

OPINION NO. 73-055

Syllabus:

1. A volunteer deputy sheriff, operating an ambulance service, is granted immunity under R.C. 2305.23, in administering emergency care or treatment to an individual at the scene of an emergency, unless his acts constitute willful or wanton misconduct.

2. If a lawsuit is filed against a volunteer deputy sheriff, operating an ambulance service pursuant to R.C. 307.051, for injuries sustained as a result of his acts in administering emergency care or treatment to an individual at the scene of an emergency, the county prosecutor is required to supply a defense, if he concludes, after examination of the facts, that the deputy sheriff was acting in good faith.

To: Stephan M. Gabalac, Summit County Pros. Atty., Akron, Ohio
By: William J. Brown, Attorney General, June 8, 1973

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

The Summit County Sheriff's Office proposes to operate emergency ambulance service in certain portions of Summit County where such is not avail-

able due to the cessation of ambulance service from the private sector. It is proposed that the Sheriff will supply the ambulance and equipment which will be staffed by members of their special deputies staff all of whom are volunteers who will assist the Sheriff on many occasions but are not members of the Sheriff's employed staff. These volunteers will man the equipment and respond to emergency situations through the Sheriff's dispatching units and remove the injured to hospitals. The special deputies will have undergone specialized and accredited first aid training, they will receive no remuneration for their services and there will be no charge made by the Sheriff's Office to the injured who would benefit from the service.

The questions are as follows:

1. Does the Good Samaritan Statute, Ohio Revised Code, Section 2305.23, provide the protection from personal liability suits for these individuals who would be rendering a public service?
2. If a law suit were filed against these individuals, could the Prosecutor supply a defense in the instant case?

The only authority I find for the operation of an ambulance service by the county sheriff appears in R.C. 307.051, and I assume that the plan you describe is based on that Section. In pertinent part it prescribes:

A board of county commissioners may provide ambulance service or may enter into a contract with one or more counties, townships, municipal corporations, or private ambulance owners, regardless of whether such counties, townships, municipal corporations, or private ambulance owners are located within or without the state, in order to obtain ambulance service, or to obtain additional ambulance service in times of emergency. Such contracts shall not restrict the operation of other ambulance services in the county.

When such service is provided by the board, the service may be administered by the board, by the county sheriff, or by another county officer or employee designated by the board. All rules and regulations, including the determining of reasonable rates, necessary for the establishment, operation, and maintenance of such service shall be adopted by the board. (Emphasis added.)

Although there is no statutory authorization for the appointment of "special" deputy sheriffs, it seems well settled that the sheriff has a common law right to make such appointments. The sheriff may fix the compensation of such special deputies; he may fix their hours of employment; and he may determine when they are on duty. Geyer v. Griffin 80 Ohio App. 447, 457 (1946); Opinion No. 65-177, Opinions of the Attorney General for

1965; Opinion No. 1645, Opinions of the Attorney General for 1958 and Opinion No. 68-112, Opinions of the Attorney General for 1968. I see no reason, therefore, why a special deputy cannot be on duty as a member of an ambulance squad on a volunteer basis.

R.C. 2305.23, commonly referred to as Ohio's "Good Samaritan" Statute, reads in its entirety as follows:

No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct.

Nothing in this section applies to the administering of such care or treatment where the same is rendered for remuneration or with the expectation of remuneration.

Statutes similar to the foregoing are presently in effect in the majority of states. Although the provisions vary widely from state to state, the uniform purpose is to encourage prompt treatment of injured persons at the scene of an emergency. Prior to the enactment of these statutes, only callous disregard for the misfortunes of strangers immunized the bystander from liability. The purpose was to change this unfortunate situation by eliminating the likelihood that emergency assistance might later result in civil liability.

Some of these statutes extend immunity only to limited groups, such as doctors, nurses, or others in some way related to the practice of medicine. R.C. 2305.23, however, contains no such limitation. It expressly provides for immunity from civil liability to every person who gratuitously administers emergency care at the scene of such emergency.

There is no reason why this immunity, extended to all other persons, should be withheld from special deputy sheriffs who act as volunteer operators of an ambulance service. If the legislative intent, which was to facilitate the prompt treatment of injured persons, is to be given effect, immunity must be granted to all persons who render assistance at the scene of an emergency.

In light of the foregoing, I think it clear that special deputy sheriffs who operate an ambulance service on a volunteer basis, and who administer emergency care to injured persons at the scene of an emergency, are granted immunity from civil liability under R.C. 2305.23. It should be noted, however, that R.C. 2305.23 does not extend absolute immunity to those persons administering emergency care. The statute does not protect acts that constitute either wanton or willful misconduct. There is, therefore, a possibility of a lawsuit.

Your second question asks whether, in that event, the county prosecutor may defend such volunteer deputy sheriffs.

R.C. 309.09, which concerns the duties of a prosecuting attorney, provides in part, as follows:

The prosecuting attorney shall be the legal adviser of the board of county commissioners,

board of elections, and all other county officers and boards, including all tax supported public libraries, and any of them may require written opinions or instructions from him in matters connected with their official duties. We shall prosecute and defend all suits and actions which any such officer or board directs or to which it is a party, and no county officer may employ any other counsel, or attorney at the expense of the court, except as provided in section 305.14 of the Revised Code. (Emphasis added.)

It was long ago determined by one of my predecessors, in Opinion No. 1750, Opinions of the Attorney General for 1933, that although a deputy sheriff is not an officer of the state for all purposes, he does come within that term as it is used in R.C. 309.09. He is, therefore, entitled to the legal assistance of the prosecuting attorney in certain instances. The syllabus of opinion No. 1750, supra, reads as follows:

It is the duty of a prosecuting attorney to defend a county sheriff and deputy in actions brought against them for damages for false arrest, if the facts and circumstances show that the suits arise out of a well intended attempt on the part of such officers to perform their official duties.

A number of recent Opinions have followed the same line of reasoning. In Opinion No. 71-080, Opinions of the Attorney General for 1971, the syllabus reads as follows:

When city police officers have been indicted by a federal grand jury for violation of 18 U.S.C. 242, it is the duty of the city solicitor to examine carefully all the facts and circumstances on which the charge is based and to determine whether such facts and circumstances indicate a good faith attempt on the part of the officers to perform the duties of their official position. If the solicitor, following such evaluation, concludes that there was a good faith attempt by the officers to perform their official duties, he is then authorized to undertake their defense. (Emphasis added.)

See also Opinion No. 4567, Opinions of the Attorney General for 1954, Opinion No. 72-076, Opinions of the Attorney General for 1972, and Opinion No. 73-029, Opinions of the Attorney General for 1973.

I conclude, therefore, that if a suit is filed against a volunteer deputy sheriff for damages, arising from acts committed while providing ambulance service pursuant to R.C. 307.051, the county prosecutor is required to supply a defense, if he concludes that the deputy sheriff was acting in good faith.

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

1. A volunteer deputy sheriff, operating an ambulance service, is granted immunity under R.C. 2305.23, in administering emergency care or treatment to an individual at the scene of

an emergency, unless his acts constitute willful or wanton misconduct.

2. If a lawsuit is filed against a volunteer deputy sheriff, operating an ambulance service pursuant to R.C. 307.051, for injuries sustained as a result of his acts in administering emergency care or treatment to an individual at the scene of an emergency, the county prosecutor is required to supply a defense, if he concludes, after examination of the facts, that the deputy sheriff was acting in good faith.