



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

December 7, 2021

Tommy Horne, Esq.  
Lauderdale County Prosecuting Attorney  
Post Office Box 1252  
Meridian, Mississippi 39302

Re: Highway Patrol Jurisdiction

Dear Mr. Horne:

The Office of the Attorney General has received your request for an official opinion.

### Questions Presented

In your request, you ask several questions, which are answered in sequence below.<sup>1</sup>

1. Under Mississippi Code Annotated Section 63-3-519, may a Highway Patrolman (“HWP”) issue a speeding ticket – premised on radar equipment – to a motorist within a city of over 15,000 while sitting stationary within said city limits on a state highway or right of way?
2. Under Section 63-3-519, may a HWP issue a speeding ticket – premised on radar equipment – to a motorist within a city of over 15,000 while sitting stationary within said city limits while NOT on a state highway but rather on a city street?
3. Under Section 63-3-519, may a HWP issue a speeding ticket – premised on radar equipment – to a motorist within a city of over 15,000 while HWP is moving/driving (not stationary) within said city limits?
4. Under Section 45-3-21, may a HWP stop a motorist and issue a non-speeding/non-radar traffic violation ticket (e.g., any Rules of the Road under Miss. Code Ann. Ch. 63-3)

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<sup>1</sup> In your request, you reference Section 99-3-7, which provides, in part, for “citizen’s arrest”. However, any authority that a highway patrolman would have to make a citizen’s arrest would be as a private person and is separate and independent from his role as a highway patrolman. A highway patrolman’s authority as a law enforcement officer under the statutes discussed in this opinion is neither expanded nor limited by Section 99-3-7. This opinion addresses a highway patrolman’s authority pursuant to Title 63, Chapter 3 and Title 45, Chapter 3. Any further discussion of citizen’s arrest is outside the scope of this opinion.

occurring in the HWP's presence inside a city but while NOT on a highway or right of way?

5. Under Section 45-3-21, may a HWP stop a motorist and issue a non-speeding/non-radar traffic violation ticket (e.g., any Rules of the Road) occurring in the HWP's presence inside a city but while ON a highway or right of way?
6. Under Section 45-3-21, must there be a "pursuit" (with a fleeing offender) for a HWP to stop a motorist within the city limits (not on a highway or right of way) to issue him a ticket when the offense first occurred in the HWP's presence on a state highway or right of way?
7. Under Section 45-3-21, may a HWP stop and issue a ticket for any traffic violation committed in the HWP's presence within the city limits while neither party (suspect or HWP) ever being on a highway or right of way in the first place or at any time?
8. Where are "general police powers" defined in Mississippi law? Section 45-3-21(1)(f) expressly denies HWP of "general police powers." *See also* Miss. A.G. No. WL 54765 (Huffman, 1990).
9. What kind of misdemeanors does "general police powers" not encompass under Mississippi Law?
10. Is the Miss. A.G. Op. No. WL 547865 (Huffman, 1990) still valid or has it been withdrawn by your Office or superseded by any subsequent official opinion?

### **Brief Response**

1. Yes. Pursuant to Section 63-3-519, the Mississippi Highway Patrol has authority to use radar speed detection equipment upon any public street, road or highway in the state. By legislative amendment made during the 2021 Regular Session, the Legislature removed from Section 63-3-519 the express prohibition on the Mississippi Highway Safety Patrol "sett(ing) up radar on highways within municipalities with a population in excess of fifteen thousand according to the latest federal census."
2. Yes. See Response 1.
3. Yes. See Response 1.
4. The definition of "highway" applicable to Title 45, Section 3 provides: "(t)he term 'highway' means every way or place of whatever nature open to the use of the public for the purpose of vehicular travel, and shall include streets of municipalities." Miss. Code Ann. § 45-3-3(b). This question must be answered with this broad definition of "highway" in mind. In addition to the authority granted under Section 45-3-21(1)(a), pursuant to Section 45-3-21(1)(f), a highway patrolman may also arrest a person "committing or attempting to commit any misdemeanor, felony or breach of the peace within their presence or view" regardless of whether the offense occurred on the highway or right of way.

However, please note that this section also provides that: “Nothing herein shall be construed as granting the Mississippi Highway Safety Patrol general police powers.” They may only act within the limited sphere of authority granted under statute defining their powers and duties. *Smith v. Rankin County*, 45 So. 2d 592 (Miss. 1950).

5. Yes. Please see Response 4.
6. No. Please see Response 4.
7. Please see Response 4. Municipal streets are included within the applicable definition of highway.
8. The Mississippi Supreme Court has held that highway patrolmen are not peace officers within the sense that sheriffs, constables and policemen are such to enforce general laws of state, but act within the limited sphere of authority granted under statute defining their powers and duties. *Smith v. Rankin County*, 45 So. 2d 592 (Miss. 1950). You may wish to contact the Department of Public Safety to further discuss the specific authority of the Mississippi Highway Safety Patrol.
9. Please see Response 8. This question is too broad to answer by official opinion. It is beyond the scope of an official opinion to attempt to list all misdemeanors that are not encompassed in general police powers.
10. According to MS AG Op., *Huffman* (June 8, 1990), “a highway patrol officer may make an arrest for a misdemeanor, felony or breach of the peace committed in his or her presence anywhere in the State of Mississippi” pursuant to Section 45-3-21(a)(vi). For the reasons stated in this opinion and those outlined in *Huffman*, this remains the opinion of this office.

