

OPINION NO. 74-038

Syllabus:

1. A township constable who has qualified under R.C. 109.77, and has been appointed under R.C. 509.01, may only be removed or suspended pursuant to R.C. 505.491, et seq. In the absence of such a removal or suspension, he may continue to perform the duties and exercise the authority provided him by statute.

2. A board of township trustees has implied authority under R.C. 509.01 to coordinate the activities of available constables in such matters as traffic patrols, but may not by resolution prohibit a constable from exercising his statutory powers and duties.

To: Lawrence S. Huffman, Allen County Pros. Atty., Lima, Ohio
By: William J. Brown, Attorney General, May 7, 1974

Your request for my opinion reads as follows:

"Prior to January 1, 1972 Bath Township, Allen County, Ohio had four part time police constables who were employed on a year to year basis at a designated salary. However, on January 1, 1972 the trustees felt that it would be more advantageous to the township to hire a full time police constable and not re-employ the part time constables. They therefore did not appropriate any money for the payment of salaries of part time constables. One of the part time constables continues to exercise his authority as a constable, wears his uniform and patrols the township in his own vehicle, all without compensation. This part time constable has been awarded a certificate attesting to satisfactory completion of an approved training program as required by Section 109.77 of the Revised Code. We therefore request your opinion on the following question.

"May a person designated as a police constable pursuant to Section 509.01 of the Revised Code who has completed the approved police training program but who is not receiving any compensation from the township trustees because of their decision to use only full time constables continue to exercise the authority of a constable, wear his uniform and make traffic arrests? If the answer to the former question is in the affirmative, to what degree and in what matters may the township trustees direct his activities?"

R.C. 509.01 provides for the appointment of constables by a board of township trustees.

"The board of township trustees may designate any qualified persons as police constables, and may provide such police constables, such automobiles, communication systems, uniforms, and

police equipment as such board deems necessary. Police constables so designated, who have been awarded a certificate attesting to satisfactory completion of an approved state, county, or municipal police basic training program, as required by section 109.77 of the Revised Code, may be removed or suspended only under the conditions and by the procedures in sections 505.491 to 505.495 inclusive, of the Revised Code. Any other police constable shall serve at the pleasure of the township trustees. In case of removal or suspension of any police constable, an appeal may be had from the decision of the board to the court of common pleas of the county, to determine the sufficiency of the cause of removal or suspension. Such appeal shall be taken within ten days of written notice to the police constable of the decision of the board. The board may pay each police constable, from the general funds of the township, such compensation as the board by resolution prescribes for the time actually spent in keeping the peace, protecting property, and performing duties as a police constable. Such police constable shall not be paid fees in addition to the compensation allowed by the board for services rendered as a police constable. All constable fees provided for by section 509.15 of the Revised Code, where due for services rendered while the police constable performing such services is being compensated as a police constable for his performance shall be paid into the general fund of the town ip." (Emphasis added.)

The emph zed language was added by H.B. 191, which became effective on November 24, 1967. The title of that bill shows that it was designed to provide a degree of job security or tenure to constables who had qualified under R.C. 109.77. Opinion No. 70-032, Opinions of the Attorney General for 1970. Prior to this change, all police constables served at the pleasure of the township trustees. See Opinion No. 66-088, Opinions of the Attorney General for 1959, p. 138. However, H.P. No. 191 provided a qualified constable with tenure that could be denied only where some form of delinquency, as set out in R.C. 505.491, et seq., could be established.

Since the constable in question has been awarded a certificate attesting to satisfactory completion of an approved training program as required by R.C. 109.77, and since he was designated a police constable by the board of trustees pursuant to R.C. 509.01, it follows that he may only be removed under the conditions set out in R.C. 505.491, et seq. It is our understanding, pursuant to conversations between this office and yours, that none of the grounds set out in those Sections is applicable to the present situation. Consequently, the constable may not be removed and he may continue to perform the duties and exercise the authority provided him by statute.

Your second question is to what degree and in what matters may the trustees direct the constable's activities. Continuing authority in the trustees to direct and supervise the activities

of constables must necessarily be inferred from the board's original appointive power under R.C. 509.01 and other powers specifically provided by statute. See, for example, Opinion No. 65-177, Opinions of the Attorney General for 1965, in which my predecessor reasoned that by virtue of its power to set compensation for constables, a board of township trustees had the power to determine the hours when the constable is on duty, and to determine when the constable could carry a concealed weapon.

The board of township trustees, which is charged with appointing constables for a township, must have implied power to direct the activities of those constables who have been appointed, so as to most efficiently meet the needs of the townships. This may include the designation of duty hours and territorial assignments, as in the case of traffic patrols.

However, the trustees' implied authority may not be construed to restrict the exercise and performance of specific statutory powers and duties imposed directly on qualified constables. Many duties of constables are set out by statute and require no resolution or action by the township trustees beyond the original appointment of the constable. Sparling and Porter v. Todd, 27 Ohio St. 52 (1875); R.C. 509.05; R.C. 509.10.

Thus, while a constable initially derives his position from the trustee's action, his authority is statutory, and in effect may at times exceed even that of the township trustees. See, for example, Opinion No. 3286, Opinions of the Attorney General for 1962, p. 709. In that Opinion my predecessor concluded that a board of township trustees lacked authority to prohibit the operation of vending trucks sounding bells or loud-speakers, from which ice cream and popsicles are sold on township streets and highways, but that under R.C. 509.10 a township constable had authority to apprehend operators of such trucks who are in violation of the state statute on disturbance of the peace.

It follows that beyond the board's power to coordinate activities of its constables a constable acts independently of the township trustees in the performance of certain statutorily prescribed duties and such performance may not be prohibited by the trustees. To allow a different construction would cause an absurd result in that a board of trustees could effectively by-pass the provisions of R.C. 505.491 et seq. and suspend a constable by a resolution restricting his activity. A reasonable interpretation of a statute must be adopted wherever possible. R.C. 1.47; Opinion No. 73-094, Opinions of the Attorney General for 1973; Opinion No. 73-083, Opinions of the Attorney General for 1973; Opinion No. 73-058, Opinions of the Attorney General for 1973.

I conclude, therefore, that while a board of township trustees has implied authority to coordinate the use of available constables to efficiently meet the needs of the township, and to supervise pursuant to R.C. 505.491 a constable's performance of his duties, such authority may not be construed to defeat the clear intent of the legislature in directing the performance of certain duties by duly appointed and qualified constables. When a board of trustees feels that a constable is abusing his authority, R.C. 505.491, et seq., provides the proper course of action.

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

1. A township constable who has qualified under R.C. 109.77, and has been appointed under R.C. 509.01, may only be removed or suspended pursuant to R.C. 505.491, et seq. In the absence of such a removal or suspension, he may continue to perform the duties and exercise the authority provided him by statute.

2. A board of township trustees has implied authority under R.C. 509.01 to coordinate the activities of available constables in such matters as traffic patrols, but may not by resolution prohibit a constable from exercising his statutory powers and duties.