

OPINION NO. 84-008**Syllabus:**

1. In order for a person to be a peace officer as defined in R.C. 109.71(A)(1), three criteria must be met. First, the person must be appointed to one of the specific positions enumerated therein. Second, the person must be commissioned or employed by a political subdivision of this state. Third, the person's primary duties must be to preserve the peace, to protect life and property and to enforce laws, ordinances or regulations. (1967 Op. Att'y Gen. No. 67-015 and 1967 Op. Att'y Gen. No. 67-123, modified. 1967 Op. Att'y Gen. No. 67-029 and 1970 Op. Att'y Gen. No. 70-073, overruled.)
2. A deputy sheriff appointed by a court of common pleas for the purpose of preserving peace within the courthouse is subject to the training and certification requirements imposed by R.C. 109.77(A).

March 1984

3. A court constable appointed by a court of common pleas pursuant to R.C. 2701.07 to preserve order within the courthouse is not subject to the training and certification requirements imposed by R.C. 109.77(A).
4. Both a deputy sheriff and a court constable are included within the definition of a law enforcement officer set forth in R.C. 2901.01(K), and may, therefore, be authorized to carry a concealed weapon when acting within the scope of their duties.

To: Vincent E. Gilmartin, Mahoning County Prosecuting Attorney, Youngstown, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 21, 1984

I have before me your request for my opinion concerning whether persons appointed by a court of common pleas for the limited purpose of maintaining order in the court must take the training offered by, and receive certification from, the Ohio Peace Officers Training Council. You also ask whether such persons may carry concealed weapons.

It appears that the Mahoning County Court of Common Pleas has recently created a security division within its court for the limited purpose of maintaining order in the courtroom and attending to any emergency that may arise in the courtroom. Among the duties suggested for such security personnel are maintaining order at courtroom events, ejecting unruly persons from the courthouse, patrolling the halls and stairways of the courthouse, and generally enforcing the peace of the courtroom.

Although your inquiry is whether Ohio Peace Officers Training Council (OPOTC) certification is necessary in order for courtroom security personnel to carry out such duties, I must first examine the authority of a court of common pleas to appoint security personnel, since the status of such appointees will determine whether they are subject to the training and certification requirements imposed by R.C. 109.77(A).

The duty to provide for a courthouse and to maintain order within it lies in the first instance with the county commissioners and the county sheriff. R.C. 307.01 states that the board of county commissioners shall provide for a courthouse, and R.C. 311.07 provides that it is the duty of the sheriff to attend upon the court of common pleas and, under the direction and control of the board of county commissioners, to have charge of the courthouse. Together these statutes place the obligation on the county, not its court, to provide for a courthouse and for the personnel to maintain order. State ex rel. Commissioners of Gallia County v. Commissioners of Meigs County, 6 Ohio Dec. 240, 241 (C.P. Meigs County 1897), aff'd, 14 Ohio C.C. 26 (4th Cir. 1897).

It is my understanding that the usual manner in which a sheriff provides security for the courthouse is by the appointment of special deputy sheriffs assigned to court security duties. I understand also, however, the Mahoning County Court of Common Pleas wishes to deviate from this procedure in that it desires to directly appoint the special deputy sheriffs to staff its security division.

The authority of a court of common pleas to appoint deputy sheriffs is very limited. Pursuant to R.C. 2301.12(B), a court of common pleas may appoint a "criminal bailiff, who shall be a deputy sheriff and hold his position at the will of such court." The duties of a criminal bailiff are set forth in R.C. 2301.15 which provides, inter alia:

The criminal bailiff shall act for the sheriff in criminal cases and matters of a criminal nature in the court of common pleas. . . . Under the direction of the sheriff, he shall be present during trials of criminal cases in such courts and during such trials perform all the duties as are performed by the sheriff. . . .

In addition, in counties where there are four or more judges of the court of common pleas, the judges of such court may appoint a chief court constable instead of a criminal bailiff.¹ Pursuant to R.C. 2301.12(C), the "chief court constable, who shall be a deputy sheriff, shall perform all the duties and give a bond required to be performed and given by a criminal bailiff, and perform such other duties as the court directs." Accordingly, pursuant to R.C. 2301.12(B) and (C), a court of common pleas may appoint either a criminal bailiff or a chief court constable and upon such appointment the appointee automatically becomes a deputy sheriff. 1931 Op. Att'y Gen. No. 2959, p. 261. A court of common pleas may direct a chief court constable to perform security duties, and a criminal bailiff may perform such duties under the direction of the sheriff with respect to criminal cases and matters of a criminal nature. Absent these provisions, however, I am aware of no general authority for a court of common pleas to appoint deputy sheriffs to perform security duties on behalf of the court.

