February 2, 1999

OPINION NO. 99-008

The Honorable Robert P. DeSanto
Ashland County Prosecuting Attorney
Suite 307, Orange Street
Ashland, Ohio 44805

Dear Prosecutor DeSanto:

You have requested an opinion concerning the eligibility of various county sheriff employees for the special retirement benefits provided for law enforcement officers under the Public Employees Retirement System. You specifically ask:

1. Is a certified peace officer employed as a deputy sheriff entitled to law enforcement retirement benefits regardless of what primary duties the sheriff assigns him?

2. Would a civilian corrections officer, who is not a certified peace officer, working in the county jail be entitled to law enforcement benefits based on the dangerous nature of his duties?

In order to answer your questions, it is first necessary briefly to discuss R.C. 145.33, which establishes benefits payable to public employees, as defined in R.C. 145.01(A), upon age and service retirement.[1] Unlike other public employees whose age and service retirement benefits are calculated under R.C. 145.33(A), persons who have credit for time "while serving as a law enforcement officer" may be entitled to receive age and service retirement benefits under R.C. 145.33(B).[2] In addition, R.C. 145.33(C) establishes separate age and service retirement

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[1] The definition of "public employee" contained in R.C. 145.01(A)(1) includes, among others, any person "employed and paid in whole or in part by the state or [any county]."

[2] R.C. 145.33(B)(1) and (2) provide age and service retirement benefits for persons who have the requisite service credit for time served as law enforcement officers and who have reached the required age. R.C. 145.33(B)(3) and (4) provide age and service retirement benefits

options available to public employees who have credit for time served as law enforcement officers in addition to other service credit under R.C. Chapter 145. In order to be entitled to receive benefits under either R.C. 145.33(B) or (C),[3] however, a public employee must, among other things, have rendered service as a "law enforcement officer."

For purposes of R.C. 145.33, the term "law enforcement officer," is defined as follows:

> Notwithstanding [R.C. 2901.01],[4] "law enforcement officer" means a sheriff, *deputy sheriff*, township constable or police officer in a township police department or district, drug agent, liquor control investigator, park officer, forest officer, wildlife officer, state watercraft officer, park district police officer, conservancy district officer, Ohio veterans' home police officer, special police officer for a mental health institution, special police officer for an institution for the mentally retarded and developmentally disabled, state university law enforcement officer, Hamilton county municipal court bailiff, or municipal police officer.

R.C. 145.01(QQ) (footnote and emphasis added). *See also* R.C. 145.01(AA)-(PP) (defining positions listed in R.C. 145.01(QQ) as "law enforcement officer[s]"). Thus, for purposes of R.C. 145.33, only time served in one of the positions expressly named in R.C. 145.01(QQ) qualifies as time "while serving as a law enforcement officer" for which a public employee may receive law enforcement service credit.

Examination of the definitions of the various positions included in the term "law enforcement officer," as defined in R.C. 145.01(QQ), reveals that a person employed by a sheriff may be a "law enforcement officer" for purposes of R.C. 145.33 only if he comes within the following definition of "[d]eputy sheriff":

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for persons who have the requisite service credit for time served as law enforcement officers and who, with certain exceptions, voluntarily resign or are discharged.

[3] 1975 Op. Att'y Gen. No. 75-022 discussed the operation of 1974 Ohio Laws, Part II, 1240 (Am. Sub. H.B. 1312, eff. March 4, 1975), which established special retirement benefits for sheriffs and deputy sheriffs under R.C. 145.33. The opinion addressed a number of issues concerning participation in and benefits available to sheriffs and deputy sheriffs under the newly established plan. Although the conclusions reached in 1975 Op. Att'y Gen. No. 75-022 do not bear directly upon the issues your questions present, we note that the numerous amendments made to R.C. 145.33 since the issuance of that opinion may affect those conclusions as applied to sheriffs and deputy sheriffs.

[4] R.C. 2901.01(A)(11) contains a definition of the term "law enforcement officer," as used elsewhere within the Ohio Revised Code.

