APPENDIX F

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

STATE POLICE: Enforcement of state laws in conjunction with local peace officers

PEACE OFFICERS: Enforcement of state laws outside jurisdictional boundaries in conjunction with state police

ATTORNEY GENERAL: Legal services for local peace officers

WORDS & PHRASES: "in conjunction with"

A local peace officer may exercise peace officer powers outside his own jurisdiction when enforcing state laws in conjunction with the state police. The phrase "in conjunction with" in this context means that the responsibility for performing police functions is shared and neither the state police officer nor the local peace officer is in charge of the other.

Where, pursuant to the statute, the director of the Michigan state police puts into effect a cooperative plan for the purpose of the prevention and discovery of crime and the apprehension of criminals, it is not necessary for a state police officer to be present in order for a local peace officer to exercise peace powers outside the jurisdiction of the local peace officer.

The state assumes no financial responsibility in connection with a civil suit arising from the actions of a local peace officer. The Attorney General is not obligated to provide any defense to a local peace officer for actions arising out of his conduct in the performance of his duties.

Opinion No. 5031

Col. George L. Halverson
Department of State Police
714 S. Harrison Road
East Lansing, Michigan

I am in receipt of your inquiry which poses the following questions regarding the authority of local officers when working outside their jurisdictions and any liability that may result therefrom. I will address the questions listed below seriatim.

> 1. Relating to 1927 PA 175, S 2a; MCLA 764.2a; MSA 28.861(1) "does 'in conjunction with the Michigan state police' mean actual physical presence of a Michigan state police officer?"

2. "Could a municipal police officer exercise his authority and power outside his normal jurisdiction where he is supervised by a Michigan state police officer who may not be physically present?"

3. "Could a municipal police officer exercise his authority and powers outside his normal jurisdiction when engaged in a joint operation with the Michigan State Police, but where Michigan State Police officers are not present and do not supervise the operation?"

4. "Does the Director of the Michigan State Police have legal authority to grant such power and authority to a local police officer where Michigan state police officers are neither present or supervising the activity?"

5. "In the event of a civil suit arising from actions taken by the task force, would the Attorney General's office provide counsel to the local officers?"

6. "In the above instance, would the state assume any financial liability which may result in such actions?"

The statute to which you refer states as follows:

"A peace officer of a county, city, village or township of this state may exercise authority and powers outside his own county, city, village, or township, when he is enforcing the laws of this state in conjunction with the Michigan state police, or in conjunction with a peace officer of the county, city, village, or township in which he may be, the same as if he were in his own county, city, village or township." MCLA 764.2a; MSA 28.861(1).

The provision has been previously addressed by this office in OAG, 1917-1918, No. 712, p. 608 (April 27, 1948). The opinion concerns the authority of a city police officer to make an arrest for a misdemeanor outside city limits, and in another county, at the request of the Michigan State Police. Thre the statutory provision was interpreted to give the city police authority to cross the county line to make the arrest and the actual presence of a state police officer was not required for city police to exercise peace powers outside their jurisdiction. It was considered legally sufficient that state police had requested the aid of the city police. Yet a caveat was given:

> ". . . In this connection, however, it might be well to add that the rule covering the arrest for a misdemeanor applies and the officer would not be warranted in making an arrest without a warrant unless the offense was committed in his presence." OAG, 1947-1948, No 712, p 608 (April 27, 1948).

The result reached in OAG, 1947-1948, No 712, p 608 (April 27, 1948) is consistent with judicial definitions made of "in conjunction with" by courts of other jurisdictions. In re Clark's Estate stated:

> "'The primary definition of the word "conjunction" is a joining or meeting of individuals or of distinct things; union; connection; combination; association . . . '" 74 Abs 460; 141 NE2d 259, 263 (1955); See also Highland v Empire National Bank of Clarksburgh, 141 W Va 473, 483; 172 SE 544, 549 (1933).

This defintion does not stipulate that working in conjunction means that people have to be in the actual presence of one another. It is therefore my opinion that "in conjunction with the Michigan state police" does not demand the actual physical presence of a Michigan state police officer.

Prior to responding to any further questions, it is essential that the terminology used in your questions be clarified. Some of the questions concern what happens in various situations where the local police are or are not "supervised" by the state police. Using the word "supervised" is improper and misleading. There is no authority for the Michigan State Police to "supervise" the local police officer's actions. "Supervise" is defined in Continental Casualty Co v Borthwick, 177 So2d 687, 689 (Fla, 1965):

> "'To oversee for direction; to superintend; to inspect with authority.'"