While courts of common pleas have only limited authority to appoint deputy sheriffs and to require such appointees to perform security duties, there is an alternative available to a court of common pleas which desires to appoint security personnel to serve under the direction of such court. Pursuant to R.C. 2701.07, a court of common pleas "may appoint one or more constables to preserve order. . . and discharge such other duties as the court requires." Acting pursuant to this statute, a court of common pleas could appoint one or more persons to provide security services for the court; such appointees, however, are constables and do not acquire upon appointment the title or the status of deputy sheriffs.

I turn now to your specific question concerning whether persons appointed by a court of common pleas for the limited purposes of maintaining order in the court are required to be certified by the Ohio Peace Officer Training Council.

R.C. 109.71 creates the Ohio Peace Officer Training Council. The provisions of R.C. 109.71 through R.C. 109.79 establish minimum standards for peace officer training throughout the State. R.C. 109.77(A), which provides for the Council to certify peace officers, states in part:

Notwithstanding any general, special, or local law or charter to the contrary, no person shall, after January 1, 1966, receive an original appointment on a permanent basis as a peace officer of any county, township, or municipal corporation, or as a state university law enforcement officer unless the person has previously 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, or municipal police basic training program. . . .

A peace officer is generally defined in R.C. 109.71(A)(1) as:

[a] deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is commissioned and employed as a peace officer by a political subdivision of this state, 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. . . .² (Footnote added.)

¹ I note that R.C. 2301.02(C) provides for Mahoning County to have six judges of the court of common pleas.

² Peace officers also include policemen employed by a railroad company pursuant to R.C. 4973.17 to R.C. 4973.22 (R.C. 109.71(A)(2)), employees of the department of taxation engaged in enforcement of R.C. Chapter 5743 (R.C. 109.71(A)(3)), and undercover drug agents (R.C. 109.71(A)(4)).

In order for a person to be a peace officer as defined in R.C. 109.71(A)(1), three criteria must be met. First, the person must be appointed to one of the specific positions enumerated in the definition. Second, the person must be commissioned or employed by a political subdivision of this state. Third, the person's primary duties must be to preserve the peace, to protect life and property and to enforce laws, ordinances or regulations.

Pursuant to these provisions a person appointed by a court of common pleas pursuant to R.C. 2301.12(B) or R.C. 2301.12(C) to perform security duties on behalf of the court is a peace officer within the meaning of R.C. 109.71(A)(1) and, accordingly, is subject to the training and certification requirements imposed by R.C. 109.77(A). A person appointed pursuant to either of these provisions is a deputy sheriff. Such appointee is also an employee of the county. R.C. 2301.12(B) (compensation of criminal bailiff is to be paid from the county treasury on warrant of the auditor); R.C. 2301.12(C) (compensation of chief court constable is to be paid from the county treasury on warrant of the auditor); R.C. 124.11(A)(10) (bailiffs and constables of courts of records are in the unclassified civil service). Lastly, the anticipated duties of such appointee clearly relate to the preservation of the peace. As mentioned previously, the duties of court security personnel will include maintaining order at courtroom events, ejecting unruly persons from the courthouse, patrolling the halls and stairways of the courthouse and generally enforcing the peace of the courtroom. On the other hand, however, if the same duties are performed by a constable appointed pursuant to R.C. 2701.07, such appointee is not a peace officer for the purpose of R.C. 109.77(A), since the position of court constable is not included in the definition of peace officer set forth in R.C. 109.71(A)(1).

I realize that the foregoing test and analysis for determining whether a person is a peace officer under R.C. 109.71(A)(1) for the purpose of the training and certification requirements imposed by R.C. 109.77(A) differs substantially from the test employed by two of my predecessors in 1967 Op. Att'y Gen. No. 67-015 (a private policeman appointed pursuant to R.C. 737.05 is a peace officer for the purposes of R.C. 109.77(A)), 1967 Op. Att'y Gen. No. 67-029 (a special constable appointed pursuant to R.C. 1907.201 is a peace officer for the purposes of R.C. 109.77(A)), 1967 Op. Att'y Gen. No. 67-123 (R.C. 109.77 applies to any deputy sheriff unless the rights, powers and duties of such deputy were significantly limited by the appointing sheriff), 1970 Op. Att'y Gen. No. 70-073 (park district rangers and patrolmen are subject to training and certification requirements set forth in R.C. 109.77). I note that in 1967, however, the only definition of a peace officer for the purposes of R.C. 109.77 was that established by the Ohio Peace Officer Training Council in its administrative rules, and that that administrative definition was substantially different than the definition now set forth in R.C. 109.71(A)(1). The administrative definition relied upon by my predecessors was set forth in Rule PC-1-02 as follows:

