

OPINION NO. 2001-026**Syllabus:**

1. Pursuant to R.C. 311.01(F)(2), a county board of elections is responsible for determining whether, on particular facts, a person satisfies the qualifications specified in R.C. 311.01(B) for the office of county sheriff.

2. For purposes of R.C. 311.01(B)(8)(b), a village mayor is a law enforcement officer, as defined in R.C. 2901.01(A)(11), vested with duties related to the enforcement of statutes, ordinances, and codes. Whether a village mayor is employed as a law enforcement officer on a "full-time" basis, as is required by R.C. 311.01(B)(8)(b), presents a question of fact that must be resolved on a case-by-case basis by a county board of elections.
3. A village mayor is not a "peace officer," as defined in R.C. 109.71(A), for purposes of R.C. 311.01(B)(8)(a).
4. A village mayor is not a "peace officer," as defined in R.C. 109.71(A), for purposes of R.C. 311.01(B)(9)(a).
5. An administrative judge of a court of common pleas is not authorized to certify to the county board of elections that a candidate for the office of county sheriff satisfies the qualifications set forth in R.C. 311.01.

To: Matthew P. Puskarich, Harrison County Prosecuting Attorney, Cadiz, Ohio
By: Betty D. Montgomery, Attorney General, July 16, 2001

You have requested an opinion concerning the qualifications imposed by R.C. 311.01(B) on persons who seek appointment or election to the office of county sheriff. You have asked the following questions, which we have restated as a result of our conversation with you:

1. Is a village mayor a full-time law enforcement officer for purposes of R.C. 311.01(B)(8)(b) when his primary employment and source of income is as a truck driver for a bulk oil distributorship?
2. Is a village mayor a full-time peace officer for purposes of R.C. 311.01(B)(8)(a) when his primary employment and source of income is as a truck driver for a bulk oil distributorship?
3. Does experience as a village mayor qualify as supervisory experience as a peace officer at the rank of corporal or above as required by R.C. 311.01(B)(9)(a)?
4. Does an administrative judge of a court of common pleas have the authority to certify to the county board of elections that a candidate for the office of county sheriff satisfies the qualifications set forth in R.C. 311.01?¹

¹In your first and second questions you have asked whether a village mayor is a full-time law enforcement officer or peace officer for purposes of R.C. 311.01(B)(8) when his primary employment and source of income is as a truck driver for a bulk oil distributorship. In order to answer these questions it is unnecessary for us to consider the private employment of a mayor as a truck driver since such private employment does not constitute employment as a law enforcement officer or peace officer for purposes of R.C. 311.01(B)(8). See R.C. 109.71(A); R.C. 2901.01(A)(11).

You have explained that the mayor of a village in Harrison County sought to be a candidate for the office of county sheriff at the general election in November 2000. Prior to the primary election in May 2000, however, another candidate filed a timely protest with the county board of elections challenging the mayor's qualifications to serve in that office. In a unanimous decision, the county board of elections ruled that the village mayor satisfied the qualifications set forth in R.C. 311.01(B) for the office of county sheriff, and thus his name appeared on the primary election ballot.

The village mayor was not nominated at the primary election. You have stated that the mayor intends to run for the office of county sheriff in 2004. You anticipate that questions concerning the mayor's qualifications to serve as county sheriff will be raised again at that time.

In Ohio, a person is not eligible to be a candidate for, and may not be elected or appointed to, the office of county sheriff, unless he satisfies the qualifications set forth in R.C. 311.01(B). These qualifications relate to a person's citizenship, places of residence, status as an elector, education, criminal record, law enforcement experience, and supervisory experience. Pursuant to R.C. 311.01(F)(2), a county board of elections is required to "certify whether or not a candidate for the office of sheriff who has filed a declaration of candidacy, a statement of candidacy, or a declaration of intent to be a write-in candidate meets the qualifications specified in [R.C. 311.01(B)]."²

