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House of Representatives
Commonwealth of Pennsylvania
Harrisburg

November 4, 2004

Mr. John R. McGinley, Jr.
Chairman
Independent Regulatory Review Commission
333 Market Street
14th Floor, Harrisburg 2
Harrisburg, PA 17101

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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

Dear Mr. McGinley:

Following the Committee's vote to disapprove these regulations and the resultant discussions between Committee staff and IRCC staff, I asked Committee staff to provide me with a summary of their current analysis of the scope of the proposed final form regulations. This analysis by Committee staff has led me to the opinion that the regulations, as written, do in fact apply to sheriffs who possess the requisite training enabling them to make arrests under the Pennsylvania Vehicle Code. This opinion is consistent with the intent of Section 3328 and with the stated purpose of the final form regulations and will ensure that motorists on Pennsylvania's highways and trafficways can be made aware of the use of unmarked vehicles by all police officers in this Commonwealth.

I offer the following summary of the Committee staff analysis which supports my opinion and I respectfully request that you make this part of your record. The summary is as follows:

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). See also Commonwealth v. Kline, 559 Pa. 646, 741 A.2d 1281 (2002). This authority, however, requires that in order to enforce

the laws, a sheriff or deputy sheriff complete the same type of training that is required of police officers. Thus upon receiving the same type of training that is required of police officers, a sheriff or deputy sheriff falls under the definition of "police officer" as defined in 75 Pa.C.S.A. § 102. This definition reads as follows:

"Police officer." A natural person authorized by law to make arrests for violations of law.

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)

"Emergency vehicle" is defined in Title 75 § 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.
- (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)

The Title 75 provision directing the Pennsylvania State Police to adopt the above-referenced regulations reads as follows:

§ 3328. Unmarked police vehicles.

(a) General rule.--The Pennsylvania State Police, in consultation with the department, shall promulgate regulations for the use of **unmarked vehicles by police officers**. The regulations shall:

- (1) establish the procedure to be used by a police officer in an unmarked vehicle when stopping a motorist;
- (2) require the use of audible and visual signals which meet the requirements and standards set forth in this title and in regulations adopted by the department; and
- (3) establish requirements for the wearing of an official police uniform and the display of official police identification.

(b) Public awareness.--The Pennsylvania State Police and the department shall provide for the dissemination of information to the public regarding the use of unmarked vehicles. Such information shall accompany annual vehicle registration or vehicle registration renewal forms distributed by the department no earlier than July 1, 2002.
(emphasis added)

The various Vehicle Code provisions cited above must be construed together with Leet in order to fully determine the scope of these final form regulations. Construing these provisions of the Vehicle Code together with Leet indicates that when making arrests, unmarked police vehicles are vehicles operated by natural persons authorized by law to make arrests for violations of law, which clearly includes sheriffs and deputy sheriffs who have obtained the training required by Leet. Unmarked sheriff vehicles, then, would be vehicles operated by sheriffs and deputy sheriffs who have not obtained this training and as such are not authorized by common law to make arrests for violations of law as set forth in Leet.

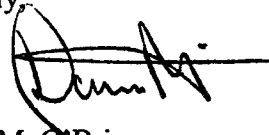
The submitted final form regulations contain, inter alia, the following definitions:

“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).”

These regulations cover the use of unmarked police vehicles. As previously stated, an unmarked vehicle operated by a sheriff or a deputy sheriff who has obtained the training required by Leet, thus satisfying the Vehicle Code definition of “police officer,” is an “unmarked police vehicle” and is covered by the submitted final form regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis M. O'Brien", with a long horizontal line extending to the right.

Dennis M. O'Brien
Chairman, House Judiciary Committee

DMO'B:MSS:kar

cc: Robert E. Nyce, IRRRC Executive Director