

OPINION NO. 89-071**Syllabus:**

1. Special deputy sheriffs who are commissioned and employed by the sheriff on behalf of the county and whose primary duties are to preserve peace, protect life and property, and enforce laws are peace officers. As such, they are required to be trained and certified by the Ohio Peace Officer Training Council as peace officers pursuant to R.C. 109.77.

2. Duties 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. Special deputy sheriffs who are commissioned and employed by the sheriff on behalf of the county and who have such primary duties are peace officers who must be trained and certified pursuant to R.C. 109.77.
3. Special deputy sheriffs who are commissioned and employed by the sheriff of a county but whose primary duties do not include preserving peace, protecting life and property, and enforcing laws need not be trained and certified as peace officers pursuant to R.C. 109.77 but may, instead, receive training pursuant to R.C. 109.78.

To: Anthony L. Gretlick, Williams County Prosecuting Attorney, Bryan, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 6, 1989

I have before me your letter requesting my opinion regarding training requirements for persons employed by a county sheriff as special deputy sheriffs. Specifically you ask whether special deputy sheriffs may be trained as special police officers under R.C. 109.78 rather than receiving training as peace officers under R.C. 109.77. Your question arises because the special deputy sheriffs in question have limited duties and because special police officer training requires considerably fewer training hours than the Ohio Peace Officer Training Council program set out in R.C. 109.77. *See generally* 1 Ohio Admin. Code 109:2-1-16 (peace officer basic training course); 1 Ohio Admin. Code 109:2-3-11 (private basic training course).

Requirements pertaining to the training of peace officers generally are set forth in R.C. 109.77. R.C. 109.77 mandates, with limited exceptions, that all peace officers receive training and certification from the Ohio Peace Officer Training Council.¹ R.C. 109.77(A) states, in part:

Notwithstanding any general, special, or local law or charter to the contrary, and except as provided in division (C) of this section, *no person shall receive an original appointment on a permanent basis as a peace officer of any county...unless the person previously has been awarded a certificate by the executive director of the Ohio peace officer training council, attesting to his satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program.* Every person who is appointed on a temporary basis or for a probationary term or on other than a permanent basis as a peace officer of any county...shall forfeit his position as such unless he previously has satisfactorily completed, or within the time prescribed by rules promulgated by the attorney

¹ The certification requirements of R.C. 109.77 apply, in general, to a person receiving an original appointment. Various grandfather provisions permit persons who were employed in specified types of positions on certain dates to serve as peace officers without obtaining certification. *See* R.C. 109.77; 1 Ohio Admin. Code 109:2-1-12. For example, R.C. 109.77(D) states:

A person who was employed as a peace officer of a county, township, or municipal corporation, of the state on January 1, 1966, and who has completed at least sixteen years of full-time active service as such peace officer may receive an original appointment on a permanent basis and serve as a peace officer of a county, township, or municipal corporation, or as a state university law enforcement officer, without complying with the requirements of division (A) of this section.

I assume, for purposes of this opinion, that the special deputy sheriffs about whom you have inquired are not covered by any such grandfather provisions.

general pursuant to section 109.74 of the Revised Code, satisfactorily completes a state, county, municipal, or department of natural resources peace officer basic training program for temporary or probationary officers and is awarded a certificate by the director attesting to the satisfactory completion of the program.² (Emphasis and footnote added.)

"Peace officer" is defined in R.C. 109.71(A)(1) to mean:

A deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, 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 Ohio, ordinances of a municipal corporation, or regulations of a board of county commissioners or board of township trustees, or any such laws, ordinances or regulations.... (Emphasis added.)

Deputy sheriffs who meet the definition of "peace officer" set forth in R.C. 109.71(A)(1) are, thus, required to receive training and certification under R.C. 109.77. See 1984 Op. Att'y Gen. No. 84-008.