In light of the language of R.C. 311.01(F)(2), it is clear that a county board of elections is responsible for determining whether a person satisfies the qualifications specified in R.C. 311.01(B) for the office of county sheriff. *See State ex rel. Wolfe v. Delaware Cty. Bd. of Elections*, 88 Ohio St. 3d 182, 724 N.E.2d 771 (2000); *State ex rel. Snider v. Stapleton*, 65 Ohio St. 3d 40, 600 N.E.2d 240 (1992); *State ex rel. Shumate v. Portage Cty. Bd. of Elections*, 64 Ohio St. 3d 12, 591 N.E.2d 1194 (1992). *See generally State ex rel. Williams v. Board of Elections of Trumbull Cty.*, 175 Ohio St. 253, 254, 193 N.E.2d 392, 393 (1963) ("a board of elections is authorized and required in a protest proceeding to determine whether the candidate is eligible under the statutes for the office which he seeks"). Whether a person meets the qualifications established by statute involves questions of fact that must be resolved on a case-by-case basis by a county board of elections. *See, e.g., State ex rel. Wolfe v. Delaware Cty. Bd. of Elections. See generally State ex rel. Kelly v. Cuyahoga Cty. Bd. of Elections*, 70 Ohio St. 3d 413, 414, 639 N.E.2d 78, 79 (1994) ("[b]oards of elections are obligated to weigh evidence of a candidate's qualifications, and courts should not substitute their judgment for that of the board"); *State ex rel. Williams v. Board of Elections of Trumbull Cty.* (whether a candidate for the office of municipal court judge has satisfied the qualification that he be "admitted to the practice of law," as required by R.C. 1901.06, is a question

²R.C. 311.01(F)(2) also requires a county board of elections to determine whether a candidate for the office of county sheriff meets the qualifications specified in R.C. 311.01(C), which provides as follows:

Persons who meet the requirements of division (B) of this section, except the requirement of division (B)(2) of this section, may take all actions otherwise necessary to comply with division (B) of this section. If, on the applicable qualification date, no person has met all the requirements of division (B) of this section, then persons who have complied with and meet the requirements of division (B) of this section, except the requirement of division (B)(2) of this section, shall be considered qualified candidates under division (B) of this section.

of fact for a board of elections). Accordingly, pursuant to R.C. 311.01(F)(2), a county board of elections is responsible for determining whether, on particular facts, a person possesses the qualifications specified in R.C. 311.01(B) for the office of county sheriff.

The Attorney General cannot adjudicate the legal rights or responsibilities of particular persons. 1986 Op. Att'y Gen. No. 86-076 at 2-422; 1983 Op. Att'y Gen. No. 83-087 at 2-342. Rather, such authority rests exclusively with the courts. See *Stanton v. Tax Comm'n*, 114 Ohio St. 658, 672, 151 N.E. 760, 764 (1926) ("the primary functions of the judiciary are to declare what the law is and to determine the rights of parties conformably thereto"); *Village of Fairview v. Giffie*, 73 Ohio St. 183, 190, 76 N.E. 865, 867 (1905) ("it is a judicial function to hear and determine a controversy between adverse parties, to ascertain the facts, and applying the law to the facts, to render a final judgment"). In addition, a formal opinion of the Attorney General can only address questions of law, such as the meaning to be accorded particular language within a statute or the interpretation that has been placed upon such language by our courts. We are unable by means of a formal opinion to consider and decide questions of fact. 1988 Op. Att'y Gen. No. 88-008 at 2-27; 1987 Op. Att'y Gen. No. 87-082 (syllabus, paragraph three); 1986 Op. Att'y Gen. No. 86-076 at 2-422. In this instance the resolution of factual questions remains the responsibility of the county board of elections. See, e.g., 1990 Op. Att'y Gen. No. 90-032 at 2-126 (the determination whether the Department of Liquor Control should issue temporary F or F-2 permits "depends, in large part, upon particular questions of fact peculiar to each permit applicant that can be resolved only by the Department on a case-by-case basis"). See generally 1987 Op. Att'y Gen. No. 87-039 at 2-264 ("[i]t is generally appropriate for factual determinations to be made on the local level").