The definition of "supervise" is also set forth in Saxton v St. Louis Stair Co, 410 SW2d 369, 377 (Mo App, 1966):

> " 'To coordinate, direct, and inspect continuously and at first hand the accomplishment of another or to oversee with the powers of direction and decision the implementation of one's own or another's intentions.' "

The statutes that are of present concern give local police officers the authority to work "in conjunction with" another peace officer, such as the Michigan State Police. This is quite different from working under the "supervision" of another peace officer.

When one is working under the "supervision" of another, the person who is supervising is in control, and is therefore responsible for the actions of those being supervised. On the other hand, when one is working "in conjunction with" another, the control and responsibility is shared as there is a joining or combining of forces. Hence, the parts of the questions that pertain to "supervision" will not be considered.

Accordingly, questions two and three may be answered by stating that 1927 PA 175, S 2a, supra, allows a local peace officer to exercise peace officer powers outside his jurisdiction. But these powers relate only to enforcement of "the laws of this state in conjunction with the Michigan state police, or in conjunction with a peace officer of the county, city, village or twonship in which he may be."

Regarding question four, 1935 PA 59, S 6; MCLA 28.6; MSA 4.436, which delineates the powers and duties of the director of the Michigan State Police, states:

> "The /director/ shall have authority, upon the order of the governor, to call upon any sheriff or other police officer of any county, city, township or village, within the limits of their respective jurisdictions, for aid and assistance in the performance of any duty imposed by this act and, upon being notified or called upon for such aid and assistance, it shall be the duty of the officer concerned to comply with such order to the extent requested. Refusal or neglect to comply therewith shall be deemed misfeasance in office and shall subject the officer so refusing or neglecting to removal from office.
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> "The said /director/ shall formulate and put into effect plans and means of cooperating with the local police and peace officers throughout the state for the purpose of the prevention and discovery of crimes and the apprehension of criminals; and it shall be the duty of all such local police and peace officers to cooperate with such /director/ in such plans and means . . ." /emphasis added/

This statutory provision, in my opinion, authorizes the director of the Michigan State Police to allow a local peace officer to exercise peace officer powers outside his jurisdiction even when Michigan state police officers are not present. The provision, however, does not vest state police officers with supervisory powers over local peace officers.

1964 PA 170, § 8; MCLA 691.1408; MSA 3.996 (108), relates to questions five and six:

> "Whenever any claim is made or any civil action is commenced against any officer or employee of any governmental agency for injuries to persons or

> property caused by negligence of the officer or employee while in the course of his employment and while acting within the scope of his authority, the governmental agency is authorized, but not required, to pay for or engage or furnish services of an attorney to advise the officer or employee as to the claim and to appear for and represent the officer or employee in the action and the governmental agency may compromise, settle and pay such claim before or after the commencement of any civil action. Whenever any judgment for damages is awarded against any officer or employee of any governmental agency as a result of any civil action for personal injuries or property damage caused by the officer or employee while in the course of his employment and while acting within the scope of his authority, the government agency is authorized, but not required, indemnify the officer or employee or pay, settle, or compromise the judgement . . ." /emphasis added/

This statute, in my opinion, leaves it to the discretion of the governmental agency which has employed the officer to decide whether it will defend such person and whether it will indemnify the officer or employee or pay, settle or compromise if a judgment for damages is awarded against that person.

Traditionally, the Attorney General determines on a case by case basis whether to defend an officer or employee who is being sued. Since the Michigan State Police are given authority to work "in conjunction with", as opposed to exercising any control over or "supervising" the local police, it is evident that the Attorney General need not defend a civil suit arising from actions of local peace officers. Hence, the Attorney General will not provide counsel for the local police officers nor does the state assume financial liability resulting from their action.

In summary, it is my opinion that 1) when local police officers work in conjunction with state police officers, the local police officers maintain their authority and powers when outside their jurisdiction whether or not the state police officers are actually present. (2) The director of the Michigan State Police has legal authority to grant such powers and authority to a local police officer when Michigan State Police have exercised a plan under 1935 PA 59, § 6, supra. (3) It is within the discretion of the governmental agency that has employed the officer or employee as to whether it will defend and indemnify such person for suits against that person. The state assumes no financial responsibility in connection with a civil suit arising from the actions of local peace officers.

/s/ Frank J. Kelley
Attorney General