

OPINION NO. 89-044**Syllabus:**

1. The position of deputy sheriff is incompatible with the position of village police officer, where the village is within the same county served by the deputy sheriff. (1987 Op. Att'y Gen. No. 87-002, followed.)
2. The position of deputy sheriff is incompatible with the position of township police constable, where the township is within the same county served by the deputy sheriff.

To: Frank Pierce, Belmont County Prosecuting Attorney, St. Clairsville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 20, 1989

I have before me your request for my opinion regarding the compatibility of several law enforcement positions. Pursuant to a telephone conversation you had with a member of my staff, you indicated that your concern was the performance of police protection services for a village and township by a deputy sheriff. Specifically you ask:

1. Is the position of deputy sheriff compatible with the position of village police officer, where the village is within the same county served by the deputy sheriff?
2. Is the position of deputy sheriff compatible with the position of township police constable, where the township is within the same county served by the deputy sheriff?

Pursuant to R.C. 311.04, deputy sheriffs are appointed by the county sheriff. *See also* R.C. 325.17. "The sheriff is the chief law enforcement officer in the county, with jurisdiction coextensive with the county, including all municipalities and townships." *In re Sulzmann*, 125 Ohio St. 594, 597, 183 N.E. 531, 532 (1932); *see also* 1984 Op. Att'y Gen. No. 84-028 at 2-82 ("[t]he sheriff and his deputies are the chief law enforcement officers of the county, R.C. 311.07"). The Ohio Supreme Court, in *In re Termination of Employment*, 40 Ohio St. 2d 107, 114-15, 321 N.E.2d 603, 608-09 (1974), summarized the duties of a deputy sheriff as follows:

Deputy sheriffs are clearly employed by and directly responsible to their sheriffs, who are elected county officials....

...A deputy sheriff may be called upon to serve process upon witnesses (R.C. 3.10, 117.03 [now R.C. 117.18]¹), and to serve writs and orders such as levys on property, writs of attachment, and summons to jurors. (R.C. 311.17.) He may perform ordinary police functions, such as transporting prisoners (R.C. 339.57), guarding prisoners in the county jail (R.C. 341.05), and exercising the general duties of a peace officer (R.C. 2935.01). For many deputies, a principal duty is to patrol state highways (R.C. 4513.39), while others

¹ R.C. 117.03, which was amended and renumbered R.C. 117.18 by 1985-1986 Ohio Laws, Part I, 1760, 1803-04 (Sub. H.B. 201, eff. July 1, 1985), now allows only the auditor of state and his assistants to direct service by the sheriff or constable.

are assigned as bailiffs in county courts (R.C. 2301.12)....For many, the duties assigned are virtually identical to those assigned to a member of a metropolitan police force or of the State Highway Patrol, or to a bailiff in the civil courts....[T]here are cases where a deputy sheriff is in a true fiduciary relationship with the sheriff, e.g., where a deputy sheriff has charge of deposits of bond (R.C. 2331.16), or acts as a receiver of property (R.C. 2333.22). (Footnote added.)

A village police officer, the second position about which you ask, is appointed by the mayor, as provided by the legislative authority, and subject to its confirmation. R.C. 737.16. The village marshal has the exclusive authority to station and transfer, under such general rules as the mayor prescribes, R.C. 737.19(A), and the exclusive right to suspend, R.C. 737.19(B), village police officers. The village marshal shall notify the mayor of any suspension, for a determination whether to sustain the charges and the penalty if such charges are sustained. *Id.* In most cases the village police officer has a right of appeal to the legislative authority and where removal is involved, an appeal to the court of common pleas. *Id.* R.C. 737.11 and R.C. 737.18 describe the general powers and duties of a village police officer. R.C. 737.11 provides in part:

The police force of a municipal corporation² shall preserve the peace, protect persons and property, and obey and enforce all ordinances of the legislative authority of the municipal corporation, all criminal laws of the state and the United States, and all court orders issued and consent agreements approved pursuant to sections 2919.26 and 3113.31 of the Revised Code.... Both the police and fire departments shall perform any other duties that are provided by ordinance. (Footnote added.)

R.C. 737.18 further provides in part:

The marshal shall be the peace officer of a village and the executive head, under the mayor, of the police force. The marshal, and the deputy marshals, policemen, or night watchmen under him shall have the powers conferred by law upon police officers in all villages of the state, and such other powers, not inconsistent with the nature of their offices, as are conferred by ordinance.

Village police officers, thus, are conferred by statute and ordinance with various powers and duties related to law enforcement in a village. *E.g.*, R.C. 2917.05 (authorized to use non-deadly force and in some circumstances deadly force to suppress a riot); R.C. 2935.03 (power to arrest without a warrant); R.C. 4513.39 (power to make arrests on highways located within municipal corporation).