Accordingly, in this opinion, we cannot advise you whether a particular person who seeks election to the office of county sheriff possesses the qualifications specified in R.C. 311.01(B), and is thus eligible to appear on the ballot for that office. That is a judgment that can be rendered only by the county board of elections, and it must be based upon the board's consideration of all the facts and circumstances it believes to be relevant to that determination. See R.C. 311.01(F)(2). See generally *State ex rel. Wolfe v. Delaware Cty. Bd. of Elections* 88 Ohio St. 3d at 183, 724 N.E.2d at 772 (the decision of a county board of elections concerning a person's qualifications to be county sheriff will be set aside only if the board engaged in fraud, corruption, abuse of discretion, or clear disregard of applicable legal provisions); 1986 Op. Att'y Gen. No. 86-076 at 2-422 (the Attorney General is "not authorized to exercise on behalf of another officer or entity of the government discretion that has been bestowed by statute on that officer or entity"). We will, however, offer you our understanding of the pertinent statutory language in order to guide the county board of elections as it considers the qualifications of persons who wish to seek election to the office of county sheriff.

Let us begin with your first question, which asks whether a village mayor is a full-time law enforcement officer for purposes of R.C. 311.01(B)(8)(b). Pursuant to R.C. 311.01(B)(8), a person who seeks appointment or election to the office of county sheriff is required to have attained experience performing duties related to the enforcement of statutes, ordinances, or codes. In this regard, R.C. 311.01(B)(8) provides that a person must satisfy at least one of the following conditions:

(a) Has obtained or held, within the four-year period ending immediately prior to the qualification date, a valid basic peace officer certificate of training issued by the Ohio peace officer training commission or has been issued a certificate of training pursuant to [R.C. 5503.05], and, within the four-year period ending immediately prior to the qualification

date, has been employed as an appointee pursuant to [R.C. 5503.01] or as a full-time peace officer as defined in [R.C. 109.71] performing duties related to the enforcement of statutes, ordinances, or codes;

(b) Has obtained or held, within the three-year period ending immediately prior to the qualification date, a valid basic peace officer certificate of training issued by the Ohio peace officer training commission and has been employed for at least the last three years prior to the qualification date as a *full-time law enforcement officer, as defined in [R.C. 2901.01(A)(11)], performing duties related to the enforcement of statutes, ordinances, or codes.* (Emphasis added.)

Thus, one of the ways in which a person, who has obtained or held the requisite basic peace officer certificate of training, may satisfy the law enforcement experience qualification of R.C. 311.01(B)(8) is to have "been employed for at least the last three years prior to the qualification date as a full-time law enforcement officer, as defined in [R.C. 2901.01(A)(11)], performing duties related to the enforcement of statutes, ordinances, or codes." R.C. 311.01(B)(8)(b); *see* R.C. 311.01(H)(1) (defining "[q]ualification date," as used in R.C. 311.01).

R.C. 2901.01(A)(11) defines "law enforcement officer" for purposes of the Revised Code as including "[a] mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation." *See generally* R.C. 733.24 (a village mayor "shall be the chief conservator of the peace [within the village] and shall have the powers and duties provided by law"). Therefore, because a village mayor, in his capacity as chief conservator of the peace within the village, is a law enforcement officer, as defined in R.C. 2901.01(A)(11), a village mayor is a law enforcement officer for purposes of R.C. 311.01(B)(8)(b).

Moreover, pursuant to R.C. 733.24, a village mayor "shall be the chief conservator of the peace [within the village] and shall have the powers and duties provided by law." *See also* R.C. 2901.01(A)(11)(c). In this capacity, a village mayor is required to "see that all ordinances, bylaws, and resolutions of the legislative authority are faithfully obeyed and enforced," R.C. 733.30, and is vested, within the village, with "all the powers conferred upon sheriffs to suppress disorder and keep the peace," R.C. 1905.20(A). In addition, a village mayor is responsible for appointing and removing the village's chief of police, R.C. 737.15; R.C. 737.171, and, when authorized by the village's legislative authority, appointing deputy marshals, police officers, night guards, and special police officers and providing general rules for their stationing and transfer within the village's police department, R.C. 737.16; R.C. 737.19(A). When a deputy, officer, or employee of the police department is suspended, the village mayor is required to inquire into the cause of the suspension and render a judgment on it. R.C. 737.19(B). In the event of a riot or other emergency, a village mayor may furnish the county sheriff with village law enforcement personnel and equipment, R.C. 311.07(B), appoint additional patrolmen and officers for temporary service in the police department, R.C. 737.10, and cordon off any areas during a riot, R.C. 3761.16. A village mayor thus is vested with duties related to the enforcement of statutes, ordinances, or codes. *See generally State v. Masten*, Nos. 49327; 49328, 1985 Ohio App. LEXIS 9031, at *10 (Cuyahoga County Oct. 24, 1985) (a village mayor has a duty to enforce the laws of his village); *In re Removal of Pickering*, 25 Ohio App. 2d 58, 64, 266 N.E.2d 248, 253 (Logan County 1970) (a village mayor, "as the chief conservator of peace within the village, [has] a positive duty to suppress any riot therein and to disperse and apprehend rioters"); *City of Toledo v. Weber*, 87 Ohio Misc. 2d 26, 30, 688 N.E.2d 1146, 1149 (Toledo Mun. Ct. 1997) (a city mayor, "as the conservator of peace, is a law enforcement officer within the limits of the