> "Deputy sheriff" means any person who is commissioned and employed as a full-time peace officer by the sheriff of any county, and has been so employed since on or before December 31, 1965, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of this state; any person who is or has been commissioned and employed as a peace officer by the sheriff of any county since January 1, 1966, and who has received a certificate attesting to the person's satisfactory completion of the peace officer training school as required by [R.C. 109.77] and whose primary duties are to preserve the peace, protect life and property, and enforce the laws of this state; or any person deputized by the sheriff of any county and employed pursuant to [R.C. 2301.12] as a criminal bailiff or court constable who has received a certificate attesting to the person's satisfactory completion of the peace officer training school as required by [R.C. 109.77] and whose primary duties are to preserve the peace, protect life and property, and enforce the laws of this state.

R.C. 145.01(AA). *See generally* R.C. 311.04(B)(1) (in part authorizing the sheriff, with certain exceptions, to "appoint, in writing, one or more deputies," and requiring the sheriff, "[a]t the time of the appointment, [to] file the writing upon which the appointment is made with the clerk of the court of common pleas," who "shall enter it upon the journal of the court"); R.C. 325.17 (authorizing the sheriff, among others, to "appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees" and requiring the sheriff to "file certificates of such action with the county auditor").

For purposes of R.C. 145.33, the term "[d]eputy sheriff" thus includes three categories of deputies described in R.C. 145.01(AA). The first such category includes any person who is both commissioned and employed by the sheriff as a "full-time peace officer" and who has been so employed since on or before December 31, 1965, and whose primary duties are "to preserve the peace, to protect life and property, and to enforce the laws of this state." The second category of deputy sheriffs described in R.C. 145.01(AA) includes any person who is or has been both commissioned and employed as a peace officer by the sheriff since January 1, 1966, and who has a certificate of satisfactory completion of the peace officer training school as required by R.C. 109.77,[5] and whose primary duties are "to preserve the peace, protect life and property, and enforce the laws of this state." The final category of deputy sheriffs specified in R.C. 145.01(AA) includes any person who is deputized by the sheriff and is also employed under R.C. 2301.12 as either a criminal bailiff or a court constable, who has a certificate of satisfactory completion of the peace officer training school as required by R.C. 109.77, and whose primary duties are "to preserve the peace, protect life and property, and enforce the laws of this state." In order to qualify in any of the three categories of deputy sheriffs established by R.C. 145.01(AA), a person must satisfy every requirement within that category. *See generally Heald v. City of*

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[5] R.C. 109.77 prescribes, among other things, various positions for which a certificate of satisfactory completion of a type of peace officer basic training is required.

Cleveland, 19 Ohio N.P. (n.s.) 305, 323 (C.P. Cuyahoga County 1916) (the word "and" means "'with,' 'along with,' 'together with,' 'also,' 'moreover'").

With this framework in mind, let us turn to your first question, which asks whether a person who is employed as a deputy sheriff and who has been certified as a peace officer "is entitled to law enforcement retirement benefits regardless of what primary duties the sheriff assigns him." Whether such a person is entitled to receive law enforcement retirement benefits depends upon whether he meets the various conditions imposed by R.C. 145.33(B) or (C) for the receipt of such benefits, only one of which is that the person have rendered service as a "law enforcement officer." *See generally* 1991 Op. Att'y Gen. No. 91-049 (liquor control investigators as law enforcement officers for purposes of R.C. 145.33).

Whether a person who is employed as a deputy sheriff and has received a peace officer basic training certificate is entitled to receive credit for such service as time "while serving as a law enforcement officer" for purposes of R.C. 145.33 depends upon whether such a person falls within one of the three categories of deputy sheriffs established by R.C. 145.01(AA). You specifically question whether the duties assigned to such a deputy bear upon his qualification as a "deputy sheriff" under the definition set forth in R.C. 145.01(AA).