R.C. 109.78 provides for the certification of persons who complete approved training programs designed to qualify them to hold certain private positions. R.C. 109.78 states, in part:

(A) The executive director of the Ohio peace officer training council, on behalf of the council and in accordance with rules promulgated by the attorney general, shall *certify persons who have satisfactorily completed approved training programs designed to qualify persons for positions as special policemen, security guards, or persons otherwise privately employed in a police capacity* and issue appropriate certificates to such persons....Such programs shall cover only duties and jurisdiction of such security guards and special policemen privately employed in a police capacity when such officers do not qualify for training under section 109.71 of the Revised Code....*Such certificate or the completion of twenty years of active duty as a peace officer shall satisfy the educational requirements for appointment or commission as a special policeman or special deputy of a political subdivision of this state.*³ (Emphasis and footnote added.)

The initial language of R.C. 109.78(A) suggests that the training provided pursuant to its terms is intended for persons who are privately employed in a police capacity, and not for persons who are employed by sheriffs as their deputies. R.C. 109.78(A) further indicates that persons who are eligible for training as peace officers under R.C. 109.71 and 109.77 may not be trained, instead, under R.C. 109.78, even though they may also work as security guards or privately-employed

² Currently, there are no separate training programs authorized pursuant to R.C. 109.74 for peace officers who are employed on a temporary or other than permanent basis. Therefore, they are required to be trained and certified by the Ohio Peace Officer Training Council as peace officers pursuant to R.C. 109.77.

³ R.C. 109.78 goes on to state: "Such programs shall cover only duties and jurisdiction of such security guards and special policemen privately employed in a police capacity when such officers do not qualify for training under section 109.71 of the Revised Code." Thus a person who is eligible for training as a peace officer under R.C. 109.71-77 is ineligible for training under R.C. 109.78.

special policemen. *See generally* 1985 Op. Att'y Gen. No. 85-056. R.C. 109.78(A) does, however, expressly state that certification pursuant to its provisions or the completion of twenty years of active duty as a peace officer "shall satisfy the educational requirements for appointment or commission as a special policeman or special deputy of a political subdivision of this state." On its face, R.C. 109.78 thus indicates that certification pursuant to R.C. 109.78 is sufficient to qualify a person to serve as a "special deputy of a political subdivision of this state." This term evidently includes a special deputy employed by a county sheriff.

It is a fundamental principle of statutory construction that sections and acts relating to the same or similar subject matter should be read *in pari materia*, as though they were a single statute, and should be harmonized where possible. *See Schwartz v. McAtee*, 22 Ohio St. 3d 14, 20-21, 488 N.E.2d 479, 484-85 (1986); *Winkelfoos v. Mann*, 16 Ohio App. 3d 266, 271, 475 N.E.2d 509, 514 (Huron County 1984); *Volan v. Keller*, 20 Ohio App. 2d 204, 206, 253 N.E.2d 309, 310 (Jefferson County 1969). Therefore, in order to determine whether the training under R.C. 109.78 is adequate for the special deputy sheriffs in question, it is necessary to examine the language of R.C. 109.78 in light of R.C. 109.77. In construing these two sections together, I read the language of R.C. 109.77(A), "Notwithstanding any general, special, or local law or charter to the contrary..." as superseding contrary provisions of any statute, law, charter or ordinance, including R.C. 109.78. R.C. 109.77 requires that all peace officers receive basic peace officer training pursuant to its provisions. Therefore, notwithstanding the language of R.C. 109.78, if the special deputy sheriffs in question are peace officers, they must receive training pursuant to R.C. 109.77 and will not qualify for private basic training under R.C. 109.78. However, if the special deputy sheriffs in question are not peace officers, they fall within the statutory exception set forth in R.C. 109.78 and are qualified to hold their positions if they receive certification of training under R.C. 109.78.⁴

In 1984, I considered the definition of "peace officer" set forth in R.C. 109.71(A)(1) and stated that, in order to qualify as a peace officer under R.C. 109.71(A)(1), three criteria must be met. Op. No. 84-008. Although the statutory definition of peace officer has changed since that time, *see* Sub. H.B. 708, 117th Gen. A. (1988) (eff. April 19, 1988), the three criteria remain the same; first, a person must be appointed to one of the positions specifically enumerated in R.C. 109.71(A)(1); second, the person must be commissioned and employed by a political subdivision of the state; and third, the person's primary duties must be to preserve peace, protect life and property, and to enforce laws, ordinances or regulations. Op. No. 84-008 at 2-24.