city and, as such, he would be empowered to sign the Uniform Traffic Ticket charging [a] defendant with a traffic violation”).

It is thus clear that a village mayor performs duties related to the enforcement of statutes, ordinances, and codes. It must be determined, however, whether a village mayor may be considered to be employed as a “full-time” law enforcement officer as required by R.C. 311.01(B)(8)(b). The word “full-time” is not defined by statute for purposes of R.C. 311.01. *Cf.* R.C. 124.382 (defining “[f]ull-time permanent employee” for purposes of R.C. 124.382-.383 and R.C. 124.386-.388 as “an employee whose regular hours of duty total eighty hours in a pay period in a state agency, and whose appointment is not for a limited period of time”); R.C. 325.19(J)(1) (defining “[f]ull-time employee” for purposes of R.C. 325.19 as “an employee whose regular hours of service for a county total forty hours per week, or who renders any other standard of service accepted as full-time by an office, department, or agency of county service”). *See generally* R.C. 124.18(A) (“[f]orty hours shall be the standard work week for all employees whose salary or wage is paid in whole or in part by the state or by any state-supported college or university”). The word “full-time,” therefore, should be construed according to its ordinary meaning and common usage. R.C. 1.42; *see* 1986 Op. Att’y Gen. No. 86-077 at 2-428.

Webster’s New World Dictionary 564 (2d college ed. 1986) defines the adjective “full-time” as “designating, of, or engaged in work, study, etc. for specified periods regarded as taking all of one’s regular working hours.” *See The American Heritage Dictionary* 538 (2d college ed. 1982) (“full-time” means “[e]mployed for or involving a standard number of hours of working time”); *See also* 1962 Op. Att’y Gen. No. 3464, p. 971 (syllabus, paragraph two) (“[t]here is no statutory designation of what constitutes full-time employment for county employees within the purview of [R.C. 325.19], and, in the absence of such designation, a full-time employee is a person who regularly works all of the working hours required by the employer as normal working hours for his employees”). A person thus is employed as a “full-time” law enforcement officer for purposes of R.C. 311.01(B)(8)(b) when the person’s work as a law enforcement officer takes all of his regular working hours. *See* 1986 Op. Att’y Gen. No. 86-077 at 2-428.

Whether a village mayor is employed as a law enforcement officer for an amount of time regarded as taking all of his regular working hours is a question of fact that will have to be resolved by the county board of elections. *See generally* 1990 Op. Att’y Gen. No. 90-077 (syllabus) (“[t]he circumstances in which [township employees] are entitled to receive health insurance benefits under R.C. 505.60(A) depend upon whether the position is a full-time or part-time employment, as determined by the facts of each case”). *But see generally* 1986 Op. Att’y Gen. No. 86-077 at 2-428 (“[w]hether a particular individual serves on a full-time basis for purposes of R.C. 124.13 depends, in large part, upon the statutory provisions governing that individual and the position or office he occupies. The terms of such statutory provisions will ordinarily give an indication of whether the individual in question engages in work or occupies a position that takes all of his regular working hours”).³ In making this determina-

