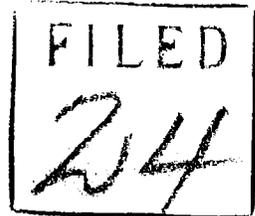


HIGHWAY PATROL:

Forty-seven questions concerning powers and duties of Highway Patrol.

September 19, 1941



Honorable Forrest C. Donnell  
Governor of Missouri  
Jefferson City, Missouri

Dear Governor Donnell:

This department is in receipt of a request on forty-seven questions in reference to the powers and duties of the State Highway Patrol.

It is necessary that we give our official opinion on each and every question separately for the reason that the facts in each question set up a separate statement that cannot be passed upon by this department in a general opinion. It is further necessary to give a separate opinion on each question for the reason that our opinion in some of the questions must be qualified as to the other facts that may be involved in the question.

On August 21, 1941, this department, at your request, rendered an official opinion as to the general powers and duties of the State Highway Patrol. Our conclusion in that opinion reads as follows:

"It is, therefore, the conclusion of this department that the money paid into the state treasury for the benefit of the State Highway Commission and other departments thereunder is a sacred fund for the purpose of the construction and maintenance of the State Highway System and cannot be appropriated for any other purpose.

"It is further the opinion of this department that Chapter 44 of the Revised Statutes of Missouri 1939, concerning the forming and the duties of the State Highway Patrol, was enacted by reason of

the fact that Section 44a, Article IV of the Constitution of Missouri, contained the following incidental clause, 'less \* \* \* the cost of administering and enforcing any state motor vehicle law or traffic regulation \* \* '

"It is further the opinion of this department that the only powers of the State Highway Patrol are contained in Section 8358, Chapter 44 of the Revised Statutes of Missouri 1939, which section confines their duties only to the administering of the motor vehicle laws and traffic regulations.

"It is further the opinion of this department that any appropriation out of the extraordinary road fund, as formed under Section 44a, Article IV of the Constitution of Missouri, would be unconstitutional as to any appropriation made for the purpose of the State Highway Patrol in performing any other duties except that of administering and enforcing any state motor vehicle law or traffic regulation as set out under Section 8358; R. S. Missouri 1939."

In arriving at the above general conclusion set out in our opinion rendered to you on August 21, 1941, we based it primarily on--

First, Section 8358, Chapter 44, R. S. Missouri 1939;

Second, Section 8359, Chapter 44, R. S. Missouri 1939;

Third, Section 44a, Article IV of the Constitution of Missouri.

The most important reason as to our giving the above described conclusion was the fact that the State Highway Patrol was being paid out of the sacred fund known as the State Road Fund and it was not our intention to say that

the State Highway Patrol could not carry on as regular state police if the appropriation out of which they were paid was drawn upon the general fund. The Legislature of this state has the authority, under the Constitution and their police power, to enact laws providing for state police if they were paid out of the general fund and not out of the State Road Fund.

Section 8359, Chapter 44, R. S. Missouri 1939, provides 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. 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."

Section 8358, R. S. Missouri 1939, Chapter 44, provides as follows:

"It shall be the duty of the patrol to police the highways constructed

and maintained by the commission; to regulate the movement of traffic thereon; to enforce thereon the laws of this state relating to the operation and use of vehicles on the highways; to enforce and prevent thereon the violation of the laws relating to the size, weight, and speed of commercial motor vehicles and all laws designed to protect and safeguard the highways constructed and maintained by the commission. It shall be the duty of the patrol whenever possible to determine persons causing or responsible for the breaking, damaging or destruction of any improved hard surfaced roadway, structure, sign markers, guard rail or any other appurtenance constructed or maintained by the commission and to arrest persons criminally responsible therefor and to bring them before the proper officials for prosecution. It shall be the duty of the patrol to cooperate with the secretary of state and the motor vehicle commissioner in the collection of motor vehicle registration fees and operators and chauffeurs licenses and to cooperate with the state inspector of oils in the collection of motor vehicle fuel taxes."

Section 44a, Article IV of the Constitution of Missouri, provides in part as follows:

"In addition to the exceptions made and created in section 44, the General Assembly shall, for the purpose of locating, establishing, acquiring, constructing, widening and improving hard-surfaced public highways in the State and in each county thereof, and of acquiring materials therefor and for the purpose of locating and constructing bridges across the rivers and waters of the State and of participating in the con-

struction of toll-free, interstate bridges, have the power to contract or authorize to contracting of a debt or liability on behalf of the State and to issue bonds or other evidences of indebtedness therefor not exceeding in the aggregate one hundred and thirty-five millions of dollars --

\* \* \* \* \*

"The said bonds and the interest that will accrue thereon shall be paid out of a fund to be provided by the levy and collection of a direct annual tax upon all taxable property in the State. All state motor vehicle registration fees, license taxes or taxes authorized by law on motor vehicles (except the property tax on motor vehicles and state license fees or taxes on motor vehicle common carriers) and also all state taxes on the sale or use of motor vehicle fuels authorized by law, less the expense of the collection of such registration fees and license taxes on motor vehicles and taxes on the sale or use of motor vehicle fuels and less also the cost of maintaining the State Highway Department and the State Highway Commission and the cost of administering and enforcing any state motor vehicle law or traffic regulation shall, after the issuance of any of said bonds and so long as any of said bonds herein authorized remain unpaid, be and stand appropriated without legislative action, to the payment of the principal and interest of the said bonds and for that purpose shall be credited to the State Road Bond Interest and Sinking Fund provided by law. \* \* \* \* \* To complete and widen or otherwise improve, and maintain the state system of primary and secondary highways as designated and laid out under existing

law; to reimburse the various counties and political or civil subdivisions (including road districts) of the State for money expended by them in the construction or acquisition of roads and bridges now or hereafter taken over by the State as permanent parts of the state highway system to the extent of the value to the State of such roads and bridges at the time taken over, not exceeding in any case the amount expended by such counties or subdivisions in the construction or acquisition of such roads and bridges;  
 \* \* \* \* \*

"After the principal and interest of all of said bonds shall have been paid, all state motor vehicle registration fees, license fees or taxes, authorized by law, on motor vehicles (except the property tax on motor vehicles and state license fees or taxes on motor vehicle common carriers) and also all state taxes on the sale or use of motor vehicle fuels, authorized by law, less the expense of the collection of such registration fees and license taxes on motor vehicles and taxes on the sale or use of motor vehicle fuels and less also the cost of maintaining the State Highway Department and the State Highway Commission and the cost of administering and enforcing any state motor vehicle law or traffic regulation, shall be and stand appropriated without legislative action to the State Road Fund, to be administered and expended under the direction and supervision of the State Highway Commission for the purposes and in the manner hereinbefore set forth.

"It shall be the duty of the State Auditor, annually; on or before the first day of July, to determine the rate of taxation necessary to raise

the amount of money needed for that year to pay the principal and interest maturing in the next succeeding year,  
\* \* \* \* \*

I.

Your first question reads as follows:

"1. Shall the Patrol make national defense investigations?"

