

OPINION NO. 77-027

Syllabus:

A special deputy sheriff is a "deputy" as that term is used in R.C. 311.04 and R.C. 325.17, and such special deputies may, therefore, be compensated from the same fund as regular deputies.

To: David E. Bowers, Allen County Pros. Atty., Lima, Ohio
By: William J. Brown, Attorney General, May 23, 1977

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

"This request concerns the manner in which a special deputy may be compensated for services rendered. First, the question as to whether the position of special deputy exists was resolved in the affirmative by one of your predecessors. 65 Att'y Gen. Op. 177 (1965). The question then becomes one of whether a special deputy is considered a 'deputy' as that word is used in the language of §§ 311.04 and 325.17, Ohio Revised Code. If a special deputy is a deputy under these sections, would it then be necessary to pay him from the general fund as the opinion in 69 Att'y Gen. Op. 90 (1969) suggests? If he is not a deputy for purposes of those sections, could he then be paid from the Sheriff's 'furtherance of justice fund' which was created by §325.071 Ohio Revised Code. . . ."

Your first question concerns whether a special deputy is a "deputy" for purposes of R.C. 311.04 and R.C. 325.17. R.C. 311.04 provides for the appointment of a special deputy as follows:

"The sheriff may appoint, in writing, one or more deputies. Thereupon such writing shall be filed by the sheriff with the clerk of the

court of common pleas, who shall enter it upon the journal of such court. The clerk's fees for such filing and journal entry shall be paid by the sheriff. In cases of emergency the sheriff may request of the sheriff of another county the aid of qualified deputies serving in such other counties of the state, and if the consent of the sheriff of such other county is received, the deputies while so assigned shall be deemed to be the deputies of the sheriff of the county requesting aid. No judge of a county court or mayor shall be appointed a deputy."

Sections 325.17 and 3.06, Revised Code, provide for the duties, length of appointment and compensation of a deputy as follows:

Section 325.17, supra.

"The officers mentioned in section 325.27 of the Revised Code may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, fix the compensation of such employees and discharge them, and shall file certificates of such action with the county auditor. Such compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for such office. When so fixed, the compensation of each such deputy, assistant, bookkeeper, clerk, and other employee shall be paid byweekly from the county treasury, upon the warrant of the auditor. . . ."

Section 3.06, supra.

"(A) A deputy, when qualified, may perform any duties of his principal. A deputy or clerk, appointed in pursuance of law, holds the appointment only during the pleasure of the officer appointing him. . . ."

It should be noted that none of the above sections make any reference to "special" deputy sheriffs. Nor do I find any other section of the Revised Code which defines a "special" deputy or his duties. As you have indicated, however, one of my predecessors did recognize the existence of that position. See 1965 Op. Atty. Gen. No. 65-177; 1968 Op. Atty. Gen. No. 68-112. Those opinions relied on State ex rel. Geyer v. Griffin, 80 Ohio App. 447, 76 N.E. 2d 294 (Allen Co. Ct. App. 1946) in which the court held that a special deputy sheriff who fulfills all other requirements upon appointments by the sheriff, qualifies as a lawful deputy sheriff, over whom the sheriff has complete authority. The court stated, at page 458:

". . . A sheriff is vested with absolute discretion to determine what deputies shall be employed, the length of their employment, and the duties of his office to be performed by them, and subject to the statutory restriction as to the

aggregate of compensation to be paid for his office, to fix the compensation of such deputies. As the sheriff is vested with this discretion, the common pleas judge was without authority to place any limitation on the duties to be performed by the relator as special deputy sheriff and consequently any representations made by the sheriff to the common pleas judge as to any limitation on relator's employment were immaterial.

"For the reasons mentioned, the appointment of the relator as a special deputy sheriff and the approval thereof by the common pleas judge, and relator qualifying for such office by taking the oath of office and giving bond in conformity with the statutory requirements, constituted relator a lawful (de jure) deputy sheriff employable as the sheriff saw fit. Relator's subsequent employment and the fixing of his compensation by the sheriff and the certification of his action by the sheriff to the county auditor entitled relator to payment from the county treasury for the services rendered by him, at the rate fixed by the sheriff. . . ."

At page 457, the case further stated that "In the absence of . . . a statutory restriction, the common law prevails. . . ."

It follows that, to the extent necessitated by his assignment, a "special" deputy sheriff must meet all the requirements of a regular deputy. See 1967 Op. Atty. Gen. No. 67-123. The term "special" relates not to an individual's qualification as a deputy but to the nature of his assignment as a deputy and to the fact that his commission and powers may be limited consistent with such assignment. Once he meets the general requirements of a deputy the special deputy may be required by the sheriff to perform any or all of the duties required of regular deputies. In law, the special deputy thus appointed and approved is deemed a "deputy;" there is no distinction. Nor should there be any distinction made for purposes of R.C. 311.04 and R.C. 325.17. In specific answer to your first question, I must conclude that a special deputy sheriff is a "deputy" within the purview of R.C. 311.04 and R.C. 325.17.

Based on the above answer to the first question you ask whether such a deputy must be paid from the general fund, as suggested in 1969 Op. Atty. Gen. No. 69-090. In that opinion my predecessor concluded that, since specific sections of the Revised Code provide money for transporting prisoners and traveling to a sheriff's convention, it is unnecessary to look to R.C. 325.071, a general, "furtherance of justice" fund. Similarly, R.C. 325.17 states that "each deputy" shall be compensated from the county treasury. Again, there is no distinction made between a regular or general deputy and a special deputy.

It follows that all deputies, both regular and special, should be paid from the same general fund. Since regular and special deputies are appointed in the same manner, by the sheriff, and may perform some or all of the same

duties, there is no reason to compensate them differently or from different funds.

- In specific answer to your question, it is my opinion
and you are so advised that a special deputy sheriff is
a "deputy" as that term is used in R.C. 311.04 and R.C.
- 325.17, and such special deputies may, therefore, be
compensated from the same fund as regular deputies.