Examination of the three categories of deputy sheriffs established by R.C. 145.01(AA) reveals that one criterion essential to qualification in any of the three categories is that the person's primary duties be "to preserve the peace, to protect life and property, and to enforce the laws of this state."[6] It is well recognized that not all deputy sheriffs are assigned the primary duties of preserving the peace, protecting life and property, and enforcing state laws. 1989 Op. Att'y Gen. No. 89-071 (syllabus, paragraph three). *See generally Yarosh v. Becane*, 63 Ohio St. 2d 5, 406 N.E.2d 1355 (1980) (discussing the manner in which the sheriff may assign duties to deputy sheriffs); *In re Termination of Employment*, 40 Ohio St. 2d 107, 321 N.E.2d 603 (1974)

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[6] Although we are not aware of any judicial interpretations of the phrase "to preserve the peace, to protect life and property, and to enforce the laws of this state," as used in R.C. 145.01(AA), the courts have had occasion to consider the meaning of this phrase as it is used in R.C. 109.71, defining "peace officer," for purposes of peace officer training. As does R.C. 145.01(AA), R.C. 109.71 includes a requirement that a person's primary duties be "to preserve the peace, to protect life and property, and to enforce the laws of this state." *See, e.g.*, *Cleveland Police Patrolmen's Ass'n v. City of Cleveland*, 118 Ohio App. 3d 584, 588, 693 N.E.2d 864, 867 (Cuyahoga County 1997) (finding uniformed armed officer's transporting of a prisoner in a marked police vehicle to be "a duty of enforcing laws"); *Dektas v. Leis*, 64 Ohio App. 3d 450, 581 N.E.2d 1150 (Hamilton County 1989) (finding the duties performed by certain deputy sheriffs working in the sheriff's corrections division not to constitute the duties of a peace officer); 1989 Op. Att'y Gen. No. 89-071 (syllabus, paragraph two) (stating in part, "[d]uties such as the transportation of prisoners and routine patrol in squad cars are duties intended to preserve peace, protect life and property, and enforce laws").

(discussing the variety of duties the sheriff may assign to deputies); *State ex rel. Geyer v. Griffin*, 80 Ohio App. 447, 458, 76 N.E.2d 294, 300 (Allen County 1946) (a sheriff has "absolute discretion to determine what deputies shall be employed, the length of their employment, and the duties of his office to be performed by them").[7]

Because not all deputy sheriffs are assigned the primary duties of preserving the peace, protecting life and property, and enforcing state laws, the General Assembly's inclusion of the assignment of such duties as a qualification in all three categories of "deputy sheriff" established by R.C. 145.01(AA) indicates the General Assembly's intent that only those persons whose primary duties are "to preserve the peace, to protect life and property, and to enforce the laws of this state" constitute "[d]eputy sheriff[s]" as defined therein, regardless of the other qualifications such persons may possess. In answer to your first question, we conclude, therefore, that a person who is employed as a deputy sheriff and has received a certificate of completion of peace officer basic training does not constitute a "[d]eputy sheriff," as defined in R.C. 145.01(AA), unless his primary duties are "to preserve the peace, to protect life and property, and to enforce the laws of this state."

You also ask whether a person who is a civilian employee of the county sheriff and who is not a certified peace officer, but who works in the county jail performing duties of a dangerous nature qualifies for law enforcement service credit for the time served in such a position. Again, for purposes of R.C. 145.33, such a person may receive law enforcement service credit for time served in that capacity only if the position is that of a "law enforcement officer," as defined in R.C. 145.01(QQ). The only law enforcement position listed in R.C. 145.01(QQ) that may arguably include a position such as you describe is, again, that of "[d]eputy sheriff," as defined in R.C. 145.01(AA). For the reasons that follow, however, we do not find such a position to constitute that of a "deputy sheriff," as that term is used in R.C. 145.01(QQ).

Because the persons you describe do not have "certificate[s] ... [of] satisfactory completion of the peace officer training school as required by [R.C. 109.77]," R.C. 145.01(AA), such persons will qualify as deputy sheriffs, as defined in R.C. 145.01(AA), and thus as law enforcement officers for purposes of R.C. 145.33, only if their employment meets all three criteria established for the first category of deputy sheriffs described in R.C. 145.01(AA), *i.e.*, (1) they are commissioned and employed by the sheriff as "full-time peace officer[s]," (2) they have been so employed since on or before December 31, 1965, *and* (3) their primary duties are "to preserve the peace, to protect life and property, and to enforce the laws of this state."