Under Section 8358, Chapter 44, R. S. Missouri 1939, the duties of the Patrol have been designated by the Legislature. As to highways maintained and constructed by the State Highway Commission, it is very noticeable that it specifically sets out that the duty of the Patrol is to police said highways, to regulate the movement of traffic, to enforce the laws of this state relating to the operation and use of motor vehicles on said highways, to enforce and prevent the violation of the laws relating to the size, weight, and speed of commercial motor vehicles and to enforce all laws designed to protect and safeguard said highways. Also, the Legislature saw fit to empower the State Highway Patrol to make investigations as to the breaking, damaging or destruction of any improved hard surfaced roadway, structure, sign markers, guard rail and other appurtenances constructed by the commission. It also provided that it shall be the duty of the Patrol to cooperate with the secretary of state and the motor vehicle commissioner in the collection of motor vehicle registration fees and operators and chauffeurs licenses and to cooperate with the state inspector of oils in the collection of motor vehicle fuel taxes.

In referring to Section 8358, supra, we find no authority granted the State Highway Patrol to make national defense investigations, and for that reason it is our conclusion that the State Highway Patrol is not authorized to make national defense investigations.

II.

Your second question reads as follows:

"2. Shall the Patrol engage in riot duty in case of emergency?"

In referring to Section 8358, supra, we find no power or authorization for the Patrol to engage in riot duty in case of emergency, but they may be compelled, under Section 4613, R. S. Missouri 1939, herein next set out, as members of the State Highway Patrol, to participate in the suppressing of riots in the same manner as that of an individual.

Section 4613, R. S. Missouri 1939, provides as follows:

"If twelve or more persons, armed with clubs, stones or other dangerous weapons, or if any number of armed or unarmed persons exceeding twenty, shall unlawfully, riotously assemble in any city or town within this state, it shall be the duty of the mayor and each member of the board of aldermen, and each member of the board of delegates or other legislative council of such municipality, and of the sheriff, coroner and marshal and their respective deputies of the county in which such town or city is situate, and of each justice of the peace, including every person who is by virtue of his office a conservator of the peace of the state, to go among such persons so assembled, or as near to them as may be consistent with safety, and to command all such persons so assembled to disperse immediately and repair to their respective places of business or abode, and if such command be not forthwith obeyed, to proceed to arrest all persons so refusing or failing to obey such command, and to command all bystanders or spectators to aid and assist in making such arrests."

Section 4614, R. S. Missouri 1939, provides as follows:

"Every person so commanded to assist in

making such arrests and failing or refusing to assist as required, and every person who shall fail to disperse forthwith on being commanded as aforesaid, shall be deemed to be one of the unlawful assembly, and on conviction thereof, shall be punished as for a misdemeanor."

Under the above sections it becomes the duty of the members of the State Highway Patrol or any individual to obey the order of the officers in said sections designated when commanded to assist in the suppressing of a riot.

It is, therefore, the conclusion of this department that the members of the State Highway Patrol are not empowered or authorized to suppress riots in case of an emergency unless commanded by the proper officer as set out in Sections 4613 and 4614, supra, to aid and assist in the suppressing of a riot.

III.

Your third question reads as follows:

"Shall the Patrol make selective service investigations?"

In answer to this question it is our conclusion that under Section 8358, supra, we find no authority for members of the State Highway Patrol to make selective service investigations.

IV.

Your fourth question reads as follows:

"4. Shall the Patrol arrest felons or misdemeanants on the highway not detected in the commission of the crime?"

This question must be answered in two ways. First, as to the arrest of felons, and second, on the arrest of a misdemeanant either detected or not detected in the commission of a

crime. The principal authority followed in this state upon this question is set out in *State v. Gartland*, 263 S. W. 165, l. c. 169, where the court said:

"The rule is that where a felony has been committed a sheriff, constable, or other officer has a right, without a warrant, to arrest a person, upon information or reasonable ground to believe that the person to be arrested has perpetrated the crime. Sometimes this is expressed as 'reasonable ground to suspect.' Such officer has no right, without a warrant to arrest for a misdemeanor, unless the misdemeanor is committed in the immediate presence and view of the officer. This is the rule wherever the common law prevails. *Wehmeyer v. Mulvihill*, 150 Mo. App. loc. cit. 206, 130 S. W. 681; *State v. Grant*, 76 Mo. loc. cit. 244, 245; *State v. Boyd*, 196 Mo. loc. cit. 59, 94 S. W. 536; *State v. Underwood*, 75 Mo. loc. cit. 237; *State v. Peters* (Mo. Sup.) 242 S. W. loc. cit. 896. A peace officer, by statute, may be authorized to arrest without a warrant for a misdemeanor not committed in his presence. In cities in this state having 500,000 population such authority is given by section 8953, R. S. 1919. That section is held to authorize police officers, in cities of that class, to arrest without a warrant for misdemeanor the same as in case of a felony, on information and reasonable ground to believe. *Hanser v. Bieber*, 271 Mo. 326, loc. cit. 337, 197 S. W. 68, 70. The reason for this statute as applied to cities is stated in that opinion, where this court, through Judge Walker, said:

"Any one at all familiar with civil conditions in cities as contradistinguished from the country, realizes that greater power should be given police officers to

preserve the peace and arrest offenders in cities than is given to peace officers elsewhere.'

"Other sections of the statutes relating to marshals of villages and of cities of the third and fourth classes, sections 8239, 8248, 8426, and 8575, do not authorize such an officer to arrest for a misdemeanor unless the offense is committed in his presence. State v. Evans, 161 Mo. loc. cit. 109, 61 S. W. 590, 84 Am. St. Rep. 669.

"Under section 7959, R. S. 1919, in cities of the first class, of which St. Joseph is one, policemen are made conservators of the peace and are authorized to arrest any person 'who shall break the peace, or be found violating any ordinance.' Under section 7875, R. S. 1919, such officers are made officers of the state of Missouri. But those sections do not give officers the right to arrest for a misdemeanor unless such misdemeanor is committed in their presence.

"These statutes show that it is the legislative policy of this state to modify the common-law rule in respect to arrest for misdemeanors only in cities of the largest size. In the country and in the smaller towns the officers are bound by the common-law rule. The statute authorizing sheriffs and police officers to arrest for violation of the prohibition act is section 6597. It authorizes sheriffs, marshals, etc., 'to apprehend and arrest any person or persons found violating any of the provisions of this article.'

"It may be implied that such arrests may be made without warrant, but the statute does not say so. But the officer must find the offense being committed. This does not enlarge the common-law authority

to arrest for a misdemeanor unless committed 'in the presence and view' of the officer.

"When is an offense committed in the presence of an officer? The officer cannot arrest upon suspicion, or information, or reasonable grounds to suspect, that a misdemeanor is being committed. The cases are numerous showing the limit of his authority to actual knowledge that the offense is committed. It is not committed in his presence unless he knows it is committed. In *State ex rel. Brennan v. Dierker*, 101 Mo. App. 636, 74 S. W. 153, the defendant was arrested for violating the game law and carrying quail out of a county. Judge Goode, in writing the opinion, said (*loc. cit.* 643, 74 S. W. 155):

"Peace officers, in the absence of an empowering statute, have no authority to arrest an individual for a misdemeanor without process, except on view; that is, when they witness the perpetration of the offense." (*Italics ours.*)

"In the case of *State v. Holcomb*, 86 Mo. 371, *loc. cit.* 380, 381, it was held that an officer without a warrant had no right to arrest a man for carrying a concealed weapon because he did not know that he had the weapon. The rule is general. *Hughes v. State*, 2 Ga. App. 29, 58 S. E. 390; *Roberson v. State*, 43 Fla. 156, 29 South, 535, 52 L. R. A. 751; *O'Malley v. Whitaker*, 118 La. 906, 43 South. 545; *Pickett v. State*, 99 Ga. 12, 25 S. E. 608, 59 Am. St. Rep. 226; *White v. McQueen*, 96 Mich. 249, 55 N. W. 843; *People v. Hochstim*, 36 Misc. Rep. 562, 73 N. Y. Supp. 626; *McCullough v. Greenfield*, 133 Mich. 463, 95 N. W. 532, 62 L. R. A. 906, 1 Ann. Cas. 924; *Eldredge*

v. Mitchell, 214 Mass. 480, 102 N. E. 69.