³In some instances the statutory provisions governing a position give a clear indication that a position is full-time or part-time. *See, e.g.,* R.C. 1901.08 (providing for the election of full-time and part-time municipal court judges); R.C. 1907.11 (providing for the election of part-time county court judges). *See generally* 1986 Op. Att’y Gen. No. 86-077 at 2-429 (reviewing the statutory provisions in R.C. Chapter 3501 (election procedure; election officials) and concluding that members of a county board of elections “do not serve or perform the duties of their office on a full-time basis”). In other instances, however, a review of the statutory provisions governing a position does not disclose whether the position is full-time

tion, the board may consider any particular information and facts it finds to be necessary and relevant. This may include, but is not limited to, a village mayor's specific duties related to law enforcement and the actual amount of time he spends discharging those duties and a village mayor's specific duties unrelated to law enforcement and the actual amount of time he spends discharging those duties. The board of elections may also consider the total number of working hours a village mayor devotes to discharging law enforcement duties in relation to the total number of working hours he devotes to matters unrelated to law enforcement and any other law enforcement positions that a village mayor may hold.

Therefore, in response to your first question, it is our opinion that, for purposes of R.C. 311.01(B)(8)(b), a village mayor is a law enforcement officer, as defined in R.C. 2901.01(A)(11), vested with duties related to the enforcement of statutes, ordinances, and codes. Whether a village mayor is employed as a law enforcement officer on a "full-time" basis, as is required by R.C. 311.01(B)(8)(b), presents a question of fact that must be resolved on a case-by-case basis by a county board of elections.

Your second question asks whether a village mayor is a full-time peace officer for purposes of R.C. 311.01(B)(8)(a). As explained above, R.C. 311.01(B)(8) requires a person who seeks election or appointment to the office of county sheriff to have attained experience performing duties related to the enforcement of statutes, ordinances, or codes. In addition to the other ways in which a person may satisfy the law enforcement experience qualification of R.C. 311.01(B)(8),⁴ a person, who has obtained or held the requisite basic peace officer certificate of training or has been issued a certificate of training pursuant to R.C. 5503.05, satisfies this qualification when, "within the four-year period ending immediately prior to the qualification date, [he] has been employed ... as a full-time *peace officer as defined in [R.C. 109.71]* performing duties related to the enforcement of statutes, ordinances, or codes." R.C. 311.01(B)(8)(a) (emphasis added).

R.C. 109.71(A)(1)-(19) list the positions that are included within the definition of "[p]eace officer." In order for a person to be a peace officer as defined in R.C. 109.71(A), a person must be appointed to one of the specific positions enumerated therein. *See* 1984 Op. Att'y Gen. No. 84-008 at 2-24; *see also* 1999 Op. Att'y Gen. No. 99-008 at 2-62 through 2-64. The position of village mayor is not listed in R.C. 109.71(A). Therefore, a person who serves in that position is not a peace officer as defined in R.C. 109.71(A). *See generally Fort*

or part-time. *See, e.g.,* R.C. 311.04 (a county sheriff may appoint deputy sheriffs); R.C. 504.15(A) (a board of township trustees of a limited home rule government township "shall appoint a full-time or part-time township law director"); R.C. 505.38(A) (a board of township trustees "shall provide for the employment of such firefighters as it considers best"); R.C. 737.21 (the legislative authority of a municipal corporation may "establish the hours of labor of the members of its fire department").

The statutory provisions governing the office of village mayor do not specify whether a village mayor is employed as a law enforcement officer on a full-time or part-time basis. *See generally* 1990 Op. Att'y Gen. No. 90-014 at 2-57 ("[a]n officer is not required to devote particular hours to his duties"). Absent such statutory guidance, a county board of elections must consider all the facts and circumstances it believes to be relevant, and make a determination whether a particular village mayor is employed as a law enforcement officer on a "full-time" basis, as is required by R.C. 311.01(B)(8)(b).

⁴R.C. 311.01(B)(8) sets forth several ways in which a person attains experience performing duties related to the enforcement of statutes, ordinances, or codes.

Hamilton-Hughes Mem'l Hosp. Center v. Southard, 12 Ohio St. 3d 263, 265, 466 N.E.2d 903, 905 (1984) (“[i]t is a basic doctrine of construction that the express enumeration of specific classes of persons in a statute implies that the legislature intended to exclude all others”). Because a village mayor is not a “[p]eace officer,” as defined in R.C. 109.71(A), a village mayor is not a peace officer for purposes of R.C. 311.01(B)(8)(a).

