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1. VIGILANCE CORPORATION—NO PROVISION IN LAW TO REQUIRE OFFICERS AND MEMBERS TO GIVE BOND—CHAPTER 1731. RC.
2. OFFICERS AND MEMBERS OF VIGILANCE CORPORATION—WITHIN PROHIBITION OF STATUTE—WITHOUT AUTHORITY TO GO ARMED—EXCEPTION, CIRCUMSTANCES WHICH WOULD JUSTIFY ORDINARY CITIZEN TO CARRY A WEAPON—SECTION 2923.01 RC MAKES IT A CRIME TO CARRY CONCEALED WEAPONS—NO EXCEPTION AS TO OFFICERS AND MEMBERS OF VIGILANCE CORPORATION.

SYLLABUS:

1. There is no provision in law requiring the officers and members of a vigilance corporation, organized pursuant to the provisions of Chapter 1731, Revised Code, to give bond.

2. Since Section 2923.01, Revised Code, which makes it a crime to carry concealed weapons, contains no exception from the effect of the statute in the case of officers and members of a vigilance corporation, these persons are within the prohibition of the statute and are without authority to go armed except under circumstances which would justify an ordinary citizen in carrying a weapon.

Columbus, Ohio, February 24, 1955

Hon. Dorothy Kennedy, Prosecuting Attorney
Brown County, Georgetown, Ohio

Dear Miss Kennedy:

I have before me your request for my opinion which reads as follows:

"A Ranger Unit has been organized in Brown County, pursuant to Section 1731.01 et seq., and as a consequence said unit has asked my opinion on the following questions:

"1) Is it necessary for a Ranger to give bond as a Constable would be required to do and in the same amount and manner, inasmuch as Section 1731.04 of the Revised Code provides the officer has the same power to arrest and detain offenders as is vested in constables? Or since there is no provision specifically made in the law directing such an officer to give bond, should he give any bond at all?

"2) Is the Ranger governed by the same law as a private citizen with regard to the carrying of a gun? I note that in 5 O.J. 2d, Section 27, at page 41, as to his power of arrest, the Ranger has more power than the private citizen but less than a regular police officer, but how does that statement apply to this particular question?

"I would appreciate your opinion on the above questions at your convenience."

Section 509.02, Revised Code, provides that a constable be required to give bond to the state before entering upon the discharge of his duties. The purpose of such bond is to assure the faithful and diligent discharge of such duties.

The sections with which we are here concerned are found in Chapter 1731, Revised Code, which pertains to vigilance corporations. This chapter is an outgrowth of early legislation which authorized the creation of corporations for the apprehension and conviction of horse thieves and other felons. 84 Ohio Laws, 169.

Section 1731.01, Revised Code, provides:

"Any number of persons not less than fifteen, a majority of whom must be residents of this state, may become incorporated

for the purpose of apprehending and convicting persons accused of felonies or misdemeanors.”

Authority to arrest without warrant in felony cases is found in Section 1731.03, Revised Code, which provides:

“The officers and members of an association incorporated as provided in section 1731.01 of the Revised Code may, upon the proper certificate of the presiding officer of the association, if a felony has been committed, pursue and without warrant arrest any person whom they believe or have reasonable cause to believe guilty of the offense, and may arrest and detain the alleged criminal in any county in this state to which he has fled, return him to any officer of the county in which the offense was committed, and there detain him until a legal warrant can be obtained for his arrest.”

Authority to arrest a misdemeanor upon issuance of a warrant is found in Section 1731.04, Revised Code, which provides:

“An officer or member of an association incorporated as provided in Section 1731.01 of the Revised Code, under a certificate of authority from its presiding officer, may apply for and obtain a warrant for the arrest of a person accused of a felony or a misdemeanor, and such warrant shall be issued to him by any justice of the peace or police magistrate of a municipal corporation under the same conditions as warrants are issued to constables. Under such warrant the officer or member shall have the same power to arrest and detain offenders as is vested in constables.”

It may be seen from a reading of these sections that an association organized thereunder is a purely voluntary organization. Its members contribute their services; its “purpose is the protection of its members from the depredations of criminals.” Opinion No. 1155, Opinions of the Attorney General for 1915, page 2505. Sections 1731.03 and 1731.04, Revised Code, confer upon the officers and members of such association a limited power of arrest in order to effectuate this purpose.

These sections do not impose a duty to arrest, however. The members of such an association are neither public officers nor employees, but are private citizens organized for their mutual protection.