"In Re Kellam, 55 Kan. 700, 41 Pac. 960, the court states the common-law rule that felonies are excepted from the rule on account of the gravity of such offense; public safety demands and requires the prompt apprehension of criminals charged with heinous crimes, but the power of officers to make arrests without warrant cannot be extended to minor offenses.

"In Connecticut, Delaware, Illinois, Indiana, Kansas, Maryland, Michigan, Mississippi, North Carolina, Pennsylvania, and other states the rule is stated that an officer without a warrant cannot arrest one for a misdemeanor in carrying a concealed weapon, on suspicion or information that the person arrested has the weapon on his person.

"There are a number of cases directly in point: Where an officer seized a man without advising him that he was under arrest, and in the scuffle a bottle of whisky fell from the defendant's pocket, it was held not admissible in evidence. People v. Margelis, 217 Mich. 423, 186 N. W. 488. So of the search of a defendant's grip without a warrant. People v. Foreman, 218 Mich. 591, 188 N. W. 375. In Ash v. Commonwealth, 193 Ky. 663, 236 S. W. 1032, evidence obtained by search of the defendant's grip was held inadmissible because the search was unlawful. In case of search of a prisoner arrested without warrant and discovery of a concealed weapon the search was unlawful. Pitts v. State, 14 Ga. App. 283, 80 S. E. 510. Where a defendant was searched without being arrested and whisky which was not open to the observation was found in his

pocket, it was held that the search was illegal and the evidence thus discovered was incompetent. Helton v. Commonwealth, 195 Ky. 678, 243 S. W. 918, citing several cases.

"In Hughes v. State, 145 Tenn. 544, 238 S. W. 588, 20 A. L. R. 639, a sheriff had information, and actually saw, the defendant engaged in the whisky traffic, searched and found whisky in his car. The Supreme Court of Tennessee held that it was not an unreasonable search, but, in an exhaustive review of the cases in the United States Supreme Court and other decisions relating to unreasonable search, used this language (145 Tenn. 570, 238 S. W. 595):

"It follows, therefore, that it cannot be said that the plaintiff in error was in the commission of an offense in the presence of the officers, so as to justify the arrest, merely from the fact that, when the arrest was effected, it was found that he was actually committing an offense. Neither is it sufficient to justify the arrest that the officer had information justifying him in the belief that an offense was being committed, for the facts constituting the offense must have been within the knowledge of the officer, and that knowledge must have been revealed in the officer's presence. To illustrate: If a person has in his possession a concealed weapon, if he exposes it in the presence of an officer or uses it, and the officer sees it, then the officer may lawfully arrest him without a warrant. A person may have a concealed weapon upon his person, but if there is no evidence of that fact apparent to an officer his arrest would be unwarranted."

This case was followed in the case of State v. McBride, 37 S. W. (2d) 423, and State v. Raines, 98 S. W. (2d) 580.

The rule of law as to the arrest of a felon without a warrant is stated in 6 C. J. S., Section 8, page 606, as follows:

"It is a general rule, unless changed by statute, that it is both the right and the duty of a private person, who is present when a felony is committed, to apprehend the felon without waiting for the issuance of a warrant; and the arrest may be made at any subsequent time as well as at the time of the commission of the felony. Likewise a private person may lawfully arrest without a warrant, on fresh pursuit, one whom he knows to have committed a felony. Where a private person makes an arrest under these circumstances, he must act in good faith and with a view of assisting in bringing to justice a felon.

"To prevent felony. A private person also has a right to make an arrest without a warrant for the purpose of preventing the commission of a felony, and may arrest without a warrant one whom he finds attempting to commit a felony.

\* \* \* \* \*

"At common law, and under the statutes of most states, although subject to statutory variations, a private person acting in good faith may arrest without a warrant one who has committed a treason or a felony on an occasion already past.

"In order to justify such arrest, it is necessary and also sufficient, to show that a felony was actually committed, and that there was reasonable ground for

suspecting that the person arrested committed it. Generally, mere proof of reasonable and probable cause for making an arrest without a warrant will not justify a private person unless a felony has actually been committed, since a sharp distinction is made in this respect between an arrest by a private person and an arrest by a peace officer; but, in a few jurisdictions, even a private person may justify an arrest where he reasonably believes that a felony has been committed. The reasonable grounds of suspicion of a felony, however, may be proved in mitigation of damages. In some jurisdictions, it is the rule that it must appear, not only that a felony has been committed, but also that the offense was committed by the person arrested therefor, before the arrest will be justified; but the more generally prevailing rule is that reasonable grounds for believing the person arrested to be guilty is sufficient justification where a felony has been actually committed, although he is in fact innocent."

Also, the rule is stated at page 607, as follows:

"At common law, and except where the rule is changed by statute, it being the duty of every citizen to assist in preserving the peace, any private person may arrest without a warrant one who commits a breach of the peace in his presence, or where it is reasonably suspected that a person is threatening to commit a breach of the peace. Unless modified by statute, it would seem, where the arrest is for a misdemeanor, that the offense must amount to a breach of the peace to justify a private person in arresting without a warrant. Where one commits a misdemeanor in the presence of a private person and seeks forcibly

to resist an arrest by him, the offender is also guilty of a breach of the peace and may be arrested by a private person without a warrant.

"To justify an arrest by a private person, without a warrant, for an offense less than a felony, where permitted by statute, it is essential that such offense shall actually have been committed or attempted. Accordingly, where it appeared after arrest that a person had in fact not committed any offense, the arrest was held unlawful. Furthermore, it is necessary that such offense be committed in the presence of the person making the arrest, and, in this connection, it has been held that it is not sufficient that the private person making the arrest have knowledge of the commission of the offense, but he must also be able to detect the offense, by sight or hearing, as an act of the accused. Also, such arrest must be made at the time when the offense was committed, or while there is a continuing danger of its renewal, and a private person does not have the right to make an arrest for a misdemeanor without a warrant after the event, or on mere information or suspicion."

At common law the process of arrest of a felon without a warrant was had under what was known as the Hue and Cry process. Under our statute the Hue and Cry process is still in effect as set out in Section 3882, R. S. Missouri 1939. Also, under Section 3882, supra, to the effect that when the sheriffs, coroners and constables shall ask for assistance when a felony has been committed, an arrest of a felon can be made by any of such officers or others who are required to assist by such officer without a warrant.

