

court is convinced by proper action and proceedings that through inadvertence or otherwise in the presentation of the cause, the findings of the court should be modified, and does modify them.

Respectfully

THOMAS J. HERBERT,  
*Attorney General.*

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1066.

COUNTY COMMISSIONERS — UNIFORMS—1. HAVE AUTHORITY TO PURCHASE FOR SHERIFF AND DEPUTIES —SECTIONS 2419, 12616-2, G. C.—TOWNSHIP TRUSTEES—CONSTABLES—2. NO AUTHORITY TO PURCHASE UNIFORMS.

*SYLLABUS:*

1. *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.*

2. *Township trustees have no authority to purchase for constables the uniforms required by Section 12616-2, General Code.*

COLUMBUS, OHIO, August 19, 1939.

HON. A. ROSS SIVERLING, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR: Your recent request for my opinion reads as follows:

“I respectfully request your opinion pertaining to the following questions:

G. C. 12616-2 requires that the State Highway Patrol and every other ‘peace officer’ shall wear a distinctive uniform, while on duty for the exclusive or main purpose of enforcing the motor vehicle laws.

Question: Can the County Commissioners, by virtue of G. C. 2419, provide sheriffs and their deputies with distinctive uniforms? Can the township trustees purchase distinctive uniforms for police constables whose duties include enforcement of the motor vehicle laws?”

The questions you have presented arise from the enactment of Section 12616-2, General Code, by the 93rd General Assembly, which section became effective August 3, 1939. This section provides:

“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.”

It will be seen that this section provides that every peace officer, while on duty for the exclusive or main purpose of enforcing the state motor vehicle or traffic laws, if the same be punishable as a misdemeanor, shall wear a distinctive uniform.

So far as the duties of the sheriff are concerned, Section 2833, General Code, provides, *inter alia* :

“Each sheriff shall preserve the public peace and cause all persons guilty of breach thereof, within his knowledge or view, to enter into recognizances with sureties to keep the peace and to appear at the succeeding term of the common pleas court of the proper county and commit them to jail in case of refusal.”

In interpreting Section 2833, *supra*, the court, in the case of *In Re Sulzman*, 29 O. N. P. (N. S.) 92, said at page 98 :

“The courts of Ohio hold a sheriff to be a law enforcement officer, and it is the view of this court that this means he shall enforce all state laws within his county, including the laws against gambling.”

It is stated in 36 O. J., at page 642 :

“The rights, powers, and duties of sheriffs and constables extend into practically every field of the Ohio law \* \* \*.”

In addition, Section 13432-1, General Code, provides in part as follows :

“A sheriff, deputy sheriff, marshal, deputy marshal, watchman or police officer, herein designated as ‘peace officers,’ shall arrest and detain a person found violating a law of this state, or an ordinance of a city or village, until a warrant can be obtained.”

It seems clear that it is the duty of sheriffs to enforce motor vehicle and traffic laws, as well as the other laws of the state.

Since the enactment of Section 12616-2, *supra*, if the sheriff and his deputies are to enforce the traffic laws of the state, they must wear distinctive uniforms while on duty for the exclusive or main purpose of enforcing such laws.

In view of this conclusion, it appears that Section 2419, General Code, is directly applicable. This section, in setting out the duties of the county commissioners with reference to other county officers, provides:

“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. \* \* \*.”

It was held in 1927 O. A. G., No. 101, that the county commissioners may purchase handcuffs and pistols for the sheriff. In 1938 O. A. G., No. 1952, it was ruled that the commissioners might purchase a camera, police siren and a high powered rifle for the sheriff. The instant case is even stronger for the reason that Section 12616-2, General Code, makes such a uniform necessary equipment if the sheriff is to properly carry out his duties.

Inasmuch as uniforms are necessary equipment for sheriffs if such officers are to be on duty exclusively and for the main purpose of enforcing traffic laws, which is a part of their duty, it seems clear that county commissioners may purchase for county sheriffs the uniforms required by Section 12616-2, General Code.

With regard to your second question, however, the above reasoning will not apply. There is no authority for township trustees to furnish any supplies or equipment for constables. Such officer receives no compensation from the township trustees and he must provide his own automobile, gun, etc. The determination of what constitutes a distinctive uniform for constables is to be made by the Superintendent of the State Highway Patrol pursuant to the provisions of Section 12616-2, *supra*. The right of the Superintendent of the State Highway Patrol to make this determination is exclusive and it cannot be made either by the township trustees or the constables and I have been informed that the Superintendent of the State Highway Patrol has made this designation of what constitutes a distinctive uniform pursuant to the authority granted him by law.

It is well settled that public officers have only such powers as are expressly granted them by statute or which may be implied from those expressly granted. There is no general grant of authority to township trustees as exists with reference to county commissioners by virtue of Section 2419, *supra*. Consequently, in the absence of such authority, I am constrained to the view that township trustees have no authority to purchase such uniforms.

In view of the above and in specific answer to your inquiry, I am of

the opinion that: (1) 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; (2) Township trustees have no authority to purchase for constables the uniforms required by Section 12616-2, General Code.

Respectfully

THOMAS J. HERBERT,  
*Attorney General.*

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1067.

STATE TEACHERS' RETIREMENT SYSTEM—APPLICATION  
FOR RETIREMENT—OPTION—NO PROVISION IN LAW  
FOR TEACHER IF HE DIES BEFORE END OF SCHOOL  
YEAR TO EXERCISE OPTION—SECTION 7896-42, G. C.

*SYLLABUS:*

*The law makes no provision whereby a teacher member of the State Teachers' Retirement System applying for retirement, may exercise the option spoken of in Section 7896-42, General Code, if he dies before the end of the school year in which he makes application for retirement.*

COLUMBUS, OHIO, August 19, 1939.

HON. W. E. KERSHNER, *Secretary, State Teachers Retirement System, Ohio State Savings Building, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

"Section 7896-42, G. C., provides that a teacher, upon retirement, may exercise certain options to take effect at the time of his retirement. In a certain case we have this year, a teacher who proposed to retire and who was very ill put in his application and exercised an option and died on May 12th. His widow now claims that the option must go into effect September first even though her husband died before the end of the year.

The specific question on which I should like your opinion is:

When can a teacher, applying for retirement, exercise an option so that the option will go into effect the following September first, even though the teacher may have died previous to that time?"