

## OPINION NO. 74-041

## Syllabus:

1. A private investigator licensed pursuant to R.C. Chapter 4749. is not a law enforcement officer, and has no statutory power to enforce the law.

2. A private investigator may not arrest a person for the commission of a misdemeanor, except where the investigator is employed by a merchant and has probable cause to believe that the person arrested is guilty of shoplifting. R.C. 2935.041.

3. A county court judge may not appoint a special constable pursuant to R.C. 1907.201 to guard and protect property which lies outside the territorial jurisdiction of the county court.

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To: Joseph Loha, Jefferson County Pros. Atty., Steubenville, Ohio  
By: William J. Brown, Attorney General, May 27, 1974

I have before me your request for my opinion, which presents the following questions:

"1. What are the powers and authority of a private policeman (private guard) licensed under Chapter 4749 of the Revised Code, while off the premises of his employer?

"2. Can such private policeman (private guard) arrest a person on a city street for the violation of a misdemeanor without a warrant, such misdemeanor not being committed on the premises of his employment?

"3. What are the powers of a special constable appointed by a County Court Judge under the Ohio Revised Code Section 1907.201 and 1907.211 in a municipality outside the jurisdiction of said County Court?

"4. Is a private policeman (private guard) licensed under Chapter 4749 of the Revised Code a law enforcement officer?"

Your letter refers to a "private policeman (private guard) licensed under Chapter 4749 of the Revised Code", but that Chapter actually provides for licensing of private investigators. Private policemen, appointed pursuant to R.C. 737.05 by the safety director of a municipal corporation, are police officers and public officials. Opinions No. 70-145 and 70-044, Opinions of the Attorney General for 1970; Opinion No. 66-179, Opinions of the Attorney General for 1966; and Neapolitan v. U.S. Steel Corporation, 77 Ohio L. Abs. 376 (1956). Therefore, they are exempt from the licensing requirements of R.C. Chapter 4749.

insofar as they are performing official duties as private policemen. Opinion No.70-145, supra. This exemption is provided by R.C. 4749.01, which reads in part as follows:

"As used in sections 4749.01 to 4749.10, inclusive, of the Revised Code:

"(A) 'Private investigator' means any person who engages in the business of private investigation, as an individual, a partner, or an officer of a corporation.

"(B) 'Business of private investigation' means, except when performed by one excluded under division (C) of this section, engaging in any of the following for hire:

(1) Furnishing watchmen, guards, private patrolmen, or other persons whose primary duties are to protect persons or property;

(2) Conducting any investigation relevant to any crime or wrong done or threatened, or to obtain information on the identity, habits, conduct, movements, whereabouts, affiliations, transactions, reputation, credibility, or character of any person, or to locate and recover lost or stolen property, or to determine the cause of or responsibility for any libel or slander, or any fire, accident, or damage to property, or to secure evidence for use in any legislative, administrative, or judicial investigation or proceeding."  
(Emphasis added.)

" \* \* \* \* \*

"(C) 'Private investigator' and 'business of private investigation' do not include:

"(1) Public officers and employees whose duties require them to engage in investigatory activities;

" \* \* \* \* \*

"(5) An employee in the regular course of his employment, engaged in investigating matters pertinent to the business of his employer or protecting property in the possession of his employer, provided such employee is not employed by, associated with, or acting for or on behalf of any private investigator.

" \* \* \* \* \*

(Emphasis added.)

It should also be noted that R.C. Chapter 4749. applies only to independent contractors, not to guards regularly employed by a single business to protect its property. R.C. 4749.01(C) (5); Opinion No. 70-145, supra.

In contrast to a private policeman, a private investigator is not a law enforcement officer or a public official. R.C. 4749.08 provides as follows:

"(A) No private investigator or registered employee who engages in private investigatory activities as defined in division (B) of section 4749.01 of the Revised Code, shall thereby be considered a law enforcement officer for any purpose, and nothing in Chapter 4749. of the Revised Code shall be construed as granting the right to carry a concealed weapon."

(Emphasis added.)

From your reference to R.C. Chapter 4749., I infer that your question concerns private investigators, not private policemen. Therefore, R.C. 4749.08, previously quoted, provides the answer to your fourth question.

Although you have not asked, it will be helpful to note that all private investigators need not be certified by the Peace Officer Training Council. The educational and certification requirements of R.C. 109.78 only refer to "appointment or commission as a special policeman or special deputy of a political subdivision of this state", and to employment as a special policeman or security guard by a "public or private educational institution." Unless a private investigator holds one of such positions, he is not required to attend a POTC-approved training course, although such instruction is available if he desires it.

Note also that private investigators have no authority to carry concealed weapons. R.C. 4749.08. Their right to do so is the same as that of other persons. See R.C. 2923.12(C), which provides certain affirmative defenses to the charge of carrying a concealed weapon.

With respect to your first question, the evident purpose of the General Assembly in enacting R.C. Chapter 4749. was to provide regulation for, and raise the standards of, private investigators. That Chapter does not confer any special powers or authority upon private investigators, but merely sets certain requirements which must be satisfied for one to engage in the business of private investigation. R.C. 4749.01(B), which defines "business of private investigation", makes no reference to where such business may be conducted. Thus, I must conclude that private investigators licensed pursuant to R.C. 4749.03 may engage in the business of private investigation, as defined by R.C. 4749.01(B), without restriction as to place of operation. However, since the statutes confer no law enforcement powers upon a private investigator, he has no such powers either on or off the premises of his employment.