As to whether or not peace officers or individuals can arrest a misdemeanant without a warrant, it was held in *Gray v. Earls*, 250 S. W. 567, 1. c. 572, as follows:

"No statute has been pointed out or found authorizing private persons to make arrests in the circumstances here shown. Police officers in cities have certain powers under statutes applicable to cities of the various classes, but 'peace officers, in the absence of an empowering statute, have no authority to arrest an individual for a misdemeanor without process, except on view--that is, when they witness the perpetration of the offense.' \* \* \* \* \*

Also, in the case of State v. Peters, 242 S. W. 894, par. 1, the court said:

"Section 11640, R. S. 1919, provides that sheriffs are conservators of the peace, and section 11638, R. S. 1919, clothes the deputy sheriff with the same power as that possessed by the sheriff. The sheriff and his deputies, as peace officers, have the right to make arrests, without warrant, in misdemeanors committed in their presence flagrante delicto. \* \* \* \* \*

In view of the authorities above set out under your fourth question it is the opinion of this department that the members of the State Highway Patrol can arrest and apprehend, with or without a warrant, persons who have committed a felony and if they have no warrant, any person whom they have good reason to believe has committed a felony.

It is further the opinion of this department that the members of the State Highway Patrol may arrest persons who have committed a misdemeanor in their presence.

It is further the opinion of this department that the members of the State Highway Patrol may arrest one who has committed a felony and are empowered in the same manner as an individual who has the same authority to arrest a person who has committed a felony, either under the Hue and Cry section, supra, or upon reasonable grounds that the person has committed a felony.

It is further the opinion of this department that members of the State Highway Patrol cannot arrest a misdemeanor, either on or off of the highway who has not been detected in the commission of the crime by the member of the Patrol.

V.

Your fifth question reads as follows:

"5. Shall the Patrol arrest on a warrant persons charged with crimes on the highway or against the highway?"

In giving our opinion on your fifth question, we are assuming that the crime described in this question is a crime concerning the laws of motor vehicles or traffic regulations. If the crime pertains to any of the crimes set out in Section 8358, supra, which section sets out the powers and duties of the State Highway Patrol, then the State Highway Patrolmen may arrest, on a warrant, persons charged with crimes set out in said Section 8358, supra, which includes crimes against the highway.

VI.

Your sixth question is as follows:

"6. Shall the Patrol pursue drivers of cars from the highway to make arrests?"

In answering the above question we are assuming that the member of the Patrol detected the driver of the car in a commission of either a felony or a misdemeanor. Under Section 8359, supra, it specifically provides "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."

In view of this partial section it is the opinion of this department that if a member of the State Highway Patrol should detect a person committing either a felony or misde-

meanor he may pursue the driver of such car to any place in the state to make an arrest.

VII.

Your seventh question reads as follows:

"7. Shall the Patrol assist sheriffs in investigations which they have not the facilities for handling?"

In answer to this question we do not find that the State Highway Patrol is empowered or authorized under Section 8358, supra, to assist sheriffs in investigations in any manner other than the violation of the motor vehicle laws and traffic regulations. The fact that the sheriff has not the facilities for handling investigations other than that of the violation of the motor vehicle laws and traffic regulations does not alter the case in any manner. If the State Highway Patrol should assist sheriffs in such investigations, they would be giving aid to investigations which should not be given at the expense of the State Road Fund.

VIII.

Your eighth question reads as follows:

"8. Shall the Patrol assist any organization in any way whatsoever to investigate any crime or condition not confined to misuse of the highways or a violation of motor laws?"

Since Section 44a, Article IV of the Constitution of Missouri specifically states, "and enforcing any state motor vehicle law or traffic regulation," it would be a violation for the State Highway Patrol to investigate any crime or condition not confined to misuse of the highways or a violation of motor laws for the reason that the expense of investigation would be borne by the State Highway Patrol Appropriation Act which would be invalid.

IX.

Your ninth question reads as follows:

"9. Shall the Patrol leave the highway to investigate persons suspected of damaging the highway or markers?"

Under Section 8358, Chapter 44, R. S. Missouri 1939, it specifically provides that the State Highway Patrol is empowered and authorized "to determine persons causing or responsible for the breaking, damaging or destruction of any improved hard surfaced roadway, structure, sign markers, guard rail or any other appurtenance constructed or maintained by the commission and to arrest persons criminally responsible \* \* . For that reason the State Highway Patrol is authorized to leave the highways to investigate persons suspected of damaging the highway or markers.

X.

Your tenth question reads as follows:

"10. Shall the Patrol collect on 'no account' or 'insufficient funds' checks received at office of Secretary of State for fees?"

Section 8358, supra, specifically states:

"\* \* \* It shall be the duty of the patrol to cooperate with the secretary of state and the motor vehicle commissioner in the collection of motor vehicle registration fees and operators and chauffeurs licenses and to cooperate with the state inspector of oils in the collection of motor vehicle fuel taxes."

This authority granted in Section 8358, supra, does not empower the Patrol to collect checks marked "no account" or "insufficient funds." If the secretary of state accepts noncertified checks he does so at his own risk for the reason that he is not authorized to receive checks for any fees. Also, the secretary of state may cancel any instrument, license or certificate that he has granted which has not been

paid for.

XI.

Your eleventh question reads as follows:

"11. Shall the Patrol assist in traffic direction around fairs, picnics, funerals and other special gatherings?"

Section 8358, supra, specifically states:

"It shall be the duty of the Patrol to police the highways constructed and maintained by the Commission \* \* \* \* \*"

and further states, "to regulate the movement of traffic thereon."

In the above partial section it is very noticeable that the Legislature, in empowering the State Highway Patrol to regulate the movement of traffic, specifically stated that it applied to highways constructed and maintained by the commission.

Statutes have been construed to the effect that when a certain procedure or thing is mentioned it excludes all other procedure and things. It was so held in State ex rel. Kansas City Power and Light Company v. Smith, 111 S. W. (2d) 513, and also in Chilton v. Drainage District No. 8 v. Pemiscot County, 63 S. W. (2d) 421. It was so held also in Crevisour v. Hendrix, 136 S. W. (2d) 404.

As to traffic directions at the State Fair, the Legislature, under Section 14159, R. S. Missouri 1939, provided for the appointment of special police for the purpose of keeping peace and directing traffic.

In view of the above authorities it is the opinion of this department that the State Highway Patrol shall not assist in traffic directions around fairs, picnics, funerals and other special gatherings unless as set out in Section 8358, supra, the highways upon which they are directing the traffic is constructed and maintained by the commission.

## XII.

Your twelfth question reads as follows:

"12. Shall the Patrol conduct investigations concerning stolen cars and 'hot car rings'?"

The powers and duties of the State Highway Patrol are set out in Chapter 44, Section 8358, supra. The question of the theft of motor vehicles is set out in Chapter 45, R. S. Missouri 1939. The framers of Section 44a, Article IV of the Constitution of Missouri saw fit to include as an incident to that section, which was a provision for the State Highway System, the phrase "cost of administering and enforcing any state motor vehicle law or traffic regulation." It is very noticeable under this section of the Constitution that the five words "any state motor vehicle law" by the Legislature, in setting out the duties of the Highway Patrol, under Section 8358, supra, only mentioned the following part in reference to the motor vehicle laws, that is, "to enforce thereon the laws of this state relating to the operation and use of vehicles on the highways; to enforce and prevent thereon the violation of the laws relating to the size, weight and speed of commercial motor vehicles and all laws designed to protect and safeguard the highways constructed and maintained by the commission." Previous to this clause in Section 8358, supra, this sentence is specifically set out, "It shall be the duty of the patrol to police the highways constructed and maintained by the commission; \* \* . The word "thereon" used in reference to the enforcement of the motor vehicle laws is plain and unambiguous and this power granted to the State Highway Patrol means the vehicle laws thereon the highways constructed and maintained by the commission.