In opinion No. 1778, Opinions of the Attorney General for 1930, page 634, my predecessor held that the fact that warrants may issue to officers and members of a vigilance corporation under the same conditions

as warrants are issued to constables does not justify the conclusion that the officers and members are entitled to receive fees in the same manner as constables. The result reached in this opinion was predicated upon the fact that no provision for fees was fixed in the statute, that the services were gratuitous, and that therefore the payment of such fees was not authorized.

I am inclined to follow this line of reasoning. No provision is made in Section 1731.01 et seq., Revised Code, for the giving of a bond by the officers and members of a vigilance corporation. Such persons are volunteers who have been given legislative authority to act, in some instances, in the manner of constables, for their mutual protection. They have no duty to act in these instances, but only the authority to do so. Under these circumstances it is difficult to conceive how a bond conditioned upon the faithful discharge of official duty could be required. If the legislature had seen fit to require the giving of a bond, it would have so provided.

This position is further fortified by referring to Section 2935.04, Revised Code, which 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.”

Under this section a private citizen is given authority to arrest, without warrant, any person whom the arrester has reasonable ground for believing has committed a felony. It is quite clear that the mere fact that such authority has been conferred upon a private citizen does not justify the conclusion that he may be required to give bond.

It is therefore my opinion that, in the absence of any statutory provision requiring the officers and members of a vigilance corporation to give bond, such persons are not required to do so.

Turning next to the second question which you have presented, I call your attention to Section 2923.01, Revised Code, the first paragraph of which reads as follows:

“No person shall carry a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person. This section does not affect the right of sheriffs, regularly appointed police officers of municipal corporations, regularly elected con-

stables, and special officers as provided by sections 311.07, 737.10, 1717.06, 1721.14 and 2917.32 of the Revised Code, to go armed when on duty. Deputy sheriffs and specially appointed police officers, except as are appointed or called into service under said sections may go armed if they first give bond to this state, to be approved by the clerk of the court of common pleas, in the sum of one thousand dollars, conditioned to save the public harmless by reason of any unlawful use of such weapons carried by them. Persons injured by such improper use may have recourse on said bond." * * *

The second paragraph of this section provides for the penalties to be imposed in cases of violation.

A prior analogous statute, Section 12819, General Code, was made the basis of a decision on a question identical to that here under consideration in Opinion No. 1778, supra. No relevant change has since been made in the statute.

In that opinion the then Attorney General reasoned that any right of a member or officer of a vigilance corporation to carry guns must exist by virtue of this section, if at all. It will be seen that the statute is prohibitory in nature, but allows for certain exceptions to the general prohibition against the carrying of weapons. The inhibition does not apply to sheriffs, regularly appointed police officers of municipal corporations, regularly elected constables, and special officers as provided by Sections 311.07, 737.10, 1717.06, 1721.14 and 2917.32 of the Revised Code. Neither does it apply to deputy sheriffs or specially appointed police officers, provided that they give bond.

Unless the officers and members of a corporation organized under Section 1731.01, Revised Code, are classified as "specially appointed police officers" within the meaning of the statute, they are not exempted from its prohibitive effect.

My predecessor held in Opinion No. 1073, Annual Report of the Attorney General for 1914, page 1039, that the officers and members of a vigilance corporation were not specially appointed police officers, and were therefore not authorized to carry weapons. It was stated at page 1041 of the opinion :

"* * * I cannot bring myself to the belief that the members of these associations are specially appointed police officers, as in its ordinary significance the expression 'police officer' means one

who is charged with the detection and arrest of those who violate any of the laws of the state or ordinances of a municipality, and who, during the time he is acting, has the obligation of continually engaging in such service. It does not comprehend the doing of police work in a particular case, nor is the expression 'specially appointed' to be regarded as in any way modifying the view which I have just expressed. * * *''

This position was again taken in Opinion No. 1778, supra. I concur with the reasoning and result of these opinions.

Accordingly, in answer to your specific inquiry, it is my opinion and you are advised that:

1. There is no provision in law requiring the officers and members of a vigilance corporation, organized pursuant to the provisions of Chapter 1731, Revised Code, to give bond.

2. Since Section 2923.01, Revised Code, which makes it a crime to carry concealed weapons, contains no exception from the effect of the statute in the case of officers and members of a vigilance corporation, these persons are within the prohibition of the statute and are without authority to go armed except under circumstances which would justify an ordinary citizen in carrying a weapon.

Respectfully,

C. WILLIAM O'NEILL

Attorney General