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SHERIFF, DEPUTY—NOT ON COUNTY PAYROLL—EMPLOYED BY PRIVATE BUSINESS CONCERN—DUTY TO PRESERVE ORDER ON PREMISES OF EMPLOYER—COUNTY COMMISSIONERS NOT AUTHORIZED TO PURCHASE UNIFORM.

SYLLABUS:

County commissioners are not authorized to purchase a uniform for a deputy sheriff who is not on the payroll of the county, but whose principal employment is by a private business concern and whose duty is to preserve order on the premises of his employer.

Columbus, Ohio, July 3, 1946

Honorable Robert M. Betz, Prosecuting Attorney
Gallipolis, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"On January 1, 1945, the Gallia County Sheriff appointed 'X' as a deputy sheriff, said appointment being approved by the then Common Pleas Judge. 'X' was not placed upon the county payroll as a full-time deputy sheriff, but was merely available for emergency duty.

Subsequently, 'X' went on more or less regular duty at several taverns located in the county, his principal responsibility being the preservation of order at those establishments. The proprietors of the various taverns paid him a weekly, or monthly salary for such services, and he is still engaged in that work. He is, in addition, at the call of the Sheriff for regular police duty, including the enforcement of the motor vehicle laws.

Some two or three months ago, the Sheriff determined that 'X' could more effectively perform his duties if properly uniformed, and pursuant to such determination, purchased 'X' a complete uniform. The Commissioners, upon presentation of the bill, refused to pay the same, for the reason that 'X' was not a regular employee inasmuch as he was not a paid county employee.

Will you please let me have your opinion as to whether or not the Commissioners *may* legally furnish such equipment under the provisions of Section 2419, of the General Code of Ohio."

Section 12616-2, General Code, reads as follows:

"Every member of the state highway patrol and every other peace officer, *while on duty for the exclusive or main purpose of enforcing the motor vehicle or traffic laws of this state*, provided the same be punishable as a misdemeanor, *shall wear a distinctive uniform*. The superintendent of the state highway patrol shall specify what shall constitute a distinctive uniform in accordance with this section, except that the sheriff of a county and the police department of a municipality shall determine the uniform for their respective departments." (Emphasis added.)

It will be noted that there is nothing in the above section which places upon the county commissioners, or any other officer or board of the county,

specifically the duty to furnish or pay for such uniform. County commissioners, however, have the authority, coupled with the duty, to provide offices for county officers, and other public buildings and equipment incidental to the administration of the business of the county.

Section 2419, General Code, reads as follows:

“A court house, jail, public comfort station, offices for county officers and an infirmary shall be provided by the commissioners when in their judgment they or any of them are needed. Such buildings and offices shall be of such style, dimensions and expense as the commissioners determine. They shall also provide all the equipment, stationery and postage, as the county commissioners may deem necessary for the proper and convenient conduct of such offices, and such facilities as will result in expeditious and economical administration of the said county offices. They shall provide all rooms, fire and burglar-proof vaults and safes and other means of security in the office of the county treasurer, necessary for the protection of public moneys and property therein.”

This section does not contain any reference to uniforms for a sheriff's deputies and if it contains authority for the furnishing of such uniforms by the commissioners such authority will have to be found in the provision of that section which requires them to provide “equipment * * * as the county commissioners may deem necessary for the proper and convenient conduct of such offices and such facilities as will result in expeditious and economical administration of the said county offices.”

Section 2419, *supra*, has been under consideration by several attorneys general with respect to the authority of the commissioners to purchase certain equipment. It was held in 1922 Opinions of the Attorney General, page 396, that the commissioners have authority to purchase weighing jacks for use by deputy sheriffs for weighing trucks upon the road to see that they are not overloaded.

In 1927 Attorney General's Opinions, page 151, it was held that the commissioners may purchase handcuffs and pistols for the sheriff.

In 1931 Opinions of the Attorney General, page 149, it was held that they are authorized to purchase tear gas protective equipment for the county treasurer's office.

In 1935 Opinions of the Attorney General, page 512, it was held that the commissioners may purchase surgical instruments for the use of the coroner.

In an opinion rendered by my predecessor found in 1939 Opinions of the Attorney General, page 1518, it was held:

“County commissioners, by virtue of Section 2419, General Code, have the authority to purchase for the sheriff and his deputies the uniforms required by Section 12616-2, General Code.”

In the course of that opinion it was pointed out that by the provisions of Section 13432-1, General Code, the sheriff, deputy sheriff and certain other officers were designated as “peace officers” and given authority to arrest and detain any person found violating a law of the state or an ordinance of any city or village. It was further pointed out that it was the duty of the sheriff to enforce motor vehicle and traffic laws as well as other laws of the state.

It will be noted that Section 12616-2 *supra* only requires a peace officer to wear a uniform “while on duty for the *exclusive or main purpose* of enforcing the motor vehicle or traffic laws of this state.

There is nothing in that statute which forbids him doing occasional traffic duty without wearing a uniform. Nor is there any penalty for failure to wear a uniform even if he is detailed mainly or exclusively for such duty, except that by the terms of Section 12616-3, General Code, he may not testify if he makes an arrest.

The statement of facts in your letter indicates that the deputy in question has never been on the county payroll and that his sole duties have been under private employment by certain “taverns” located in the county, but that he is subject to call by the sheriff for regular police duty including enforcement of the motor vehicle laws. There is nothing to indicate that he ever has been or will be called on for such police or traffic duties. Your letter further states that the sheriff determined that “X” could more effectively perform the duties if properly uniformed. Apparently the only excuse for putting him into a uniform is to make him a more impressive figure in keeping order in the resorts where he is employed. The county commissioners under Section 2419 *supra* are only authorized to supply such equipment as they “*deem necessary for the*

proper and convenient conduct of such offices." The employment and duties of this deputy appear to me to have little or no relation to the public service.

I am in accord with the general statement of my predecessor in the 1939 opinion, but am not willing to extend it beyond what I believe to be the limits of the legislative intent. Accordingly, it is my opinion that the county commissioners are not authorized to purchase a uniform for a deputy sheriff who is not on the payroll of the county, but whose principal employment is by a private business concern and whose duty is to preserve order on the premises of his employer.

Respectfully,

HUGH S. JENKINS
Attorney General