The Legislature, by the enactment of Section 8358, supra, has construed the enforcement of the motor vehicle laws to mean in reference to the highways and not to the reference of the theft of automobiles. Under Chapter 44, which contains Section 8358, supra, another section has been enacted by the Legislature to show that it was the intention of the Legislature that the power of the State Highway Patrol is confined solely under Section 8358. This section is 8363, R. S. Missouri 1939, which reads as fol-

lows:

"Neither the governor, the commission, nor the superintendent shall have any power, right or authority to command, order or direct any member of the patrol to perform any duty or service not authorized by this chapter."

This section specifically states that the governor, the commission nor the superintendent can order or command any member of the Patrol to perform any duty or service not authorized by this chapter. In other words, under this section the State Highway Patrol is not permitted to investigate stolen cars and people who commit such acts which you describe as "hot car rings."

XIII.

Your thirteenth question reads as follows:

"13. Shall the Patrol conduct safety campaigns and engage in traffic and safety education?"

In view of the authorities set out in the above twelve questions and more especially the duties as described in Section 8358, supra, we are of the opinion that the State Highway Patrol cannot conduct safety campaigns and engage in traffic and safety education for the reason that they are not so authorized.

It is further our opinion to that effect for the reason that the money paid into the State Road Fund under Section 44a, Article IV of the Constitution of Missouri does not permit the spending of the money of that sacred fund for anything except matters concerning the maintaining and the construction of the State Highway System.

XIV.

Your fourteenth question reads as follows:

"14. Shall the Patrol fingerprint persons killed in accidents to establish identity?"

We find no authority for the State Highway Patrol to fingerprint persons killed in accidents to establish identity. That is a matter for other officials, such as coroners and for other peace officers who are empowered to perform such acts.

XV.

Your fifteenth question reads as follows:

"15. Shall the Patrol attempt to contact persons traveling through the state for the delivery of emergency measures?"

After a careful research and under all of the authorities hereinbefore set out it is our opinion that the State Highway Patrol is not empowered to attempt to contact persons traveling through the state for the delivery of emergency messages unless it is a matter incident to or connected with the maintaining and construction of the state highway system or concerning the violation of the laws set out in Section 8358, supra, regarding motor vehicles and traffic regulations.

XVI.

Your sixteenth question reads as follows:

"16. Shall the Patrol relay radio messages for out-of-state departments or other state and federal agencies?"

In view of our holding under your fifteenth question and unless the radio message relayed for out-of-state departments or for other state and federal agencies concerned the violations of the motor vehicle laws as set out in Section 8358, supra, or is not incident to the maintaining and construction of the state highway system, it is our opinion that the State Highway Patrol cannot relay such messages.

## XIX.

Your nineteenth question reads as follows:

"19. Shall the Patrol investigate suspicious characters along the highways?"

It is the opinion of this department that the State Highway Patrol is not empowered to investigate suspicious characters along the highways unless they have reasonable cause to believe that the persons under suspicion may have or intend to commit a violation of the laws as set out under Section 8358, supra. Of course, if a member of the State Highway Patrol has just grounds and believes that the suspicious character is a fugitive from justice or a patrolman, under the Hue and Cry section, believes that the suspicious character has committed a felony he may, by investigation, arrest the suspicious character the same as if he was a private citizen and not a member of the State Highway Patrol. The State Highway Patrol is not empowered to promiscuously investigate any person on the highway unless he has just and reasonable grounds for the investigation. A State Highway Patrolman, under Section 44a, Article IV of the Constitution of Missouri, and under Section 8358, supra, is confined as a member of the State Highway Patrol and not as a private citizen to laws involving the protection and maintenance of the State Highway System.

## XX.

Your twentieth question reads as follows:

"20. Shall the Patrol accept for filing fingerprints and other data on criminals from members and other officers?"

In answer to your twentieth question and in view of authorities hereinbefore set out, it is the opinion of this department that the Patrol has no authority to accept for filing fingerprints and other data on criminals from members and other officers unless the data concerns the violation or would aid in a conviction of persons guilty of the violation of crimes set out in Section 8358, supra, in regard to the laws concerning motor vehicles in that section and traffic regulations.

XXI.

Your twenty-first question reads as follows:

"21. Shall the Patrol accept for examination in the laboratory material submitted by other officers or departments concerning crimes investigated by those officers, which were not committed on the highways?"

This question concerns a matter which is not incident to and is in no way connected with the maintenance or construction of the State Highway System and under the facts stated therein does not concern crimes coming within the authority of the State Highway Patrol as set out in Section 8358, supra.

It is, therefore, the opinion of this department that the State Highway Patrol, which has been created by reason of Section 44a, Article IV of the Constitution, cannot use the money out of the State Road Fund for the examination in the laboratory any material submitted by other officers or departments concerning crimes investigated by those officers which have no connection with the violation of laws as set out in Section 8358, supra, or concerning the maintenance and construction of the State Highway System.

XXII.

Your twenty-second question reads as follows:

"22. Shall the Patrol furnish information concerning the previous records of criminals to other departments?"

Under the above question you ask if the State Highway Patrol can furnish information concerning the previous records of criminals to other departments and if you mean criminals other than those who have been convicted or are subject to arrest for a violation of the laws regarding the State Highway System as set out in Section 8358, supra, then the State Highway Patrol is not authorized to furnish that information for the reason that under our previous opinion the State Highway Patrol is limited to crimes concerning motor vehicle laws as applicable

to the State Highway System under Section 8358, supra, and traffic regulations.

Under Section 8456, R. S. Missouri 1939, it is the duty of the Commissioner of Motor Vehicles to receive and file all violations of motor vehicle laws pertaining to traffic, etc., and under other sections of the statute it is the duty of certain officers to report such violations to the Commissioner of Motor Vehicles, and we find no authority under Section 8358, supra, for the State Highway Patrol to furnish information to other departments.

### XXIII.

Your twenty-third question reads as follows:

"23. Shall the Patrol assist in the fingerprinting of school children, applicants and citizens for personal checkup and identification?"

Under the above question we are assuming that the school children consented to the fingerprinting, but we do not understand what you mean when you say applicants and citizens for personal checkup and identification. Even if you mean that the school children, the applicants and citizens for personal checkup and identification agree to the fingerprinting, we find no authority which permits the State Highway Patrol to use the funds set apart in the State Road Fund for the maintenance and construction of the State Highway System to be used for the fingerprinting of anyone with or without their consent.

In this state Section 23, Article II of the Constitution of Missouri provides that no person shall be compelled to testify against himself in a criminal cause. Under that section of the Constitution where a person objects to being fingerprinted, the Legislature saw fit to enact Section 4184, R. S. Missouri 1939, which reads as follows:

"Any person convicted of a felony, which shall not be set aside or reversed, may be subjected by or under the direction of those in whose custody he is to the measurements,

processes and operations practiced under the system for the identification of criminals, commonly known as the Bertillon signaletic system. Such force may be used as necessary to the effectual carrying out and application of such measurements, processes and operations; and the signaletic card and other results thereof may be published for the purpose of affording information to officers and others engaged in the execution or administration of the law."

