

OPINION NO. 92-024

Syllabus:

A township police officer commissioned as a special deputy sheriff is not subject to an impermissible conflict of interest, when he is not required as a special deputy sheriff to follow the law enforcement standards, policies, and techniques established by the county sheriff or to discharge any duties on behalf of the county sheriff.

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Lee Fisher, Attorney General, June 26, 1992

You have requested an opinion regarding the deputization of a township police officer by the county sheriff. According to information provided in conjunction with your request, the county sheriff neither fixes nor provides any of the township police officer's compensation. Additionally, the township police officer is not under the immediate control and supervision of the county sheriff. In light of these facts, you ask the following: "Is it a conflict of interest for a township police officer to serve as a deputy sheriff for the limited purpose of [exercising] county-wide arrest powers?"

The Jurisdiction Of A Township Police Officer

Pursuant to R.C. 505.48, a board of township trustees is authorized to create a township police district. A board of township trustees also may appoint and employ police officers to provide the same police protection services to the citizens of the township police district that a county sheriff and his deputies furnish to county residents. 1991 Op. Att'y Gen. No. 91-063 at 2-299.

As a general matter, except pursuant to an express statutory provision, a township police officer is authorized to exercise his police powers only within the territory of the township police district. *State v. Layman*, 29 Ohio App. 3d 343, 345, 505 N.E.2d 999, 1001 (Montgomery County 1986); 1985 Op. Att'y Gen. No. 85-021 at 2-82; cf. *City of Fairborn v. Munkus*, 28 Ohio St. 2d 207, 209, 277 N.E.2d 227, 228 (1971) ("[t]he general common-law rule [subject to change by statute] is that the power of a municipal police officer is limited to the boundaries of his municipality"). Specific statutory provisions do, however, authorize a township police officer, in certain situations, to exercise his police powers beyond the boundaries of the township police district that employs him. See, e.g., R.C. 177.03(A) (granting a patrolman of a township police district, as a member of an organized crime task force, the powers of a peace officer throughout the county or counties in which an investigation into organized criminal activity is undertaken); R.C. 311.07(B); R.C. 505.43; R.C. 505.431; R.C. 505.50; R.C. 737.10; R.C. 2935.02; R.C. 2935.03(D); see also 1990 Op. Att'y Gen. No. 90-012 at 2-50 and 2-51; 1986 Op. Att'y Gen. No. 86-068 at 2-375; 1968 Op. Att'y Gen. No. 68-155.

Deputization By County Sheriff

A county sheriff is authorized, pursuant to R.C. 311.04, to appoint deputy sheriffs to provide police protection throughout the county. 1990 Op. Att'y Gen. No. 90-091 at 2-391; see *In re Sulzmann*, 125 Ohio St. 594, 597, 183 N.E. 531, 532 (1932) (per curiam); see also R.C. 3.06(A); R.C. 325.17; R.C. 2935.03(A). A deputy appointed by the county sheriff may be either a regular deputy sheriff or a special deputy sheriff. 1991 Op. Att'y Gen. No. 91-037 at 2-199; see *State ex rel. Geyer v. Griffin*, 80 Ohio App. 447, 76 N.E.2d 294 (Allen County 1946). See generally Op. No. 91-063 at 2-300 (a county sheriff is responsible for determining the duty status of, and the duties to be performed by, his deputies). Since you have indicated that the township police officer is not compensated by, or under the immediate supervision and control of, the county sheriff, this analysis is limited to the appointment of the township police officer as a special deputy sheriff.¹

¹ 1991 Op. Att'y Gen. No. 91-037 at 2-199 stated that a regular deputy sheriff is a deputy sheriff "assigned to full-time duty under the supervision

Powers Of A Special Deputy Sheriff

A special deputy sheriff is a deputy "authorized to perform only some of the duties of the county sheriff, or appointed by the sheriff without being immediately assigned to perform any of his duties, but subject to duty from time to time as the sheriff in his discretion may determine." Op. No. 91-037 at 2-199; *accord State ex rel. Geyer v. Griffin*, 80 Ohio App. at 457, 76 N.E.2d at 300; *see also* Note, *Special Police: A Benefit or a Threat?*, 47 Ohio St. L.J. 261, 264 (1986). Special deputy sheriffs are also appointed to protect the property of various private entities. *State ex rel. Geyer v. Griffin*, 80 Ohio App. at 448, 76 N.E.2d at 296; Op. No. 91-037 at 2-199. These special deputy sheriffs are neither compensated by, nor under the immediate supervision and control of, the county sheriff; rather, these special deputies operate under the direction of the private entity that provides their compensation. *See* Op. No. 91-037 at 2-200. "A county sheriff, thus, has the authority to appoint 'special deputy sheriffs' who are not subject to his immediate control and supervision." *Id.* Moreover, this grant of authority includes the power to commission, as special deputy sheriffs, law enforcement officers not employed by the county sheriff, for the sole purpose of conferring upon them a portion of the law enforcement powers of the county sheriff. *Id.* at 2-199 and 2-200; *cf.* R.C. 5577.13 ("[t]he patrolmen of the county highways may be deputized by the sheriffs of the counties in which they are employed, as deputy sheriffs, but shall receive no extra compensation"). Accordingly, a county sheriff has the authority to commission a township police officer as a special deputy sheriff for the sole purpose of conferring upon him a portion of the county sheriff's law enforcement powers.

