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Original: 2386

October 19, 2004

Syndi L. Guido, Policy Director  
Pennsylvania State Police  
1800 Elmerton Avenue  
Harrisburg, PA 17110

RE: Final-Form Rulemaking, Identification Number 17-65  
Title 37. Law, Part I. State Police  
Chapter 42. Use of Unmarked Cars

RECEIVED  
2004 OCT 20 AM 11:53  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

Dear Ms. Guido:

We write concerning regulations before the Independent Regulatory Review Commission which were promulgated by the Pennsylvania State Police as required by 75 Pa.C.S.A. § 3328. This section of the Vehicle Code requires the Pennsylvania State Police to create regulations for the use of unmarked vehicles by police officers.

The submitted final form regulations were distributed to the House Judiciary Committee consistent with the Committee's function to provide legislative oversight to the Pennsylvania State Police. The submitted final form regulations were discussed at the Committee's meeting this date and Committee unanimously voted to disapprove the above-referenced final form regulations. The submitted regulations state that they were created to establish uniformity in the use of unmarked vehicles by police officers. Following our review of these submitted final form regulations, we believe that the regulations require further revision.

We are of the opinion that the term "police officers" as used in section 3328 of the Vehicle Code includes sheriffs and deputy sheriffs and that specific reference should be made to this effect. In support of this opinion we offer the following:

1. Sheriffs and Deputy Sheriffs throughout the Commonwealth enforce the Vehicle Code pursuant to the authority granted by common law and confirmed by the Supreme Court of Pennsylvania in Commonwealth v. Leet, 537 Pa. 89, 641 A.2d 299 (1994) and Commonwealth v. Kline, 559 Pa. 646, 741 A.2d 1281 (2002).

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2. The Vehicle Code authorizes the use of both unmarked police vehicles and unmarked sheriff vehicles. See 75 Pa.C.S.A. § 4571(b). Section 4571 of the Vehicle Code provides in relevant part:

Section 4571. Visual and audible signals on emergency vehicles.

- "(a) General rule. – Every emergency vehicle shall be equipped with one or more revolving or flashing red lights and an audible warning system. Spotlights with adjustable sockets may be attached to or mounted on emergency vehicles.
- (b) Police, sheriff, fire and coroner or medical examiner vehicles. –
- (1) Police, sheriff, coroner, medical examiner or fire police vehicles may in addition to the requirements of subsection (a) be equipped with one or more revolving or flashing blue lights. The combination of red and blue lights may be used only on police, sheriff, coroner, medical examiner or fire police vehicles.
- (2) ***Unmarked police and sheriff vehicles used as emergency vehicles and equipped with audible warning systems shall be equipped with the lights described in this subsection.***  
(emphasis added)

The Vehicle Code defines "emergency vehicle" in section 102 as follows:

"Emergency vehicle." A fire department vehicle, ***police vehicle, sheriff vehicle***, ambulance, blood delivery vehicle, human organ delivery vehicle, hazardous material response vehicle, armed forces emergency vehicle, one vehicle operated by a coroner or chief county medical examiner and one vehicle operated by a chief deputy coroner or deputy chief county medical examiner used for answering emergency calls, or any other vehicle designated by the State Police under section 6106 (relating to designation of emergency vehicles by Pennsylvania State Police), or a privately owned vehicle used in answering an emergency call when used by any of the following:

(1) A police chief and assistant chief.

(2) A fire chief, assistant chief and, when a fire company has three or more fire vehicles, a second or third assistant chief.

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- (3) A fire police captain and fire police lieutenant.
  - (4) An ambulance corps commander and assistant commander.
  - (5) A river rescue commander and assistant commander.
  - (6) A county emergency management coordinator.
  - (7) A fire marshal.
  - (8) A rescue service chief and assistant chief.
- (emphasis added)

These statutory references clearly indicate that there are two types of unmarked vehicles utilized by police officers authorized to enforce the Vehicle Code in the Commonwealth.

The submitted final form regulations contain, inter alia, definitions which include the following:

"Unmarked police vehicle" is defined in the submitted final form regulations as a police vehicle not equipped with a roof mounted light-bar assembly. The vehicle may display graphics, markings or decals, identifying the agency or department.

"Marked police vehicle" is defined in the submitted final form regulation as "a police vehicle that is equipped with at least one light-bar assembly and displays graphics, markings, or decals identifying the agency or department on a minimum of three sides (front, rear, left, or right)."

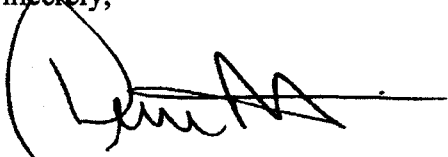
3. Sheriffs and deputy sheriffs currently use unmarked vehicles as part of their every day duties. For example, when serving Protection from Abuse Orders or bench warrants it is often necessary for sheriffs to approach a defendant's property in an unmarked vehicle. Unmarked vehicles are also an essential part of sheriffs' involvement in terrorism task forces throughout the Commonwealth.

In conclusion, as Sheriffs are currently authorized by statute to use unmarked vehicles, and do in fact use unmarked vehicles; we believe that it is necessary that the regulations currently being promulgated by the Pennsylvania State Police "to promote uniformity," cover all authorized uses of unmarked vehicles by "police officers," i.e., persons authorized to enforce the laws of the Commonwealth, including their use by sheriffs and deputy sheriffs when enforcing the vehicle code. Consistent with the intent of section 3328 and in the interest of promoting uniformity throughout the Commonwealth for the benefit of her citizens, these regulations must cover the use of

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both types of vehicles used by police officers under the vehicle code – unmarked police vehicles and unmarked sheriff vehicles.

Sincerely,



DENNIS M. O'BRIEN, Chairman  
Republican Chairman  
House Judiciary Committee



KEVIN BLAUM  
Democratic Chairman  
House Judiciary Committee

DMO'B:MSS:js

cc: Robert E. Nyce, Executive Director, IRRRC  
Colonel Jeffrey B. Miller, Commissioner, PA State Police  
Major John F. Duignan, Director, Bureau of Patrol  
Barbara L. Christie, Chief Counsel, PA State Police