In 1979 Op. Att'y Gen. No. 79-111, my predecessor set forth seven questions for determining whether two public positions are incompatible. Two positions are incompatible if, *inter alia*, a person holding both positions would be subject to a conflict of interest. *Id.* "One person may not simultaneously hold two public positions if he would be subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public." 1985 Op. Att'y Gen. No. 85-042 at 2-150; *see also* 1985 Op. Att'y Gen. No. 85-021; 1984 Op. Att'y Gen. No. 84-070.

² Villages and cities are both municipal corporations. "Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages." Ohio Const. art. XVIII, §1. Additionally, R.C. 703.01 provides that "[m]unicipal corporations, which, at the last federal census, had a population of five thousand or more, or five thousand registered resident electors or resident voters as provided in section 703.011 [703.01.1] of the Revised Code, are cities. All other municipal corporations are villages."

I turn now to your first question, which asks whether the positions of deputy sheriff and village police officer are compatible, where the village is within the same county served by the deputy sheriff. In 1987 Op. Att'y Gen. No. 87-002, I addressed this question and held that these positions are incompatible. My finding of incompatibility is based on the premise that "to the extent that a deputy sheriff and village peace [police] officer are expected to follow different law enforcement standards, policies, and techniques, I believe that one person serving in both positions would be subject to divided loyalties or a conflict of interest." *Id.* at 2-9. See generally 1986 Op. Att'y Gen. No. 86-007 (the positions of parole officer and village police chief are incompatible because the law enforcement standards, policies, and techniques are different for each of the positions in question, and thus, one person serving in both positions would be subject to conflicting duties and interests); Op. No. 85-021 at 2-83 ("[t]o the extent that law enforcement standards, policies and techniques established by the board of township trustees, see R.C. 505.49, differ from those of the county sheriff, see R.C. 311.07, it is apparent that a person who simultaneously serves as a deputy sheriff and township police chief within the same county would be subject to conflicting duties and interests").

A deputy sheriff and village police officer, where the village is located within the same county served by the deputy sheriff, would both have jurisdiction over the territory within the village. Op. No. 87-002. Further, deputy sheriffs are expected to observe the law enforcement standards, policies, and techniques established by the county sheriff. *Id.*; Op. No. 85-021. See generally *In re Termination of Employment; State ex rel. Geyer v. Griffin*, 80 Ohio App. 447, 76 N.E.2d 294 (Allen County 1946) (per curiam). In contrast, a village police officer must comply with the requirements established by the village marshal, mayor and legislative authority. See generally R.C. 737.18; R.C. 737.19. Hence, a deputy sheriff and village police officer are expected to follow different law enforcement standards, policies, and techniques.³

I further noted in Op. No. 87-002 that under either R.C. 311.07(B) (county sheriff may call upon the village for police personnel) or R.C. 311.29(B) (county sheriff and village may contract for the sheriff to exercise police powers or functions on behalf of the village), a situation could arise where the county sheriff or a deputy would be in a position of supervising village police officers. These provisions may not be sufficient to find the positions incompatible, but add support for my conclusion that the positions are incompatible. Therefore, I continue to agree with the reasoning in Op. No. 87-002, and reaffirm my conclusion therein that the position of deputy sheriff is incompatible with the position of village police officer, where the village is within the same county served by the deputy sheriff.

Your second question asks whether the positions of deputy sheriff and township police constable are compatible, where the township is within the same county served by the deputy sheriff.⁴ A township police constable is designated

³ In your letter you indicate that "[t]here are no conflicting duties and interests...nor are any standards or policies imposed upon him as a Deputy Sheriff that would conflict with his performance of duties in the [v]illage." The fact that the positions in question have different appointing authorities, statutorily imposed duties and jurisdictional limitations militates against a finding of no conflicting duties and interests. Thus, I cannot concur in your assessment that an individual who serves in these two positions will not be subject to a conflict of interest.

⁴ In 1955 Op. Att'y Gen. No. 6025, p. 650, my predecessor concluded that the position of deputy sheriff is incompatible with the position of township police constable established by R.C. 509.16. R.C. 509.16, which was the predecessor to current R.C. 509.01, was repealed by 1959 Ohio Laws 823 (Am. H.B. 571, eff. Nov. 6, 1959). The rationale of 1955 Op. No. 6025 was that under R.C. 4513.39 only state highway patrol officers and county sheriffs or their deputies could make arrests for violations of motor vehicle and traffic laws on state highways. However, since the writing of 1955 Op. No. 6025, R.C. 4513.39 has been amended to grant township police constables the authority to make arrests on those sections of state highway

and subject to removal and suspension by the board of township trustees. R.C. 509.01; *see also* R.C. 505.491 to R.C. 505.495. The powers and duties of a township police constable are found in R.C. 509.05, which provides in part:

In addition to the county sheriff, constables shall be ministerial officers of the county court in all cases in their respective townships, and in criminal cases, they shall be such officers within the county. They shall apprehend and bring to justice felons and disturbers of the peace, suppress riots, and keep and preserve the peace within the county. They may execute all writs and process, in criminal cases, throughout the county in which they reside, and in which they were elected or appointed. If a person charged with the commission of a crime or offense flees from justice, any constable of the county wherein such crime or offense was committed shall pursue and arrest such fugitive in any other county of the state and convey him before the county court of the county where such crime or offense was committed.