This section was not passed upon in this state directly, but in the case of State v. Baldwin, 297 S. W. 10, l. c. 18, par. 10, the court said:

"If it be conceded (a matter we do not now pass upon) that Baker's testimony as to taking the picture, and that it was the picture of the defendant, was competent, there was no excuse for the latter portion of his evidence, as to where the picture was kept. What issue in the case did that tend to prove? To what issue in the case was proof of where the picture was kept relevant? Absolutely none. Baker had said he took the picture, and that it was the picture of defendant, and that facts had not been questioned up to the date of the general objection to proof as to where the picture was kept. Such evidence of Baker was not relevant to any issue in the case, and, under the rules we have discussed supra, the general objection of irrelevancy was good. It is clear what the real purpose was in its introduction. And the court seems to have been in thorough sympathy, for we read in the record: 'The Court: Did I hear you say Bertillon room?'

"The law fixes the character of pictures

to be found in Bertillon rooms. R. S. 1919, sections 4140 to 4143, both inclusive. In section 4140 it is provided that any person convicted of a felony, whose sentence has not been reversed shall be subject to all the things (by way of identification) allowed by the Bertillon system. See, also, sections 8955 and 8964, R. S. 1919, wherein is authority for the establishment of a Bertillon system of identifying convicted criminals in cities of 500,000 or over. So, under the law (presumably known by all citizens) the defendant's picture was in the Bertillon room of the city of St. Louis, wherein it had no place, unless, under section 4041, he had been convicted of a felony and his conviction had not been reversed. This made this evidence highly prejudicial. The place where the picture was kept was utterly immaterial upon the question as to whether or not it was the picture of defendant. Nor did it tend to prove defendant committed the crime. It could be relevant to no issue in the case, and the court should have promptly sustained the objection that the evidence was irrelevant and immaterial. Its failure to do so was prejudicial and reversible error."

Many of the circuit judges of this state have declared that if persons have been convicted of a felony and their cases have been finally adjudicated they can be fingerprinted without their consent, but if the persons have not been convicted of a felony they have, by injunction, restrained police officers and other officers from fingerprinting such persons. These cases, so far, have not been appealed or passed upon by the Supreme Court of this state other than in the case of State v. Baldwin, supra. But even if the defendant had been finally convicted of a felony and the fingerprinting was not made for the purpose of enforcing the laws and under the duties of the State Highway Patrol as set out in Section 8358, supra, it would be a violation of Section 8363, supra, for the reason it would be exceeding the duties of the State Highway Patrol and the use of the State Road Fund for purposes other than the

maintenance and construction of the State Highway System.

XXIV.

Your twenty-fourth question reads as follows:

"24. Shall the Patrol issue bulletins listing stolen cars, crimes committed, driver's licenses suspended or revoked, stolen property, etc?"

The above question refers to listing stolen cars, crimes committed and stolen property. If the bulletin regarding the above matter is incident to the powers and duties of the prevention of crime as set out in Section 8358, supra, such a bulletin would be proper for the reason it is a question pertaining to enforcement of the motor vehicle laws and property of the State Highway Commission as set out in Section 8358, supra. You specifically mention the furnishing of bulletins concerning stolen cars. The answer to this question is contained in our opinion in reply to your question numbered 12. Of course, if the stolen cars are property of the State Highway Commission, it comes within the duties and powers of the State Highway Patrol, under Section 8358, supra, and a bulletin in such a case would be proper. You also mention in the above request whether it is proper for the State Highway Patrol to issue bulletins listing drivers' licenses suspended or revoked. Of course, this public notice is recorded in the office of the Commissioner of Motor Vehicles as set out in Sections 8456 and 8459, R. S. Missouri 1939. The issuing of bulletins listing drivers' licenses suspended or revoked would be proper for the reason that under Section 8358, supra, it specifically states, "It shall be the duty of the patrol to cooperate with the secretary of state and the motor vehicle commissioner in the collection of motor vehicle registration fees and operators and chauffeurs licenses and to cooperate with the state inspector of oils in the collection of motor vehicle fuel taxes." Said Section 8358, supra, further states, "\* \* to regulate the movement of traffic thereon; (meaning highways constructed and maintained by the commission); to enforce thereon the laws of this state relating to the operation and use of vehicles on the highways; \* \* "

It is, therefore, the opinion of this department that under Section 8358, supra, the State Patrol is empowered to issue bulletins listing stolen cars if the cars are the property of the State Highway Commission but not as to stolen cars that are not the property of the State Highway Commission and are not connected in any way with the maintaining of the state highways.

It is further the opinion of this department that the State Highway Patrol may issue bulletins concerning crimes committed in violation of the laws of the state highways as set out in Section 8358, supra.

It is further the opinion of this department that the State Highway Patrol may issue bulletins concerning drivers' licenses suspended or revoked.

It is further the opinion of this department that the State Highway Patrol may issue bulletins concerning stolen property which is the property of the State Highway Commission but not as to stolen property that is in no way connected with the maintenance and construction of the state highways.

## XXV.

Your twenty-fifth question reads as follows:

"25. Shall the Patrol assign members of Patrol to schools of other departments as instructors in first aid, safety, and law enforcement?"

We find no authorization in Section 8358, supra, whereby the State Highway Patrol may expend money out of the State Road Fund for the purpose of the Patrol entering schools of other departments as instructors in first aid, safety and law enforcement. The State Road Fund, which was enacted under Section 44a, Article IV of the Constitution of Missouri, as we have said in further answers to your questions in this request, can only be used for the maintenance and construction of the state highways and payment of the bonds issued under said section.

We reiterate that if the State Highway Patrol was paid out of the general revenue it could do many things which are

not now limited under Section 44a, Article IV of the Constitution of Missouri and especially the clause used therein in violation of the motor vehicle laws and traffic regulations.

## XXVI.

Your twenty-sixth question reads as follows:

"26. Shall the Patrol be active in any strike duty?"

In answer to the above question we call your attention to Section 4613, supra, which is a section in reference to the duty of peace officers in case of riots, etc. Under said section 4613 the proper officer may require bystanders or spectators to aid in stopping the riot and assist in making arrests of the people involved in the riot. In such a case if the State Highway Patrol is ordered by the mayor, board of aldermen or a member of the board of aldermen of any municipality or by the sheriff, coroner and marshal and their respective deputies of the county in which such town or city is situated to assist in making arrests, then the State Highway Patrolmen, under their duty as peace officers, are required to be active. If they are not summoned or if there is not a riot, "strike duty" is not a part of the maintenance and construction of state highways or an act which would be enforcing the motor vehicle laws or traffic regulations.

## XXVII.

Your twenty-seventh question reads as follows:

"27. Shall the Patrol assist in the training of the Missouri defense forces?"

We find no authority in Section 8358, supra, which would authorize the State Highway Patrol in the training of the Missouri defense forces. Such action would in no way be incident or have any connection with the enforcement of the laws as set out in Section 44a, Article IV of the Constitution of Missouri or Section 8358, R. S. Missouri 1939.

XXVIII.

Your twenty-eighth question reads as follows:

"28. Shall the Patrol provide the department with emergency equipment for use in disasters?"