Your letter refers to the persons about whom you ask as "civilian employees" who work in the county jail. The authority of the sheriff to hire employees for the county jail is found, in

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[7] You have not asked, and this opinion does not address, whether particular duties constitute preservation of the peace, protection of life and property, or the enforcement of the laws of this state.

part, in R.C. 341.05(A)(2), which authorizes the sheriff to include in his staff "[j]ail officers, including civilian jail officers *who are not sheriff's deputies*, to conduct security duties" (emphasis added), and in R.C. 341.05(A)(3), which authorizes the sheriff to hire "[o]ther necessary employees to assist in the operation of the county jail."[8] You have not stated under what authority the persons you describe have been hired,[9] but we will assume that your use of the term "civilian employees" refers to persons hired by the sheriff other than as deputy sheriffs under R.C. 325.17 or R.C. 311.04.

In determining whether any of the persons you describe constitute deputy sheriffs, as defined in R.C. 145.01(AA), let us begin by examining the requirement of R.C. 145.01(AA) that, in order to constitute a "[d]eputy sheriff," one must be commissioned and employed by the sheriff as a full-time peace officer. The meaning of the phrase "full-time peace officer," as used in R.C. 145.01(AA), is not defined by statute. It is, therefore, useful to refer to the provisions of R.C. 109.77 and related provisions concerning the training and certification of peace officers to ascertain the meaning of the phrase "full-time peace officer." *See also* R.C. 2935.01(B) (listing those positions included in the term "[p]eace officer" for purposes of R.C. Chapter 2935). *See generally State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph two) ("[s]tatutes relating to the same matter or subject, although passed at different times and making no reference to each other, are *in pari materia* and should be read together to ascertain and effectuate if possible the legislative intent").

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[8] Pursuant to R.C. 341.05(C), "[t]he jail administrator and civilian jail officers appointed by the sheriff shall have all the *powers of police officers on the jail grounds as are necessary* for the proper performance of the duties relating to their positions at the jail and as are *consistent with their level of training*." (Emphasis added.) Thus, the police powers civilian jail officers may perform on the jail grounds are limited to those that are necessary to perform their duties and are consistent with their level of training. *See generally* 2 Ohio Admin. Code Chapter 109:2-11 (jailer training).

[9] Pursuant to R.C. 109.73(A)(11), one of the duties of the Peace Officer Training Commission is to recommend rules regarding, among other things, the establishment of "minimum requirements for certification of persons who are employed as correction officers in a full-service jail, five-day facility, or eight-hour holding facility or who provide correction services in such a jail or facility." *See also* R.C. 109.75(K) (including as a power of the director of peace officer training, the power "[t]o certify persons who have satisfactorily completed approved training programs for correction officers in full-service jails, five-day facilities, or eight-hour holding facilities or approved training programs for others who provide correction services in those jails or facilities and to issue appropriate certificates to those persons"); 2 Ohio Admin. Code Chapter 109:2-9 (corrections training for jail personnel); 2 Ohio Admin. Code Chapter 109:2-11 (jailer training). Whether the persons about whom you ask are required to complete a type of training other than a peace officer basic training course is a separate question not addressed by this opinion.

As used in R.C. 109.77, the term "peace officer" includes deputy sheriffs and other positions listed therein. R.C. 109.71(A).[10] In order to constitute a "peace officer" for purposes

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[10] R.C. 109.71(A) includes in the definition of "peace officer":

(1) A *deputy sheriff*, marshal, deputy marshal, member of the organized police department of a township or municipal corporation, member of a township police district or joint township police district police force, member of a police force employed by a metropolitan housing authority under [R.C. 3735.31(D)], or township constable, who is commissioned and employed as a peace officer by a political subdivision of this state or by a metropolitan housing authority, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of this state, ordinances of a municipal corporation, resolutions of a township, or regulations of a board of county commissioners or board of township trustees, or any such laws, ordinances, resolutions, or regulations;

(2) A police officer who is employed by a railroad company and appointed and commissioned by the governor pursuant to [R.C. 4973.17-.22];

(3) Employees of the department of taxation engaged in the enforcement of [R.C. Chapter 5743] and designated by the tax commissioner for peace officer training for purposes of the delegation of investigation powers under [R.C. 5743.45];

(4) An undercover drug agent;

(5) Liquor control investigators of the department of public safety engaged in the enforcement of [R.C. Chapters 4301 and 4303];

