, the word public, when applied to highways, not being restricted to connote ownership alone but in proper instances being employed to describe the use. In determining whether a way is a public or private highway, the use to which the way is put; i.e., whether public or private, is of greater importance than its ownership, its mode of creation or its designation as public or private; because it would tend to create confusion and danger to the traveling public if privately owned highways open to and used by the general public

enforced their own rules of the road, free from legitimate public regulation, upon travelers leaving the publicly owned highways and entering upon the privately owned ways; for instance, a requirement of operation on the left hand side of the way et cetera. Consequently: 'The law of the road extends to all public highways, however created, and may also be applicable to roads not public highways, if used for travel.' 40 C.J.S., Highways, p. 246, Sec. 236, subsec. b. To the extent of the public interest thus created by the owners, they subjected Glen Ridge avenue to reasonable police regulations in the furtherance of the public safety, health, and welfare. * * *"

It is therefore established that the regulations of the motor vehicle laws, as exercises of the police power of the State of Missouri, extend to privately owned and maintained roadways which are used by the public in general. There remains the question of whether or not the Missouri State Highway Patrol has been given the authority to enforce the regulations in question.

Section 8358, Laws Missouri 1945, p. 977, makes it the duty of the patrol to police and enforce the motor vehicle laws on highways constructed and maintained by the Commission. However, Section 8359, R. S. Mo. 1939, declares the members of the patrol to be officers of the State of Missouri with such powers as now or hereafter vest by law in peace officers except the serving and execution of civil process. Section 8359 reads, in part, as follows:

"The members of the patrol are hereby declared to be officers of the State of Missouri and shall be so deemed and taken in all courts having jurisdiction of offenses against the laws of this state. The members of the patrol shall have the powers now or hereafter vested by law in peace officers except the serving or execution of civil process. The members of the patrol shall have authority to arrest without writ, rule, order or process any person detected by him in the act of violating any law of the state.* * *"

Members of the patrol are also given the power and authority to make investigations connected with any crime of any nature. They may arrest anyone violating any law in their presence, and apprehend and arrest any fugitive from justice or any felony violation. This is provided for by Section 8358a, Laws Missouri 1943, p. 652, as follows:

"The members of the State Highway Patrol shall have full power and authority as now or hereafter vested by law in peace officers when working with and at the special request of the sheriff of any county, or the chief of police of any city, or under the direction of the superintendent of the State Highway Patrol, or in the arrest of anyone violating any law in their presence or in the apprehension and arrest of any fugitive from justice on any felony violation. The members of the State Highway Patrol shall have full power and authority to make investigations connected with any crime of any nature.* * * *"

The regulations with which we are here concerned are found in Article I of Chapter 43, R. S. Mo. 1939. Violations of these regulations are made either misdemeanors or felonies. Those regulations in this article, violations of which are not specifically made misdemeanors or felonies and punishment provided therefor, are governed by Section 8404(d) R. S. Mo. 1939, which reads:

"Any person who violates any of the other provisions of this article shall, upon conviction thereof, be punished by a fine of not less than five dollars (\$5.00) or more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a term not exceeding two years, or by both such fine and imprisonment."

Therefore, since these regulations extend to private roadways used by the public and since violations of these regulations are made crimes, the patrol has the power and authority to arrest on the roadway in question for any violation of these regulations committed in their presence. They have the power and authority to make investigations connected with any such violation, and where the violations constitute felonies they may apprehend and arrest the violations. In so doing they are enforcing these regulations as peace officers of the State.

Mr. David Harrison

-5-

CONCLUSION

It is, therefore, the opinion of this department that the highway patrol has the authority to enforce the regulations of the motor vehicle laws on a privately owned and maintained roadway which is open to the public in general, and has the power and authority as now or hereafter vests by law in peace officers to make arrests upon such roadway for violation of these regulations.

Respectfully submitted,

RICHARD H. VOSS
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RHV:mw