

6777

1. CONSTABLE—REGULARLY ELECTED AND ALSO APPOINTED POLICE CONSTABLE—COMPENSATED BY VIRTUE OF SECTION 509.16 RC—FEES PROVIDED FOR BY SECTION 509.15 RC—COLLECTED AND PAID INTO GENERAL FUND OF TOWNSHIP.
2. CONSTABLE—APPOINTED POLICE BUT NOT ALSO REGULARLY ELECTED CONSTABLE—NO AUTHORITY TO COLLECT FEES PROVIDED FOR IN SECTION 509.15 RC.

SYLLABUS:

1. The fees provided by Section 509.15, Revised Code, shall be collected and paid into the general fund of the township for services rendered before a justice of the peace court by a "regularly elected" constable who has also been appointed a police constable and is being compensated as such by virtue of Section 509.16, Revised Code.

2. There is no authority in law to collect the fees provided in Section 509.15, Revised Code, for the services rendered by a person designated as a police constable under Section 509.16, Revised Code, when such person is not also a "regularly elected" constable.

Columbus, Ohio, June 28, 1956

Hon. H. Dennis Dannley, Prosecuting Attorney
Medina County, Medina, Ohio

Dear Sir:

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

"Under Section 509.16 The Township Trustee may designate any qualified person as a Police Constable.

1. If the person appointed, as Police Constable, is also an elected constable of the Township, is he required to charge the fees established under Section 509.15 in Civil and Criminal cases and pay over said fees into the General Fund of said Township?

2. If the person appointed, as Police Constable, holds no office as elected Constable in the Township, then is that person, under the law, compelled to charge the fees established under Section 509.15 for the performance of his duty, both Civilly and Criminally, and then in turn pay those fees into the General Fund of the Township?

It is assumed that a salary is established for the Police Constable mentioned in both of the above questions by the Trustees of the Township."

Section 509.16, Revised Code, to which you refer, provides:

"The board of township trustees may designate any qualified person as a police constable. 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 constable performing such services is being compensated as a police constable for his performance, shall be paid into the general fund of the township."

Reference in this section is made to Section 509.15, Revised Code, which provides for the fees of constables, and reads in pertinent part as follows:

"For services actually rendered and expenses incurred, regularly elected and qualified constables shall be entitled to receive fees and expenses, to be taxed as costs and collected from the judgment debtor, * * *."

In the first situation you present, the person is a "regularly elected and qualified" constable so that he is clearly within the provisions of Section 509.15, supra, insofar as the costs of his services should be "collected from the judgment debtor." Such person is further a police constable appointed and compensated by virtue of Section 509.16, supra. In Opinion No. 1769, Opinions of the Attorney General for 1952, page 624, I considered a similar situation and there said in the third paragraph of the syllabus:

"3. Police constables who are paid the compensation provided in Section 3348, General Code (now Section 509.16, Revised Code), may not lawfully be paid any of the fees for which provision is made in Section 3347, General Code (now Section 509.15, Revised Code)."

As such fees have been collected for such police constables services and since such police constable is ineligible to receive the fees by virtue of this compensation, the last sentence of Section 509.16, is clearly applicable and such fees as were due and collected for the constables services "shall be paid into the general fund of the township."

In regard to police constables who are not also "regularly elected and qualified" constables, as described in your second question, I said in Opinion No. 1769, supra, that such persons may not lawfully be paid the fees provided for in Section 509.15, supra. Although such person may not personally receive the fees the problem remains whether or not the fees for his services should be collected and paid into the general fund of the township.

In Opinion No. 4755, Opinions of the Attorney General for 1955, I considered the status of such an appointed police constable in relation to

a municipal court. I there said in construing the last sentence in Section 509.16, *supra* :

“* * * it is to be noted that the former section authorizes payment into the township treasury only of ‘constable fees provided for by Section 509.15 of the Revised Code, *where due* for services rendered * * *.’ (Emphasis added.) Section 509.15, Revised Code, only authorizes fees where services have been performed by ‘regularly *elected* and qualified constables.’ Accordingly, if the individual concerned were not a ‘regularly elected’ constable, who has also been appointed a police constable, this section would not authorize the payment into the county treasury of any fees in connection with services he renders in a municipal court.”

This reasoning is equally applicable in the present case, and fees may only be collected and paid into the township treasury when the police constable performing the services is also a “regularly elected” constable. There is a sound basis in the rules of statutory construction for such a result. Section 509.16, *supra*, refers to the “constable fees” while a “constable” is being compensated as a “police constable.” The rule is stated in 37 Ohio Jurisprudence, 570, that :

“Indeed, it has been declared to be the duty of the court, where different words are used in a statute, to give to each word a separate meaning, if consistent with the fair interpretation of the act.”

Thus “constable” cannot be synonymous with “police constable” and must be restricted to mean that fees may be collected only where the services have been rendered by a “regularly elected” constable.

Accordingly it is my opinion that :

1. The fees provided by Section 509.15, Revised Code, shall be collected and paid into the general fund of the township for services rendered before a justice of the peace of the court by a “regularly elected” constable who has also been appointed a police constable and is being compensated as such by virtue of Section 509.16, Revised Code.

2. There is no authority in law to collect the fees provided in Section 509.15, Revised Code, for the services rendered by a person designated as a police constable under Section 509.16, Revised Code, when such person is not also a “regularly elected” constable.

Respectfully,

C. WILLIAM O'NEILL
Attorney General