Conflict Of Interest

As noted in your request, the commissioning of a township police officer as a special deputy sheriff arguably would subject the township police officer to a potential conflict of interest. The concern about a conflict of interest is generally based upon the possibility that an individual who serves in two law enforcement positions with overlapping jurisdiction may be expected to follow different law enforcement standards, policies, and techniques. *See* 1989 Op. Att'y Gen. No. 89-044; 1987 Op. Att'y Gen. No. 87-002; 1986 Op. Att'y Gen. No. 86-007; Op. No. 85-021; *see also* 1955 Op. Att'y Gen. No. 6025, p. 650.

The commissioning of a township police officer as a special deputy sheriff in the situation presented in your request, however, does not constitute the simultaneous holding of two law enforcement positions that subject an individual to different law enforcement standards, policies, and techniques. *See* Op. No. 91-037 at 2-200 n.3. Rather, the township police officer is commissioned as a special deputy sheriff for the sole purpose of conferring county-wide arrest powers upon him. The township police officer, as a special deputy sheriff, remains under the immediate supervision and control of the township chief of police, and is required to follow, even when acting outside the territory of the township police district, the law enforcement standards, policies, and techniques established by the township. The township police officer also performs his duties on behalf of the township, even when making arrests outside of the territory of the township police district. Because the township police officer is not required as a special deputy sheriff to follow the law enforcement standards, policies, and techniques established by the county sheriff, the township police officer is not subject to conflicting duties and interests. *Cf. State v. Layman* (a township police officer was within his jurisdiction when he arrested an individual outside of the township police district, where the township trustees had also appointed him as a township constable).

A second potential conflict of interest arguably exists because under several statutes the lines of control and authority between the county sheriff's department and the township police department might become intertwined. *See* Op. No. 89-044; Op. No. 85-021. Under R.C. 311.07(B), a county sheriff may call upon any chairman of a board of township trustees within his county to furnish law

and control of the county sheriff and paid compensation from the county by the sheriff." *See State ex rel. Geyer v. Griffin*, 80 Ohio App. 447, 448-49, 76 N.E.2d 294, 296 (Allen County 1946); Note, *Special Police: A Benefit or a Threat?*, 47 Ohio St. L.J. 261, 264 (1986).

enforcement personnel and equipment to preserve the public peace and to protect persons and property in the event of riot, insurrection, or invasion. If a county sheriff were to call upon the chairman of the board of township trustees to furnish law enforcement personnel and equipment, the township police officer could be subject to the supervision of the county sheriff or a deputy sheriff assigned the responsibility of overseeing the township police officers. In addition, R.C. 311.29(B), R.C. 505.43, R.C. 505.431, and R.C. 505.50 provide, in general, for the provision of police protection services between a county and township. If, under any of these statutes, police protection services are provided to a township by the county sheriff, or received by the sheriff from a township, it is possible that the sheriff or a deputy sheriff may be placed in a position of supervising township police officers.

As indicated above, however, the township police officer, as a special deputy sheriff, does not perform any duties on behalf of the county sheriff. It, thus, follows that if police protection services are provided to the township by the county sheriff, or received by the sheriff from the township, the township police officer would not be subject to conflicting duties because the township police officer is not required as a special deputy sheriff to perform any duties on behalf of the county sheriff. Moreover, it would also be unusual for the county sheriff to delegate responsibility for the overseeing of township police officers to a special deputy sheriff who is not, as a general matter, under the county sheriff's immediate supervision and control, or delegated responsibility for the performance of any of the county sheriff's duties. The possibility that the individual as a special deputy sheriff would be delegated responsibility for overseeing the township police officers, therefore, appears remote and speculative. Where possible conflicts are remote and speculative, conflict of interest rules are not violated. 1979 Op. Att'y Gen. No. 79-111 (syllabus, paragraph three). A township police officer, accordingly, is not subject to an impermissible conflict of interest when he is not required as a special deputy sheriff to follow the law enforcement standards, policies, and techniques established by the county sheriff or to discharge any duties on behalf of the county sheriff.

Conclusion

Based upon the foregoing, it is my opinion and you are hereby advised that a township police officer commissioned as a special deputy sheriff is not subject to an impermissible conflict of interest, when he is not required as a special deputy sheriff to follow the law enforcement standards, policies, and techniques established by the county sheriff or to discharge any duties on behalf of the county sheriff.