The term "peace officer" means a member of a police force or other organization, employed or commissioned by a township, a county, or a municipal corporation, who is responsible for the enforcement of general criminal laws of the state, and empowered to carry firearms, but shall not include any person serving as such solely by virtue of his occupying other office or position, nor shall such term include a sheriff, or any person having an equivalent title who is appointed or employed by a county to exercise equivalent supervisory authority.

In 1968 the General Assembly enacted the first statutory definition of peace officer as used in R.C. 109.71 to R.C. 109.77, which definition was identical to that now set forth as R.C. 109.71(A)(1). See 133 Ohio Laws, Bk. III 2398 (Am. Sub. H.B. 575, eff. Nov. 21, 1969). In 1982 the Ohio Peace Officer Training Council amended its administrative definition of peace officer to conform to the statutory definition. See [1981-1982 Monthly Record] Ohio Admin. Code 109:2-1-02(E)(1) at 381.

For the foregoing reasons the analysis set forth in the above cited opinions of my predecessors is no longer appropriate for determining whether a person is a peace officer for the purposes of R.C. 109.77(A). Furthermore, I find I must

overrule the conclusions reached in Op. No. 67-029 and Op. No. 70-073. Court constables appointed pursuant to R.C. 1907.201 and park district rangers and patrolmen are not included in the definition of peace officer set forth in R.C. 109.71(A)(1), since these positions are not specifically enumerated therein. Since deputy sheriffs and members of a municipal police department are, however, specifically enumerated in R.C. 109.71(A)(1) and are commissioned or employed by a political subdivision of this state, see R.C. 311.04; R.C. 737.05, such employees are peace officers for purposes of R.C. 109.71(A)(1), if their primary duties are to preserve the peace, protect life and property and to enforce laws, ordinances or regulations. Op. No. 67-015 and Op. No. 67-123, modified and followed.

You have also asked me to consider whether court security personnel may be permitted to carry concealed weapons. Anyone, absent a local ordinance to the contrary, may work in uniform and carry an exposed weapon. City of Akron v. Williams, 113 Ohio App. 293, 177 N.E.2d 802, (Summit County 1960). See also Ohio Const. art. I, §4 (the right to bear arms). R.C. 2923.12(A) provides that no one may carry a concealed weapon. R.C. 2923.12(B), however, grants an exception for "law enforcement officers, authorized to carry concealed weapons or dangerous ordnance." The term "law enforcement officer" is not equivalent to "peace officer" but rather, "law enforcement officer" is more broadly defined in R.C. 2901.01(K)(1) through (8) and includes a constable as well as a deputy sheriff. R.C. 2901.01(K)(1). Thus, a courtroom constable or deputy sheriff may be authorized to carry a concealed weapon when acting within the scope of his duties.

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

1. In order for a person to be a peace officer as defined in R.C. 109.71(A)(1), three criteria must be met. First, the person must be appointed to one of the specific positions enumerated therein. Second, the person must be commissioned or employed by a political subdivision of this state. Third, the person's primary duties must be to preserve the peace, to protect life and property and to enforce laws, ordinances or regulations. (1967 Op. Att'y Gen. No. 67-015 and 1967 Op. Att'y Gen. No. 67-123, modified. 1967 Op. Att'y Gen. No. 67-029 and 1970 Op. Att'y Gen. No. 70-073, overruled.)
2. A deputy sheriff appointed by a court of common pleas for the purpose of preserving peace within the courthouse is subject to the training and certification requirements imposed by R.C. 109.77(A).
3. A court constable appointed by a court of common pleas pursuant to R.C. 2701.07 to preserve order within the courthouse is not subject to the training and certification requirements imposed by R.C. 109.77(A).
4. Both a deputy sheriff and a court constable are included within the definition of a law enforcement officer, as set forth in R.C. 2901.01(K), and may, therefore, be authorized to carry a concealed weapon when acting within the scope of their duties.