(6) An employee of the department of natural resources who is a park officer designated pursuant to [R.C. 1541.10], a forest officer designated pursuant to [R.C. 1503.29], a preserve officer designated pursuant to [R.C. 1517.10], a wildlife officer designated pursuant to [R.C. 1531.13], or a state watercraft officer designated pursuant to [R.C. 1547.521];

(7) An employee of a park district who is designated pursuant to [R.C. 511.232] or [R.C. 1545.13];

(8) An employee of a conservancy district who is designated pursuant to [R.C. 6101.75];

(9) A police officer who is employed by a hospital that employs and maintains its own proprietary police department or security department, and who is appointed and commissioned by the governor pursuant to [R.C. 4973.17-.22];

(10) Ohio veterans' home police officers designated under [R.C. 5907.02];

(11) A police officer who is employed by a qualified nonprofit corporation police department pursuant to [R.C. 1702.80];

(12) A state university law enforcement officer appointed under [R.C. 3345.04] or a person serving as a state university law enforcement officer on a

of peace officer training and certification, one must, among other things, "be appointed to one of the specific positions enumerated therein." 1984 Op. Att'y Gen. No. 84-008 (syllabus, paragraph one). Examination of the positions listed in R.C. 109.71 reveals that the persons about whom you ask do not constitute peace officers. Unlike the position of "deputy sheriff" which is expressly included in the definition of peace officer, R.C. 109.71(A)(1), there is no position that includes civilian employees of a sheriff who work in the county jail. *See generally* R.C. 341.05(A)(2) (stating in part, that persons hired by the sheriff as "civilian jail officers" are not sheriff's deputies). Because the persons you describe are not peace officers, they cannot qualify as "[d]eputy sheriff[s]," as defined in R.C. 145.01(AA), or as "law enforcement officer[s]," as defined in R.C. 145.01(QQ). Accordingly, a person who is a civilian employee of the sheriff and who works in the county jail is not entitled, for purposes of R.C. 145.33, to receive law enforcement service credit for time served in that position.

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. A person who is certified as a peace officer and is employed as a deputy sheriff is not a "[d]eputy sheriff," as defined in R.C. 145.01(AA), unless his primary duties are "to preserve the peace, to protect life and property,

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permanent basis on June 19, 1978, who has been awarded a certificate by the executive director of the Ohio peace officer training council attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program;

(13) A special police officer employed by the department of mental health pursuant to [R.C. 5119.14] or the department of mental retardation and developmental disabilities pursuant to [R.C. 5123.13];

(14) A member of a campus police department appointed under [R.C. 1713.50];

(15) A member of a police force employed by a regional transit authority under [R.C. 306.35(Y)].

(16) Food stamp trafficking agents of the department of public safety designated under [R.C. 5502.14];

(17) Investigators appointed by the auditor of state pursuant to [R.C. 117.091] and engaged in the enforcement of [R.C. Chapter 117];

(18) A special police officer designated by the superintendent of the state highway patrol pursuant to [R.C. 5503.09] or a person who was serving as a special police officer, pursuant to that section on a permanent basis on October 21, 1997, and who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program.

and to enforce the laws of this state." Service as a certified peace officer and deputy sheriff does not constitute time "while serving as a law enforcement officer" for purposes of R.C. 145.33, unless the person's primary duties are "to preserve the peace, to protect life and property, and to enforce the laws of this state."

2. A person who is a civilian employee of the sheriff and who works in the county jail is not entitled, for purposes of R.C. 145.33, to receive law enforcement service credit for time served in that position.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

February 2, 1999

The Honorable Robert P. DeSanto
Ashland County Prosecuting Attorney
Suite 307, Orange Street
Ashland, Ohio 44805

SYLLABUS: 99-008

1. A person who is certified as a peace officer and is employed as a deputy sheriff is not a "[d]eputy sheriff," as defined in R.C. 145.01(AA), unless his primary duties are "to preserve the peace, to protect life and property, and to enforce the laws of this state." Service as a certified peace officer and deputy sheriff does not constitute time "while serving as a law enforcement officer" for purposes of R.C. 145.33, unless the person's primary duties are "to preserve the peace, to protect life and property, and to enforce the laws of this state."

2. A person who is a civilian employee of the sheriff and who works in the county jail is not entitled, for purposes of R.C. 145.33, to receive law enforcement service credit for time served in that position.