Your third question asks whether experience as a village mayor qualifies as supervisory experience as a peace officer at the rank of corporal or above for purposes of R.C. 311.01(B)(9)(a). R.C. 311.01(B)(9) requires a person who seeks election or appointment to the office of county sheriff to have two years of supervisory experience or post-secondary education. In order to satisfy this qualification, a person must satisfy at least one of the following conditions:

(a) Has at least two years of *supervisory experience as a peace officer* at the rank of corporal or above, or has been appointed pursuant to [R.C. 5503.01] and served at the rank of sergeant or above, in the five-year period ending immediately prior to the qualification date;

(b) Has completed satisfactorily at least two years of post-secondary education or the equivalent in semester or quarter hours in a college or university authorized to confer degrees by the Ohio board of regents or the comparable agency of another state in which the college or university is located. (Emphasis added.)

R.C. 311.01(B)(9). Accordingly, one of the ways in which a person may satisfy the experience or education qualification of R.C. 311.01(B)(9) is to have at least two years of supervisory experience as a peace officer at the rank of corporal or above in the five-year period ending immediately prior to the qualification date. R.C. 311.01(B)(9)(a).

Although the term “peace officer” is defined by statute for purposes of R.C. 311.01(B)(8)(a), the General Assembly has not specifically defined that term for purposes of R.C. 311.01(B)(9)(a). Nonetheless, in construing R.C. 311.01(B)(9)(a), it is useful to refer to the other provisions of R.C. 311.01 to ascertain the meaning of the term “peace officer,” as used in R.C. 311.01(B)(9)(a). See 1999 Op. Att’y Gen. No. 99-008 at 2-62. See generally *State v. Parks*, 13 Ohio App. 3d 85, 86, 468 N.E.2d 104, 107 (Franklin County 1983) (sections of a statute that relate to the same subject are to be construed together so as to give full force and effect to the legislative intent).

It is a basic rule of statutory construction “that a word repeatedly used in [a] statute will be presumed to bear the same meaning throughout the statute unless there is something to show that another meaning is intended.” *Schulholz v. Walker*, 111 Ohio St. 308, 325, 145 N.E. 537, 542 (1924); accord *Rhodes v. Weldy*, 46 Ohio St. 234, 20 N.E. 461 (1889) (syllabus, paragraph two). R.C. 311.01(B)(8)(a) uses the definition of peace officer set forth in R.C. 109.71(A). Nothing in the language or legislative history of R.C. 311.01 indicates that the General Assembly intended for the term “peace officer,” as used in R.C. 311.01(B)(9)(a), to be construed other than in accordance with R.C. 109.71(A).

We are informed that the office of the Secretary of State has consistently interpreted the term “peace officer,” as used in R.C. 311.01(B)(9)(a), in accordance with the definition of that term in R.C. 109.71(A), and has so advised county boards of elections that have sought guidance on this issue. Pursuant to R.C. 1.49(F), if a statute is ambiguous, the administrative construction of the statute may be considered. See generally *Vogel v. City of Cincinnati*, 959 F.2d 594, 598 (6th Cir. 1992) (“absent clear legislative intent, the construction given a statute by the agency that administers it is entitled to deference, provided it is

reasonable”), *cert. denied*, 506 U.S. 827 (1992); *Industrial Comm. v. Brown*, 92 Ohio St. 309, 311, 110 N.E. 744, 745 (1915) (“[a]dministrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do”). Nothing in the language of R.C. 311.01 indicates that the Secretary of State’s interpretation is unreasonable or contrary to law. *See generally State ex rel. Herman v. Klopffleisch*, 72 Ohio St. 3d 581, 586, 651 N.E.2d 995, 999 (1995) (“when an election statute is subject to two different, but equally reasonable, interpretations, the interpretation of the Secretary of State, the state’s chief election officer, is entitled to more weight”). Accordingly, finding that interpretation entitled to deference, we adopt it here, and advise you that the term “peace officer,” as it appears in R.C. 311.01(B)(9)(a), is to be construed in accordance with the definition of that term in R.C. 109.71(A).

As explained previously, the definition of “[p]eace officer” set forth in R.C. 109.71(A) does not include village mayors. Because the term “peace officer,” as used in R.C. 311.01(B)(9)(a), is to be construed in accordance with R.C. 109.71(A), a village mayor is not a “[p]eace officer” for purposes of R.C. 311.01(B)(9)(a). Therefore, a village mayor is not a “peace officer,” as defined in R.C. 109.71(A), for purposes of R.C. 311.01(B)(9)(a).