Your question relates to special deputy sheriffs, whereas R.C. 109.71(A)(1) refers generally to deputy sheriffs. Although the term "special deputy" is used in R.C. 109.78, there is no statutory provision expressly providing for special deputy sheriffs. The position does, however, exist at common law and has long been recognized in Ohio. *See State v. McDaniel*, 44 Ohio App. 2d 163, 173-74, 337 N.E.2d 173, 180 (Franklin County 1975); *State ex rel. Geyer v. Griffin*, 80 Ohio App. 447, 457-58, 76 N.E.2d 294, 299-300 (Allen County 1946); 1986 Op. Att'y Gen. No. 86-068 at 2-381 n. 2; 1981 Op. Att'y Gen. No. 81-009; 1977 Op. Att'y Gen. No. 77-027; 1968 Op. Att'y Gen. No. 68-112; 1965 Op. Att'y Gen. No. 65-177. The term "special deputy sheriff" has been used to designate a deputy sheriff who serves on terms that are different from those on which a regular deputy serves. For example, his duties may be limited, he may be employed only intermittently as needed, or he may serve without compensation. *See, e.g., State v. Glenn*, 28 Ohio St. 3d 451, 454, 504 N.E.2d 701, 705 (1986) (concerning a reserve deputy sheriff who served without compensation), *cert. denied*, 482 U.S. 931 (1987); *State ex rel. Geyer v. Griffin*, 80 Ohio App. at 457, 76 N.E.2d at 300 ("[a] deputy sheriff may be special in the sense that he is authorized to perform only part of the duties of the sheriff, or may be special in the sense that he is appointed by the sheriff without being assigned

⁴ A county sheriff may also have employees who are not deputized. *See* R.C. 325.17; 1967 Op. Att'y Gen. No. 67-123 (modified on other grounds by 1984 Op. Att'y Gen. No. 84-008). Such employees need not receive training pursuant to R.C. 109.77 or 109.78.

to perform any duties of the sheriff but being subject to assignment to duty by the sheriff from time to time as the sheriff in his discretion may determine"); Op. No. 81-009; Op. No. 68-112 at 2-160 to 2-161 ("it is established that the sheriff may appoint individuals to carry out whatever duties he may see fit to assign them, for whatever length of time he deems such employment necessary, and such persons may be designated 'special deputy sheriffs.'). In 1977, my predecessor concluded in Op. No. 77-027 at 2-102 that all requirements for regular deputy sheriffs apply to special deputy sheriffs:

The term "special" relates not to an individual's qualification as a deputy but to the nature of his assignment as a deputy and to the fact that his commission and powers may be limited consistent with such assignment. Once he meets the general requirements of a deputy the special deputy may be required by the sheriff to perform any or all of the duties required of regular deputies. In law, the special deputy thus appointed and approved is deemed a "deputy;" there is no distinction. Nor should there be any distinction made for purposes of R.C. 311.04 and R.C. 325.17....I must conclude that a special deputy sheriff is a "deputy" within the purview of R.C. 311.04 and R.C. 325.17 [appointment of deputy sheriffs].

See also State v. Glenn, 28 Ohio St. 3d at 454, 504 N.E.2d at 705 (stating that the training requirements of the reserve deputy sheriff who served without compensation were the same as those of a full-time deputy); R.C. 3.06(A) ("[a] deputy, when duly qualified, may perform any duties of his principal"); Op. No. 85-056. Since it has been established that a special deputy sheriff is a deputy sheriff and deputy sheriffs are specifically named in R.C. 109.71(A)(1), it follows that special deputies meet the first criterion set forth in the definition of "peace officer" appearing in R.C. 109.71(A)(1).

