

OPINION NO. 84-020**Syllabus:**

A person designated by the board of directors of a conservancy district, pursuant to R.C. 6101.75, to police the works of the district is not subject to the training and certification requirements imposed by R.C. 109.77(A).

To: Wilfred Goodwin, Executive Director, Peace Officer Training Council, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, April 30, 1984

I am in receipt of your request for my opinion concerning whether persons appointed to police the works of a conservancy district must meet the requirements of R.C. 109.71 through R.C. 109.79, specifically R.C. 109.77(A) which empowers the Ohio Peace Officer Training Council to certify peace officers.

The authority of a board of directors of a conservancy district to police its district is set forth in R.C. 6101.75, which states:

The board of directors of a conservancy district may police the works of the district, and in times of great emergency may compel assistance in the protection of such works. The board may prevent persons, vehicles, or livestock from passing over the property or works of the district at any places or in any manner which would result in damage thereto or in the opinion of the board would endanger such property or works or the safety of persons lawfully thereon.

Such employees as the board designates for that purpose have all the powers of police officers within and adjacent to the properties owned or controlled by the district. Before entering upon the exercise of such powers, each such employee shall take oath and give bond to the state, in such amount as the board prescribes, for the proper exercise of such powers. The cost of such bond shall be borne by the district.

The question presented is whether employees appointed to police the conservancy district pursuant to R.C. 6101.75 must meet the requirements of R.C. 109.71 through R.C. 109.79. 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 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 the 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;

In order for a person appointed pursuant to R.C. 6101.75 to be required to receive Council certification prior to commencing work, that person must be a peace officer as defined by R.C. 109.71(A)(1).¹ Three criteria must be satisfied to meet this definition of a peace officer. 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. 1984 Op. Att'y Gen. No. 84-008 (syllabus one).

Examining these three criteria in order, I find that employees appointed by the board of directors of the conservancy district do not meet the first requirement. These employees are not appointed, according to R.C. 6101.75, to a position as a deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or a township constable. Rather, R.C. 6101.75 refers to these persons only as employees of the conservancy district. The fact that such employees "have all the powers of police officers within and adjacent to the properties owned or controlled by the district," R.C. 6101.75, is immaterial to the question presented. Not all persons having the powers of police officers are subject to R.C. 109.77(A). R.C. 109.77(A) is applicable only to those persons who fall within the definitions of "peace officer" set forth in R.C. 109.71(A).

Having concluded that persons employed pursuant to R.C. 6101.75 do not meet the first criteria of the definition of "peace officer" set forth in R.C. 109.71(A)(1), I find it unnecessary to address the remaining two criteria.

It is my opinion, therefore, and you are hereby advised, that a person designated by the board of directors of a conservancy district, pursuant to R.C. 6101.75, to police the works of the district is not subject to the training and certification requirements imposed by R.C. 109.77(A).

¹ The term "peace officers" as used in R.C. 109.77(A) also includes 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)). These provisions obviously do not encompass persons employed by a conservancy district pursuant to R.C. 6101.75.