Your final question asks whether an administrative judge of a court of common pleas has the authority to certify to the county board of elections that a candidate for the office of county sheriff satisfies the qualifications set forth in R.C. 311.01. It is a well-settled proposition that common pleas court judges “when acting in a judicial capacity have some inherent power, but when acting in an administrative capacity they are pure creatures of the statute, having such power as is expressly delegated by the General Assembly together with such implied power as is necessary to carry into effect the power expressly delegated.” 1938 Op. Att’y Gen. No. 2308, vol. II, p. 821, 824; *accord* 1987 Op. Att’y Gen. No. 87-063 at 2-389.

The Ohio Supreme Court has determined that with respect to evaluating a candidate’s qualifications under R.C. 311.01, an administrative judge of a court of common pleas acts in an administrative capacity, not in a judicial capacity. *State ex rel. Shumate v. Portage Cty. Bd. of Elections*; *see also State ex rel. Snider v. Stapleton*. The duties of an administrative judge in this regard include the ministerial tasks of notifying the county board of elections of the results of a fingerprint search, R.C. 311.01(B)(6); *see also* R.C. 311.01(B)(5), forwarding the candidate’s residence and employment histories to the board, R.C. 311.01(B)(7), and taking a candidate’s declaration as to the truth of the information to verify his qualifications for the office of county sheriff, R.C. 311.01(F)(1). *See Cicchino v. Luse*, Case No. C-2-99-1174, 2000 U.S. Dist. LEXIS 10314, at *29-30 (S.D. Ohio 2000) (“[t]he only role the administrative judge plays is to review the initial application of each potential candidate [for county sheriff] and forward that information to the board of elections”).

The Ohio Supreme Court has determined further that no provision in the Revised Code authorizes an administrative judge of a court of common pleas to certify to the county board of elections that a candidate for the office of county sheriff satisfies the qualifications set forth in R.C. 311.01. *State ex rel. Shumate v. Portage Cty. Bd. of Elections*, 64 Ohio St. 3d at 17, 591 N.E.2d at 1198; *see also Cicchino v. Luse*; *State ex rel. Snider v. Stapleton*. Rather, a county board of elections evaluates a candidate’s qualifications under R.C. 311.01. *Cicchino v. Luse*; *State ex rel. Snider v. Stapleton*; *State ex rel. Shumate v. Portage Cty. Bd. of Elections*. *See generally* R.C. 311.01(F)(2) (“[e]ach board of elections shall certify whether or not a candidate for the office of sheriff who has filed a declaration of candidacy, a statement of candidacy, or a declaration of intent to be a write-in candidate meets the qualifications specified in divisions (B) and (C) of this section”); R.C. 3501.11(K) (each board of elections

shall “[r]eview, examine, and certify the sufficiency and validity of petitions and nomination papers”). Accordingly, an administrative judge of a court of common pleas is not authorized to certify to the county board of elections that a candidate for the office of county sheriff satisfies the qualifications set forth in R.C. 311.01.

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. Pursuant to R.C. 311.01(F)(2), a county board of elections is responsible for determining whether, on particular facts, a person satisfies the qualifications specified in R.C. 311.01(B) for the office of county sheriff.
2. For purposes of R.C. 311.01(B)(8)(b), a village mayor is a law enforcement officer, as defined in R.C. 2901.01(A)(11), vested with duties related to the enforcement of statutes, ordinances, and codes. Whether a village mayor is employed as a law enforcement officer on a “full-time” basis, as is required by R.C. 311.01(B)(8)(b), presents a question of fact that must be resolved on a case-by-case basis by a county board of elections.
3. A village mayor is not a “peace officer,” as defined in R.C. 109.71(A), for purposes of R.C. 311.01(B)(8)(a).
4. A village mayor is not a “peace officer,” as defined in R.C. 109.71(A), for purposes of R.C. 311.01(B)(9)(a).
5. An administrative judge of a court of common pleas is not authorized to certify to the county board of elections that a candidate for the office of county sheriff satisfies the qualifications set forth in R.C. 311.01.