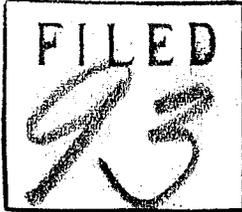


STATE HIGHWAY PATROL: Superintendent may assign patrolman to Capitol grounds and may arrest for violations of law observed by him.

*Capitol Bldg
grounds*



September 29, 1954

Col. Hugh H. Waggoner
Superintendent
State Highway Patrol
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this office on the following questions:

1. May a member of the Missouri State Highway Patrol be assigned by the Superintendent to patrol the streets on the State Capitol grounds and to direct traffic on such streets?
2. If such assignment may be made, what is the extent of the authority of the patrolman to make arrests in connection with his duties?

You have informed us that the request for the assignment by you of a member of the Patrol to patrol the streets on the State Capitol grounds was made by unanimous action of the Board of Public Buildings consisting of the Governor, Lieutenant Governor and Attorney General. Under Section 8.010, RSMo 1949, that Board has "general supervision and charge of the public property of the state at the seat of government."

Section 8.030, RSMo 1949, provides:

"The director of public buildings, with the approval of the board of public buildings, may employ and remove such assistants, engineers, clerks, janitors, watchmen and other employees as the work of the division may require and fix their compensation within the limits of the appropriation. Each watchman so employed, before entering on his duties, shall take and subscribe an oath of office to perform his duties faithfully and impartially, and shall be given a certificate of appointment, a copy of

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which shall be filed with the secretary of state, granting him the same powers now held by other peace officers to maintain order, preserve the peace and make arrests in the capitol buildings and on the grounds thereof."

Although the afore-mentioned statutes give the Board of Public Buildings supervision and control of the Capitol and Capitol grounds and provide for the appointment of watchmen to maintain order, preserve peace and make arrests on the Capitol grounds, it does not appear to have been the legislative intent in enacting such laws to make such authority exclusive in such officers.

Turning to the authority of the State Highway Patrol, that body and its members are creatures of statute and have only such authority as granted by the Legislature and necessary implied authority to carry out that expressed. Section 43.020, RSMo 1949. See State ex rel. Laundry, Inc., v. Public Service Comm., 327 Mo. 93, 34 S.W. (2d) 37; State ex rel. Crown Coach Co. v. Public Service Comm., 239 Mo. App. 198, 185 S.W. (2d) 347. Section 43.180, RSMo 1949, provides:

"The members of the state highway patrol, with the exception of the director of radio and radio personnel, 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 expense for the patrol's operation under this section shall be paid monthly by the state treasurer chargeable to the general revenue fund, provided, however, the amount appropriated from the general revenue fund shall not exceed ten per cent of the total amount appropriated for the Missouri state highway patrol."

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Under the authority of the first sentence of such section it appears that at the direction of the Superintendent of the State Highway Patrol members thereof may be directed to act in a very broad field of authority. This office, in opinions written to Honorable Forrest C. Donnell on August 21, 1941 and September 19, 1941, held that the Highway Patrol had no authority over city streets, county roads, fairs, picnics, etc. However, the present Section 43.180 was not in effect at that time; it was enacted in 1943 (Laws of Missouri, 1943, page 652). It may well be that such section was enacted as a result of the two opinions rendered to Governor Donnell limiting the power of the Highway Patrol to highways maintained by the State Highway Commission. It also appears from a reading of Section 43.180 that the Legislature contemplated by that section the imposition of duties other than patrolling of the highways maintained by the State Highway Commission, inasmuch as the last sentence of that section limits the amount of money which may be expended for such activities to ten per cent of the total amount of Highway Patrol appropriation.

In view of the provisions of Section 43.180, it appears to us that the Superintendent of the Patrol would be authorized to assign patrolmen to patrol the State Capitol grounds.

As for your second question, Section 43.170, RSMo 1949, provides:

"It shall be the duty of the operator or driver of any vehicle or the rider of any animal traveling on the highways of this state to stop on signal of any member of the patrol and to obey any other reasonable signal or direction of such member of the patrol given in directing the movement of traffic on the highways. Any person who willfully fails or refuses to obey such signals or directions or who willfully resists or opposes a member of the patrol in the proper discharge of his duties shall be guilty of a misdemeanor and on conviction thereof shall be punished as provided by law for such offenses."

Since it is presumed that in performing his duty on the Capitol grounds a trooper assigned thereto will be acting under the direction of the Superintendent of the Highway Patrol, he will, under the provisions of Section 43.180, quoted above, have full power and authority as is now or may hereafter be vested by law in police officers.

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In connection with the provisions of Section 43.170, supra, it may be pointed out that the word "highway" has generally been interpreted by the courts of this state and others to include streets in towns. In *O'Brien v. Burroughs Adding Machine Co.*, 191 Mo. App. 501, 177 S.W. 811, the court held that a public alley was a highway for all travel and any traveler injured thereon was an invitee and not a trespasser. In *Phillips v. Henson*, 326 Mo. 282, 30 S.W. (2d) 1065, 1068, the court held that a street was a highway in a statute requiring a motorist to use it with the highest degree of care. In *Mullen v. Fayette*, 274 App. Div. 527, 85 N.Y.S. (2d) 64, the court held that a street in a governmental reservation owned by the United States government and open to the public generally for passage was considered a highway. See also *Herbert v. City of Richland Center*, 264 Wisc. 8, 58 N.W. (2d) 461.

We also call attention to the provisions of Section 43.190, RSMo 1949. That section provides as follows:

"The members of the patrol, with the exception of the director of radio and radio personnel, 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 this state. When a member of the patrol is in pursuit of a violator or suspected violator and is unable to arrest such violator or suspected violator within the limits of the district or territory over which the jurisdiction of such member of the patrol extends, he shall be and is hereby authorized to continue in pursuit of such violator or suspected violator into whatever part of this state may be reasonably necessary to effect the apprehension and arrest of the same and to arrest such violator or suspected violator wherever he may be overtaken."

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Under the provisions of that section we are of the opinion that a patrolman assigned to the Capitol would have authority to arrest without warrant any person detected by him in the act of violating any laws of this state.

CONCLUSION

Therefore, it is the opinion of this office that:

1. The Superintendent of the Missouri State Highway Patrol may assign a member of the Patrol to patrol the streets in the State Capitol grounds and to direct traffic on such streets;

2. Such patrolman would have authority to make arrests for any person detected by him while on such assignment in the act of violating any laws of this state, including Section 43.170, RSMo 1949, which requires an operator of a motor vehicle to obey any reasonable signal or direction of a member of the State Highway Patrol in directing traffic.

Respectfully submitted,

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Attorney General

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