In answer to your above question if the disasters described are not incident or a part of the State Highway Commission, or would not aid in the maintenance and construction of the highways, or would not aid in the prosecution or regulation of the violation of the motor vehicle laws and traffic regulations, then the State Highway Patrol has no authority to furnish emergency equipment for use in disasters which equipment is purchased out of the funds provided for the State Road Fund.

XXIX.

Your twenty-ninth question reads as follows:

"29. Shall the Patrol examine documents or materials for other state departments?"

In answer to the above question it is the opinion of this department that the money paid into the State Road Fund is a sacred fund for the use of the maintenance and construction of state highways and should not be deviated for the purpose of furnishing aid to any of the other state departments except the departments under the State Highway Commission.

XXX.

Your thirtieth question reads as follows:

"30. Shall the Patrol assist in locating prisoners after escape from the state penitentiary and reformatories?"

In answer to your above question, which was answered in detail in questions 4 and 5 in this request, we further state that the locating of prisoners after escape from the

state penitentiary and reformatories is not included in the specific duties of the State Highway Patrol as set out in Section 8358, supra.

We again call your attention to Section 8363, supra, which specifically prohibits the governor, the commission and the superintendent of the State Highway Patrol from directing any member of the Patrol to perform any duty or service not authorized by Chapter 44 of the Revised Statutes of Missouri 1939.

XXXI.

Your thirty-first question reads as follows:

"31. Shall the Patrol use radio facilities in case of disaster which disrupts land communications for general emergency use?"

This department, in answering all of the forty-seven questions set out in this request, is merely giving our opinion on these questions according to the legal aspect and not the moral aspect and in further answer to this question it is our opinion that under Section 8358, supra, we find no authority for the State Highway Patrol to use the radio facilities purchased out of the sacred road fund for the purpose of carrying on communications which a disaster has disrupted so that land communications cannot be carried on for general emergency use.

XXXII.

Your thirty-second question reads as follows:

"32. Shall the Patrol continue off the highway investigations of cases arising on the highway?"

In answer to the above question if the cases under investigation are cases which come within the duty of the State Highway Patrol to prohibit and the law against such crimes to be enforced as set out in Section 8358, supra, then the State Highway Patrol is authorized under Chapter 44, Revised Statutes of Missouri 1939, to continue the

investigation of such cases. The investigation of such cases must be cases involved in the construction and maintenance of the state highways and regulation of the traffic thereon or the enforcing the laws of motor vehicles as set out in said Section 8358.

XXXIII.

Your thirty-third question reads as follows:

"33. Shall the Patrol arrest recognized fugitives if in civilian clothes and not on active duty, either off or on the highway?"

In answer to your thirty-third question we wish to state that this question was specifically answered in questions 4 and 5 in this request. In those answers we held that the State Highway Patrol, if having reasonable and just grounds to believe the person suspected was guilty of a felony, then they may arrest the person without a warrant or with a warrant either off or on the highway the same as any individual is authorized under the laws of Missouri. We also held in questions 4 and 5 that the State Highway Patrolmen could arrest a person on a misdemeanor if committed in their presence with or without a warrant.

XXXIV.

Your thirty-fourth question reads as follows:

"34. Shall the Patrol take part in activities of the Missouri Defense Council?"

After careful research we find no authority under Section 44a, Article IV of the Constitution of Missouri or Section 8358, R. S. Missouri 1939, which empowers the State Highway Patrol to take part in activities of the Missouri Defense Council.

XXXV.

Your thirty-fifth question reads as follows:

"35. Shall the Patrol protect wreckage of planes until Department of Commerce officials arrive?"

After careful research we find no authority under Section 44a, Article IV of the Constitution of Missouri or Section 8358, R. S. Missouri 1939, which empowers the State Highway Patrol to protect wreckage of planes until Department of Commerce officials arrive.

XXXVI.

Your thirty-sixth question reads as follows:

"36. Shall the Patrol cooperate with the railroads in investigation of sabotage?"

After careful research we find no authority under Section 44a, Article IV of the Constitution of Missouri or Section 8358, R. S. Missouri 1939, which empowers the State Highway Patrol to cooperate with the railroads in the investigation of sabotage.

XXXVII.

Your thirty-seventh question reads as follows:

"37. Shall the Patrol search for any kind of supportive evidence at the time and place of arrest of an individual?"

In answer to the above question it is the opinion of this department that if a lawful arrest was made of an individual for a crime, the prosecution of which comes within the duties of the Highway Patrol as set out in Section 8358, supra, then the Patrol has authority to make a search for any kind of supportive evidence at the time and place of arrest the same as a sheriff or constable.

XXXVIII.

Your thirty-eighth question reads as follows:

"38. Shall the Patrol arrest for violations of game laws observed off the highway?"

We find no authority under Section 44a, Article IV of the Constitution of Missouri or Section 8358, R. S. Missouri 1939, which empowers the State Highway Patrol to arrest for violation of game laws except the power that is granted an individual as we have defined in questions 4 and 5 of this request. It is not the duty of the State Highway Patrol to arrest for violations of the game laws observed off the highway but they may, of their own volition, arrest under the same powers that are granted an individual.

XXXIX.

Your thirty-ninth question reads as follows:

"39. Shall the Patrol arrest fugitives when not first observed on the highways, such as convicts known to be in woods, cornfields, etc., and no other help available?"

This question was answered by our opinion on questions 4 and 5 as set out in this request. Under those questions we gave our opinion that the State Highway Patrol has the same authority to arrest fugitives as is granted individuals. Under those questions 4 and 5 we gave the authorities upon which we base our opinion.

XL.

Your fortieth question reads as follows:

"40. Shall the Patrol take part in civic programs and parades?"

After a careful research of Section 44a, Article IV of the Constitution of Missouri or Section 8358, R. S. Missouri 1939, we find no authority that empowers the State Highway Patrol to take part in civic programs and parades. Of course, as we said before, we are only giving our opinion on the legal question. The State Highway Patrol has been taking

part in civic programs and parades, but under Section 44a, Article IV of the Constitution of Missouri, money should not be taken from the sacred State Road Fund for the purpose of paying expenses of the State Highway Patrol for any other actions except those set out in Section 8358, supra.

## XLI.

Your forty-first question reads as follows:

"41. Shall the Patrol patrol any city street or county road?"

In answer to your above question, we again refer to Section 8358, R. S. Missouri 1939, which specifically states, "It shall be the duty of the patrol to police the highways constructed and maintained by the commission; \* \* \* \* \*"

In our opinion, in answer to questions heretofore answered, we stated and quoted the law upon which we base our opinion to the effect that the mention of one thing in statute implies exclusion of another thing. We also held that where special powers are conferred or special methods are prescribed for exercise of power, the exercise of such power is within the maxim that the expression of one thing is the exclusion of another and the doing of the thing specified, except in a particular way point out, is nugatory. *Kroger Grocery & Baking Company v. City of St. Louis*, 106 S. W. (2d) 435, 341 Mo. 62, 111 A. L. R. 589. Upon the same subject we have also previously cited the case of *State ex rel. Kansas City Power and Light Company v. Smith*, 111 S. W. (2d) 513, 342 Mo. 75.

In view of the above authorities and our opinion under previous questions in this request, it is the opinion of this department that the State Highway Patrol does not have the power to patrol any city street or county road that has not been constructed and maintained by the commission. We base this opinion on the fact that the Legislature, in Section 8358, supra, in setting out the duties of the Patrol to police the highways and setting out specifically the duties of the State Highway Patrol, specifically stated in each clause the word "thereon." This word "thereon" referred back to the phrase "It shall be the duty of the patrol

to police the highways constructed and maintained by the commission."