### **Applicable Law and Discussion**

With respect to your first three questions, effective July 1, 2021, Section 63-3-519, as amended by Senate Bill 2788, 2020 Regular Session, provides:

It shall be unlawful for any person or peace officer or law enforcement agency, except the Mississippi Highway Safety Patrol, to purchase or use or allow to be used any type of radar speed detection equipment upon any public street, road or highway of this state. However, such equipment may be used:

- (a) By municipal law enforcement officers within a municipality having a population of two thousand (2,000) or more upon the public streets of the municipality;
- (b) By any college or university campus police force within the confines of any campus wherein more than two thousand (2,000) students are enrolled;
- (c) By municipal law enforcement officers in any municipality having a population in excess of fifteen thousand (15,000) according to the latest

federal census on federally designated highways lying within the corporate limits.

The Mississippi Highway Safety Patrol shall be immediately notified by municipal law enforcement of any road blockages or emergencies occurring on any federally designated limited-access highways lying within the corporate limits.<sup>2</sup>

Plainly, the Mississippi Highway Patrol has authority to use radar speed detection equipment upon any public street, road or highway in the state.<sup>3</sup> Notably, the above cited statute specifically limits the “use” of radar equipment by municipal law enforcement and college or university campus police. However, with respect to the Mississippi Highway Safety Patrol, following the amendment to Section 63-3-519 during the 2021 Regular Legislative Session, the statute provides no such restriction. To the extent that prior opinions of this office, including MS AG Op., *Hudson* (February 7, 1997), conflict with current law and this opinion, such prior opinions are hereby modified accordingly.

Turning to your fourth, fifth, sixth, and seventh questions, with respect to Title 45, Chapter 3, “[t]he term “highway” means every way or place of whatever nature open to the use of the public for the purpose of vehicular travel, and shall include streets of municipalities.” Miss. Code Ann. Section 45-3-3(b). Similarly, Section 63-3-502(1)(c) provides that “street or highway” means “the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.” Notably, municipal streets are included in both definitions of “highway.”

Section 45-3-21(1) specifically grants the Highway Safety Patrol the following power:

(a) To enforce all of the traffic laws, rules and regulations of the State of Mississippi upon all highways of the state highway system and the rights-of-way of such highways; provided, however, that if any person commits an offense upon the state highway system and be pursued by a member of the Highway Safety Patrol, such patrol officer may pursue and apprehend such offender upon any of the highways or public roads of this state, or to any other place to which such offender may flee.

...

(f) To arrest without warrant any person or persons committing or attempting to commit any misdemeanor, felony or breach of the peace within their presence or view, and to pursue and so arrest any person committing such an offense to and at any place in the State of Mississippi where he may go or be. Nothing herein shall

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<sup>2</sup> Prior to the enactment of Senate Bill 2788, this provision read: “The Mississippi Highway Safety Patrol will not set up radar on highways within municipalities with a population in excess of fifteen thousand (15,000) according to the latest federal census.”

<sup>3</sup> The definition of “highway” applicable to Title 63, Chapter 3 is “the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.” Miss. Code Ann. § 63-3-125(a).

be construed as granting the Mississippi Highway Safety Patrol general police powers.

Your eighth question seeks a definition of the term “general police powers,” noting that Section 45-3-21(1)(f) expressly denies a highway patrolman of such powers. We find no precise definition of this term. However, the Mississippi Supreme Court has held that highway patrolmen are not peace officers within the sense that sheriffs, constables and policemen are such to enforce general laws of state, but act within the limited sphere of authority granted under statute defining their powers and duties. *Smith v. Rankin County*, 45 So. 2d 592 (Miss. 1950). You may wish to contact the Department of Public Safety to further discuss the specific authority of the Mississippi Highway Safety Patrol.

Your ninth question asks this office to identify any kind of misdemeanors not encompassed by the term “general police powers.” This question is too broad to answer by official opinion. *See MS AG Op., Barrett* at \*1 (Aug. 29, 1984) (refusing to respond by official opinion on the basis that the question posed was overly broad). It is beyond the scope of an official opinion to attempt to list all misdemeanors that are not encompassed in general police powers.

Your tenth question relates to our opinion in MS AG Op., *Huffman* (June 8, 1990), which opined, in part, that “a highway patrol officer may make an arrest for a misdemeanor, felony or breach of the peace committed in his or her presence anywhere in the State of Mississippi,” pursuant to Section 45-3-21(a)(vi). For the reasons stated in this opinion and those outlined in *Huffman*, this remains the opinion of this office.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Beebe Garrard

Beebe Garrard  
Special Assistant Attorney General