

Opinion No. 252.**Highway Patrol—Peace Officers—
State Police.**

HELD: 1. Peace officers as defined by statute are sheriffs and their deputies, in counties; constables, in townships; and policemen and marshals in cities and towns.

2. There is no such officer as a "state policeman."

3. Highway patrolmen are not state policemen, and have no authority to recover certificates of registration which have been declared forfeited, such duty devolves upon peace officers as herein defined.

February 23, 1938.

Montana Highway Patrol
Mr. W. O. Whipps, Executive
Secretary
Helena, Montana

Gentlemen:

We have your letter requesting our opinion upon the following facts:

"In connection with Section 8 of Chapter 129 of the Session Laws of 1937, known as the Financial Responsibility Act for Motor Vehicle Owners and Operators, will you please furnish us with a written opinion as to whether or not a patrolman of the Montana Highway Patrol may be considered to be a 'State policeman or other police officer' under the provisions of Section 8 of said Chapter 129, which is reprinted in the booklet of traffic laws compiled by Warren Toole, and issued in 1937.

"In this connection we would like to have a complete definition of State policeman and other public officers and peace officers as defined in Section 11620 of the Revised Codes of Montana, 1935, or elsewhere, and would like to know to what extent our highway patrolmen are to be considered officers of these classes. * * *"
Section 11620 provides:

"Peace officer. A peace officer is a sheriff of a county, or his deputy, or a constable, marshal or policeman of a township, city or town."

None of the officers referred to in the above section, or under the State Highway Patrol Law, are state police officers. The State of Montana has no state police officers as such. (State ex rel. Quinton v. Edwards, 38 Mont. 265.)

Sections 5, 6, and 7 of Chapter 182, of the 1937 Session Laws, imposes certain duties upon state highway patrolmen, and when the patrolmen are performing those duties, or making arrests for offenses committed thereunder, they act as police officers, although not as state police officers. Section 7 of said chapter expressly provides that in other offenses said patrolmen shall not be deemed to be police officers.

So much thereof as is applicable of Section 8, Chapter 129 of the 1937 Session Laws, provides:

" * * * If any person shall wilfully fail to return to the registrar the operator's or chauffeur's license, certificate or certificates of registration and the number plates issued thereunder as provided herein, the registrar shall forthwith direct any state policeman or other police officer to secure possession thereof and to return the same to the office of the registrar. Any person wilfully failing to return such operator's or chauffeur's license or such certificate or certificates and number plates shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$250.00), and such penalty shall be in addition to any penalty imposed for any violation of any of the provisions of Section 2 of this act. The amount of such fine shall be paid in the manner provided for the payment of fines for violations of the motor vehicle laws."

In Chapter 182, supra, the legislature has specified the duties and powers of the highway patrolmen and has expressly restricted their powers as police officers. Such duties prescribed are exclusive, and such powers as are restricted are excluded.

Chapter 129, supra, does not confer the power or duty upon patrolmen to

secure possession of forfeited registration papers. Such duties devolve upon officers other than the patrolmen, and "other officers" means those officers as enumerated in Section 11620, within their respective jurisdictions.

The words "State Police" as used in Chapter 129 are used in a general sense. By reason of the express prohibitory language in reference to the powers of patrolmen found in Chapter 182, if the legislature had intended to designate the highway patrolmen as state police officers it would have said so in so many terms. When the legislative enactment created and established the highway patrol, it did not intend to, nor did it create, a state police or state constabulary. Therefore, it is my opinion that when the legislature used the language in Chapter 129, supra, of "State Police" it meant such officers as sheriffs, constables, etc., acting within their respective counties, townships, or jurisdictions, and highway patrolmen are police officers only when performing those duties authorized to be performed by them under the provisions of Chapter 182. Said chapter not requiring them to secure possession of forfeited registration papers, they are without authority to do so.