Your second question is whether a private investigator may, without a warrant, arrest a person who has committed a misdemeanor. Prior to being amended in 1967, R.C. 2935.03 read, in part, as follows:

"A sheriff, deputy sheriff, marshal, deputy marshal, watchman, or police officer shall arrest and detain a person found violating a law of this state, or an ordinance of a municipal corporation, until a warrant can be obtained."

(Emphasis added.)

However, in 1967 the General Assembly amended that Section deleting the term "watchman" from the first sentence. (132 Ohio Laws 959). Presently that Section reads, in part, as follows:

"A sheriff, deputy sheriff, marshal, deputy marshal, or police officer shall arrest and detain a person found violating a law of this state, or an ordinance of a municipal corporation, until a warrant can be obtained."

A "watchman" was the only person mentioned in R.C. 2935.03 who is a "private investigator" as defined by R.C. 4749.01. Since the term "watchman" has been deleted from R.C. 2935.03, a private investigator may not, without a warrant, arrest a person who has committed a misdemeanor. However, since a warrant for an arrest may only be issued to a peace officer, a private investigator may not, under any circumstances, arrest a person who has committed a misdemeanor. See R.C. 2935.08 and 2935.10.

Under R.C. 2935.04 any person may arrest another whom he has reasonable cause to believe is guilty of committing a felony. That Section reads as follows:

"When a felony has been committed, or there is reasonable ground to believe that a felony has been committed, any person without a warrant may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained."

Therefore, a private investigator, like any citizen, may arrest someone who has committed a felony or he reasonably believes has committed a felony. See State v. Ball, 1 Ohio App. 2d 297 (1964) and State v. Stone, 45 Ohio Misc. 161 (1968). R.C. 2935.041 also provides that under certain circumstances a merchant or his employee or agent may detain a person who he has probable cause to believe is guilty of shoplifting. The fact that a private investigator may not arrest a person who has committed a misdemeanor does not prohibit him from exercising the authority provided by R.C. 2935.04 and 2935.041 in the appropriate situation.

Your third question concerns the powers of a special constable, appointed by a county court judge, in a municipality outside the jurisdiction of such court. Special constables are appointed pursuant to R.C. 1907.201, which reads as follows:

"Upon the written application of the director of public works or of three freeholders of the county in which a county court judge resides, a judge may appoint one or more electors of the county special constables who shall guard and protect the property of this state, or the property of such freeholders, and the property of this state under lease to such freeholders, designated in general terms in such application, from all unlawful acts, and so far as necessary for that purpose, a constable so appointed has the same authority and is subject to the same obligations as other constables."

(Emphasis added.)

The duties of special constables are limited by this Section to guarding and protecting specific property. In performing such duties a special constable has the same powers as other constables so far as they are necessary to the performance of his duties. See R.C. 509.05. Thus, for example, he has jurisdiction throughout the state when pursuing a fugitive from the law. Opinion No. 71-076, Opinions of the Attorney General for 1971.

The territorial jurisdiction of a county court consists of all territory within the county not subject to the territorial jurisdiction of any municipal court. R.C. 1907.011. I assume your question to be whether a county court judge may appoint a special constable to guard and protect property which lies outside the jurisdiction of the county court. Since I have found no authority permitting a county court judge to exceed the territorial jurisdiction of the county court in this manner, I must conclude that such an appointment may not be made.

While R.C. 1907.201 provides that a special constable has the same authority as other constables, who have county-wide jurisdiction to serve process and perform their other duties (Opinion No. 71-076, *supra*, the duties of special constables are limited to guarding certain property. It would be anomalous for a county court judge to appoint special constables whose sole duties would relate to property not within the jurisdiction of that court.

A municipal court judge has no power directly analogous to the power of a county court judge to appoint special constables. However, R.C. 737.16 authorizes the mayor of a village to appoint night watchmen and special policemen, and one of my predecessors has held that such persons may be appointed for the purpose of protecting private property. Opinion No. 5397, Opinions of the Attorney General for 1942. Similarly, R.C. 737.05 authorizes a director of public safety to commission private policemen. Although the duties of private policemen commissioned under that Section have never been defined, they could very well include duties analogous to those of special constables. Thus the General Assembly appears to have provided for the appointment of persons to guard and protect property both within and without the territorial jurisdiction of a county court.

In specific answer to your questions, it is my opinion and you are so advised, that:

1. A private investigator licensed pursuant to R.C. Chapter 4749. is not a law enforcement officer, and has no statutory power to enforce the law.
2. A private investigator may not arrest a person for the commission of a misdemeanor, except where the investigator is employed by a merchant and has probable cause to believe that the person arrested is guilty of shoplifting. R.C. 2935.041.
3. A county court judge may not appoint a special constable pursuant to R.C. 1907.201 to guard and protect property which lies outside the territorial jurisdiction of the county court.