

February 3, 1970

OPINION LETTER NO. 132

Honorable George W. Parker  
Representative, District 120  
819 Crestland  
Columbia, Missouri 65201



Dear Representative Parker:

This opinion is in response to your questions stated as follows:

- "1. Must a highway patrolman or police officer have reasonable grounds to suspect some law violation before he can stop a person on the road?
- "2. Could you provide me with a copy of the guidance provided for the highway patrolmen on this subject?
- "3. May one's car or person be searched on the road without a search warrant?"

In reviewing our opinion file, we note that you made a similar request for an opinion in 1967; and your request was answered by Opinion Letter No. 239, dated August 23, 1967.

In order to amplify upon our previous answer, please be advised that Section 43.200, RSMo 1959, states in full as follows:

- "1. The members of the patrol shall not have the right or power of search nor shall they have the right or power of seizure except to take from any person under arrest or about to be arrested deadly or dangerous weapons in the possession of such person, and except that the members of the patrol shall have the power of search and seizure on a public highway of this state.

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"2. The superintendent of the patrol shall deposit with the governor a bond to the state of Missouri, duly executed by one or more corporate surety companies authorized to do business in this state, in the penal sum of fifty thousand dollars, conditioned upon the payment to persons injured of all damages arising out of any unlawful search, seizure or arrest made by any member of the patrol under the provisions of subsection 1. An action on the bond may be brought by the person injured in the county of plaintiff's residence or in the county in which the unlawful search, seizure or arrest occurred. The premium for the bond shall be paid by the state out of appropriations made for the support and operation of the highway patrol.

"3. The superintendent of the highway patrol shall see that every member of the highway patrol is thoroughly instructed in the powers of police officers to arrest for misdemeanors and felonies and to search and seize in order that no person or citizen traveling the highways shall be hindered, stopped, or arrested or his person or property searched or seized without constitutional grounds existing therefor."

We note that in D'Argento v. United States, 353 F.2d 327 (1965), the United States Court of Appeals for the Ninth Circuit held that a person could be stopped by an officer for the sole purpose of inquiring concerning whether such person possessed an operator's license and that such "stopping" was not unreasonable. This view is supported by other court decisions, and we consider it to be settled Missouri law. Further, this office held in Opinion No. 42, dated January 16, 1961, to Honssinger, copy enclosed, that a person operating a motor vehicle on a public highway commits a misdemeanor if he does not produce or display a motor vehicle operator's license upon demand by such officers.

With respect to the power of arrest, the United States Court of Appeals for the Eighth Circuit has held that a state highway patrol trooper who was following defendant's vehicle as it turned off the highway on to a private farmhouse road had the power and the authority to arrest the defendant without warrant provided he had probable cause to believe that the defendant was guilty of a felony. Jackson v. United States, 408 F.2d 1165 (1969). The test of such probable cause is whether the facts and circumstances known to the officer would warrant a prudent man in believing that such

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person had committed the offense. Jackson v. United States, i.d. Likewise with regard to arrest, this office held in Opinion No. 273, dated June 26, 1969, to Osborne, copy enclosed, that highway patrolmen are authorized to arrest without a warrant for a misdemeanor not committed in their presence, upon reasonable grounds, for violation of the laws relating to the operation of motor vehicles.

Of course, search of the individual's person has always been an incident to lawful arrest and this includes the immediate vicinity of the arrested party's person.

In answer to your question concerning the material the highway patrol uses for guidance, it is our understanding that the members of the patrol continuously participate in traffic institute courses offered by Northwestern University. The course material is not available for distribution from this office.

Very truly yours,

JOHN C. DANFORTH  
Attorney General

Enclosures: Op. No. 273  
6-26-69, Osborne

Op. No. 42  
1-16-61, Honssinger