Again I refer to Section 8363, supra, which prohibits the governor, the commission and the superintendent from directing any member of the Patrol to perform any duty or service not authorized by this chapter which includes Section 8358, supra.

XLIII.

Your forty-third question reads as follows:

"43. Shall the Patrol escort military convoys upon request of the military authorities?"

In answer to this question it is our opinion that it is not the duty of the State Highway Patrol to escort military convoys upon request of the military authorities under Section 8358, supra. We qualify this opinion to the effect that if it is necessary for the State Highway Patrol to escort military convoys with or without the request of the military authorities in order to regulate the movement of traffic upon the highways constructed and maintained by the commission, then it would be proper, but if the convey is moving over city streets or county roads not constructed and maintained by the commission, then it would not be proper.

XLIV.

Your forty-fourth question reads as follows:

"44. Shall the Patrol take part in any honorary or guard duty in connection with any state occasion?"

After careful research of Section 44a, Article IV of the Constitution of Missouri and Section 8358, R. S. Missouri 1939, we find no authority for the State Highway Patrol to take part in any honorary or guard duty in connection with any state occasion, unless the same is incident or connected

in some way with the State Highway Commission.

XLV.

Your forty-fifth question reads as follows:

"45. Shall the Patrol escort good will tours and large organizations when such tours do not follow state highways?"

In answer to your forty-fifth question we refer you to our opinion in answer to questions 40 and 43 which were to the effect that the Patrol is authorized to escort organizations in order to regulate traffic upon highways constructed and maintained by the commission but not authorized to escort organizations over city streets or county roads.

XLVI.

Your forty-sixth question reads as follows:

"46. Shall the Patrol assist in returning or locating runaway children?"

After careful research of Section 44a, Article IV of the Constitution of Missouri and Section 8358, R. S. Missouri 1939, we find no authority for the State Highway Patrol to use money out of the State Road Fund for the purpose of returning or locating runaway children.

XLVII.

Your forty-seventh question reads as follows:

"47. Shall the Patrol arrest individuals for federal offenses?"

This question has been answered by our opinion under questions 4 and 5 which was to the effect that the State Highway Patrol may arrest felons with or without warrants if they have just reason to believe the person arrested has committed a felony, or may arrest misdemeanants if the offense is com-

mitted in their presence. We have also held that it is not their duty to make such an arrest but it is permissible.

XLVIII.

Your forty-eighth question reads as follows:

"48. Shall the Patrol arrest soldiers for desertion?"

After careful research of Section 44a, Article IV of the Constitution of Missouri and Section 8358, R. S. Missouri 1939, we do not find that it is the duty of the State Highway Patrol to arrest soldiers for desertion, but under an Act of Congress dated June 18, 1898c, 469, Section 6, 30 Stats. 484, Congress authorized any civil officer to arrest members of the army for desertion. Since under Section 8359, Chapter 44, R. S. Missouri 1939, the officers of the State Highway Patrol are vested, by law, with the powers of a peace officer, the State Highway Patrol may arrest soldiers for desertion, but under Section 8358, supra, it is not their duty to arrest soldiers for desertion.

XLIX.

Your forty-ninth question reads as follows:

"49. Shall the Patrol investigate emergency peace disturbances adjacent to the highway?"

In answer to the above question, we refer you to our opinion as to your questions 4 and 5 as set out in this request, which was to the effect that State Highway Patrolmen may arrest persons committing misdemeanors within their sight.

L.

Your fiftieth question reads as follows:

"50. Shall the Patrol engage in traffic duty around the stadium at the University of Missouri during football games, when requested by the University authorities?"

In answer to the above question we refer you to our opinion on your question numbered 41, which was to the effect that the State Highway Patrol can only enforce traffic regulations upon highways constructed and maintained by the commission as set out in Section 8358, supra. The fact that the State Highway Patrol is requested by the University authorities to engage in traffic duty around the stadium of the University of Missouri during football games does not alter the law as set out in Section 8363, supra, which specifically prohibits the governor, the commission and the superintendent from directing any member of the Patrol to perform any duty or service not authorized by Chapter 44, R. S. Missouri 1939.

#### CONCLUSION

It is not the desire of this department to curtail the activities of the State Highway Patrol, but since a request for an opinion on certain activities has been presented to this office it is our duty to give our opinion according to the laws governing the powers and duties of the State Highway Patrol.

In the past, the State Highway Patrol has been efficient in solving certain criminal cases which we now hold they are not empowered to do. Our former opinion given to you in reference to the powers and duties of the State Highway Patrol sets out most of the authorities upon which we base our opinion in this request of forty-seven questions. We do not hold that the State Highway Patrol cannot, under any circumstances, be considered as state-wide police officers, but as the law now stands and the fact that the State Highway Patrol is paid out of the State Road Fund, which is acquired under Section 44a, Article IV of the Constitution of Missouri, we are compelled to hold that they are not state-wide police officers.

The Legislature has enacted laws limiting the powers of sheriffs generally to their own counties. It has also enacted laws limiting constables generally to the district of the justice of the peace under whom they serve writs.

In the State Highway Patrol Act the Legislature, under Section 8358, R. S. Missouri 1939, limited the State Highway Patrol to police the highways constructed and maintained by the commission. They also, in the same section, set out other duties and powers which were limited to the enforcement of certain laws thereon. The word "thereon" refers to highways constructed and maintained by the commission. The Legislature also empowered the State Highway Patrol to determine and arrest persons for causing damages to state highway property within and on the state highways. It also empowered the State Highway Patrol to cooperate with the secretary of state and the motor vehicle commissioner in the collection of motor vehicle registration fees and operators and chauffeurs licenses and to cooperate with the state inspector of oils in the collection of motor vehicle fuel taxes. That it was the intention of the Legislature that the State Highway Patrol was limited to the duties set out in Section 8358, supra, is shown by the fact that it enacted Section 8363, supra, which prohibited the governor, the commission and the superintendent to command, order or direct any member of the Patrol to perform any duty or service not authorized by Chapter 44, Revised Statutes of Missouri 1939. If it was the intention of the Legislature to create a state-wide police department with full authority in all matters, it could have enacted such a statute and not limited them as to their powers, duties and authority as they have done under Section 8358, supra. Of course, if the Legislature should enact such a statute creating a state-wide police department with full authority to enforce any and all laws with the same power as that of sheriff and other peace officers, the State Highway Patrol could not use the funds earmarked for state highway purposes only as set out in Section 44a, Article IV of the Constitution of Missouri. In case of such an event it would be necessary that the appropriation for the benefit of the State Highway Patrol be appropriated out of the general revenue and not to the State Road Fund.

In all of the above questions upon which we have rendered our opinion the main test as to whether or not the State Highway Patrol is empowered to conduct any action is whether or not the action or laws sought to be enforced is connected incidentally or pertains in any manner to the enforcement of the law as set out in Section 8358, R. S. Missouri 1939.

The limitations of the State Highway Patrol, set out in Section 8358, supra, must be followed except where some other law makes it mandatory that they perform some other

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duty such as arrests under the Hue and Cry section and laws such as the riot section which must be followed not only by the State Highway Patrol but in some cases by private individuals.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

WJB:DA