Such constables shall serve and execute all warrants, writs, precepts, executions, and other process directed and delivered to them, and shall do all things pertaining to the office of constable.

The authority of a constable in serving any process, either civil or criminal, and in doing his duties generally shall extend throughout the county in which he is appointed, and in executing and serving process issued by a judge of the county court, he may exercise the same authority and powers over goods and chattels, and the persons of parties, as is granted to a sheriff or coroner, under like process issued from courts of record.

Additionally, R.C. 509.10, which states that township police constables shall keep the peace within the township territory, provides that "[e]ach constable shall apprehend, on view or warrant, and bring to justice, all felons, disturbers, and violators of the criminal laws of this state, and shall suppress all riots, affrays, and unlawful assemblies which come to his knowledge, and shall generally keep the peace in his township."

Thus, a township constable has jurisdiction throughout the county to apprehend felons and disturbers of the peace, to execute writs and process, and to pursue and arrest fugitives. *See State v. Layman*, 29 Ohio App. 3d 343, 505 N.E.2d 999 (Montgomery County 1986) (syllabus, paragraph one) ("the territorial jurisdiction of a township police constable extends throughout the county in which his township is located. (R.C. 509.01 and 509.05, applied.)"). Furthermore, the constable has the duty to keep the peace in his township. Similarly, a deputy sheriff has jurisdiction over the entire county which he serves including the townships within the county. *See Op. No. 85-021 at 2-83* ("the county sheriff has jurisdiction coextensive with the county including all townships within the county"). Moreover, a deputy sheriff is expected to comply with the law enforcement standards, policies, and techniques established by the county sheriff. *Id. See generally In re Termination of Employment; State ex rel. Geyer v. Griffin*. A township police constable, however, is expected to comply with the requirements established by the board of township trustees. *See generally* 1974 Op. Att'y Gen. No. 74-038 at 2-167 ("[t]he board of township trustees, which is charged with appointing constables for a township, must have implied power [pursuant to R.C. 509.01] to direct the activities of those constables who have been appointed, so as to most efficiently meet the needs of the townships [sic]"). Thus, each position is expected to comply with different law enforcement standards, policies, and techniques.⁵

located within the unincorporated territory of the township, provided the highway is not part of the interstate system. 1981-1982 Ohio Laws, Part II, 4361, 4363 (Am. Sub. H.B. 738, eff. June 25, 1982). Thus, a re-examination of the compatibility of the positions of township police constable and deputy sheriff is appropriate at this time.

⁵ According to your letter, "[t]here are no conflicting duties and interests...nor are any standards or policies imposed upon him as a Deputy

Additionally, I note that there are several statutes whereby the lines of control and authority between the county sheriff's department and the township constabulary might be altered, providing additional potential for conflict or incompatibility. See R.C. 311.07(B) (county sheriff may in the event of a riot, insurrection or invasion, ask the chairman of the board of township trustees to furnish such law enforcement personnel as may be necessary to preserve the public peace); R.C. 311.29(B) (county sheriff may contract with a township to provide police service); R.C. 505.50 (township trustees may enter into a contract with the county sheriff for the provision of police protection services); R.C. 509.06 (township constable may enlist the aid of the county sheriff). The possibility of either position becoming subordinate to the other pursuant to R.C. 311.07(B), R.C. 311.29(B), R.C. 505.50, or R.C. 509.06 might not be sufficient in and of itself to find the positions of deputy sheriff and township police constable incompatible. See Op. No. 87-002. These provisions, however, do present additional concerns as to the compatibility of the two positions and lend support for my conclusion that the positions are, indeed, incompatible.

Therefore, it is my opinion, and you are hereby advised that:

1. The position of deputy sheriff is incompatible with the position of village police officer, where the village is within the same county served by the deputy sheriff. (1987 Op. Att'y Gen. No. 87-002, followed.)
2. The position of deputy sheriff is incompatible with the position of township police constable, where the township is within the same county served by the deputy sheriff.

Sheriff that would conflict with his performance of duties in the...[t]ownship." However, for the reason expressed in footnote three, *supra*, I am unable to concur in your assessment that a person who holds these two positions will not be subject to a conflict of interest.