

OPINION NO. 77-054

Syllabus:

1. R.C. 509.01 does not prohibit a Board of Township trustees from paying a police constable an annual allowance for uniforms in addition to his regular monthly salary.
2. R.C. 509.01 does not prohibit a Board of Township trustees from reim-

bursing a police constable for time lost from his regular job when the constable is called upon to testify in court.

3. The restrictions of R.C. 509.01 do not apply to officers of township police districts who are not constables.

To: David Tobin, Columbiana County Pros. Atty., Lisbon, Ohio
By: William J. Brown, Attorney General, October 3, 1977

Your request for my opinion states that the State Auditor has made findings, based upon R.C. 509.01, against some township trustees and constables in your county as a result of the local practices of giving constables an annual clothing allowance for uniforms and of paying township constables for time lost from their regular jobs when they are called upon to testify in court.

You also expressed the concern of the trustees and policemen of the townships in your county which have police districts as to whether the restrictions of R.C. 509.01 would apply to officers of those districts who are not constables. Therefore you have requested my opinion on the following questions:

1. Does R.C. 509.01 prohibit the Board of Township Trustees from paying a police constable's clothing allowance in addition to his regular compensation?
2. Does R.C. 509.01 prohibit the Board of Township Trustees from paying a police constable reimbursement for lost time to appear in Court when he had to leave his regular job to testify?
3. Do the restrictions of R.C. 509.01 also apply in similar situations to policemen of a Township Police District who are not constables?

R.C. 509.01, which prohibits payment "of fees in addition to the compensation allowed by the board (of township trustees) for services rendered as a police constable," does not prohibit allowances by the board for uniforms for township constables. The first sentence of the section specifically provides that:

The board of township trustees may designate qualified persons as police constables, and may provide such police constables, such. . . uniforms. . . as such board deems necessary.

While the section does not set forth the manner in which the uniforms should be provided, the decision of the board to pay each constable a reasonable clothing allowance is implicitly authorized by the express power to provide uniforms.

Nor does R.C. 509.01 prohibit payment for lost time from a regular job when a constable is called upon to testify in court. The prohibition in the section against payment of additional fees for services rendered as a police constable is a carry-over from the former practice of paying some constables on the basis of services actually performed for the Justice of the Peace. Under that system, the specific fees set out in R.C. 509.15 were collected from the judgment debtor and paid to the constable directly rather than to the township. Salaried constables, however, were prohibited from receiving such fees. See, 1952 O. A.G. No. 1769, p. 624. Under the present language of R.C. 509.01 the constable receives "such compensation as the board by resolution prescribes for the time actually spent in keeping the peace, protecting property, and performing duties as a police constable." This language authorizes any payment adopted by the board provided that it is reasonable and recompenses the constable for "time actually spent" in the performance of his duties. Since it is reasonably clear that the time that a constable may spend acting as a witness is "time actually spent" in the performance of his duties, I am of the opinion that a constable may be reimbursed when he is called upon to so act.

Your third inquiry questions the applicability of R.C. 509.01 to officers of township police districts who are not constables. Under R.C. 505.48, the board of township trustees may establish a police district. In creating the police force for such a district, the trustees may, at their option, designate the officers as constables. R.C. 505.49(A). When that option is taken, the compensation is controlled by the provision for township constables in R.C. 509.01. If the district police officers are designated as constables, however, then compensation is determined by the specific provisions for police district officers set forth in R.C. 505.49. When the township is not included in the class defined in R.C. 505.49(B), infra, compensation is determined in a salary schedule adopted by two-thirds of the board of township trustees. R.C. 505.49(A). In larger townships that have established a civil service commission R.C. 505.49(B) controls. It provides, in pertinent part, as follows:

Division (A) of this section does not apply to any township having a population of ten thousand or more persons residing within the township and outside of any municipal corporation, which has its own police department employing ten or more full-time paid employees, and which has a civil service commission established under division (B) of section 124.40 of the Revised Code. Such township shall comply with the procedures for the employment, promotion, and discharge of police personnel provided by Chapter 124 of the Revised Code. The board of township trustees shall determine the number of personnel required and establish salary schedules and conditions of employment not in conflict with Chapter 124, of the

Revised Code. . . This division does not apply to constables appointed pursuant to section 509.01 of the Revised Code.
(Emphasis added)

Thus, if the township has a population of 10,000 or more persons and a civil service commission has been established, then the compensation of police district officers, although determined by the board of trustees, must not conflict with R.C. Chapter 124.

In answer to your third question then, by virtue of the detailed treatment of compensation of police district officers in R.C. 505.49, and the specific exclusion of the application of that section to certain district officers who are constables, the compensation for district officers who are not constables is not controlled by R.C. 509.01.

Accordingly, in answer to your specific questions, my opinion is:

1. R.C. 509.01 does not prohibit the Board of Township Trustees from paying a police constable an annual clothing allowance in addition to his regular monthly salary.
2. R.C. 509.01 does not prohibit the Board of Township Trustees from paying a police constable reimbursement for time lost from his regular job when the constable is called upon to testify in court.
3. The restrictions of R.C. 509.01 do not apply to officers of township police districts who are not constables, but is controlled by R.C. 505.49.