The second criterion states that a peace officer must be commissioned and employed by a political subdivision of the state. The Williams County sheriff has stated that the special deputy sheriffs to whom your question relates are employed by the county sheriff acting on behalf of the county. They are, thus, commissioned and employed by a political subdivision. *See* R.C. 3.22-.23; R.C. 311.01; R.C. 311.04; R.C. 325.17. Therefore, they meet the second criterion set forth in R.C. 109.71(A)(1).

Finally, in order to be a peace officer under R.C. 109.71(A)(1), a person's primary duties must be to preserve peace, protect life and property and enforce laws, ordinances or regulations. The Williams County Sheriff indicated to a member of my staff that the special deputy sheriffs in that county participate in prisoner transport, routine patrol with deputies who have been certified as peace officers, and parking duties and patrol at county-wide functions such as fairs. These functions clearly include duties that relate to the preservation of peace, protection of life and property, and enforcement of the law, thereby qualifying those special deputies for classification as peace officers under R.C. 109.71(A)(1).

In 1986 the Ohio Supreme Court expressly concluded that a special deputy sheriff who was transporting a prisoner was a peace officer, even though he served without compensation and was designated as a reserve deputy sheriff. *State v. Glenn*, 28 Ohio St. 3d at 453-54, 504 N.E.2d at 705. In *Glenn* the defendant was convicted of aggravated murder of a reserve deputy sheriff. The jury recommended the death penalty pursuant to R.C. 2929.04(A)(6), which allows the death penalty to be used against anyone who commits the crime of aggravated murder of a peace officer, as the term is defined in R.C. 2935.01(B).⁵ *Glenn* appealed the sentence, claiming that the victim's status as a reserve deputy did not qualify him as a peace officer. The court disagreed and upheld the sentence, stating in relevant part:

It is uncontroverted that the victim fulfilled all the above requirements [set forth in R.C. 109.71(A)(1)] and that he was duly

⁵ R.C. 2935.01(B) defines "peace officer" to include "a sheriff, deputy sheriff...."

appointed and was in the process of activities performed pursuant to his duties to enforce Ohio's laws. While transporting the prisoner, the victim was in full uniform and driving a sheriff's squad car. Although he served without remuneration, his responsibilities and training requirements were the same as those of a full-time deputy.... We therefore conclude that one who acts as a *reserve or special deputy sheriff is a peace officer as that term is utilized in R.C. 2929.04(A)(6) and 109.71.*

28 Ohio St. 3d at 453-54, 504 N.E.2d at 705.

The *Glenn* case clearly supports the conclusion that a special deputy sheriff whose primary duties include transporting prisoners is a peace officer for purposes of R.C. 109.71. You have inquired about the proper training of special deputies whose primary duties include transporting prisoners and patrolling in squad cars with certified peace officers. On the basis of the *Glenn* case, it must be concluded that the special deputies in question have primary duties to preserve the peace, protect life and property, and enforce the law. They are, therefore, "peace officers," as that term is defined in R.C. 109.71(A)(1), and, notwithstanding the language of R.C. 109.78, are required to obtain certification and training pursuant to R.C. 109.77.

It is, therefore, my opinion and you are hereby advised that:

1. Special deputy sheriffs who are commissioned and employed by the sheriff on behalf of the county and whose primary duties are to preserve peace, protect life and property, and enforce laws are peace officers. As such, they are required to be trained and certified by the Ohio Peace Officer Training Council as peace officers pursuant to R.C. 109.77.
2. Duties 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. Special deputy sheriffs who are commissioned and employed by the sheriff on behalf of the county and who have such primary duties are peace officers who must be trained and certified pursuant to R.C. 109.77.
3. Special deputy sheriffs who are commissioned and employed by the sheriff of a county but whose primary duties do not include preserving peace, protecting life and property, and enforcing laws need not be trained and certified as peace officers pursuant to R.C. 109.77 but may, instead, receive training pursuant to R.C. 109.78.