

3481

POLICE EQUIPMENT FOR POLICE CONSTABLES APPOINTED  
BY TOWNSHIP TRUSTEES—TRUSTEES WITHOUT LEGAL  
AUTHORITY TO PURCHASE—SECTION 509.16 RC.

SYLLABUS:

Township trustees are without legal authority to buy police equipment for police constables appointed by them pursuant to the provisions of Section 509.16 of the Revised Code.

Columbus, Ohio, February 9, 1954

Hon. William A. Ambrose, Prosecuting Attorney  
Mahoning County, Youngstown, Ohio

Dear Sir :

I have before me your letter asking my opinion as to the authority of the township trustees to purchase police equipment for regularly employed salaried police constables. The statutory provision relative to the appointment of police constables is found in Section 509.16 of the Revised Code, and reads as follows :

“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.”

Prior to the recent codification, this section appeared in substantially the same form as Section 3348, General Code. In its earlier form that statute provided that, “The trustees of a township may designate any duly elected and qualified constables as police constables.” (Emphasis added.) A change was made in 1951, whereby the trustees, in making such appointment, are no longer required to designate a *constable* to act as police

constable, but are authorized to designate "any qualified person" as such officer.

The only other reference, so far as I have found, to the police constable is that found in Section 1901.32 Revised Code, which is a part of the Municipal Court Act of 1951. This section reads in part:

"(D) Every police officer of any municipal corporation or police constable of a township within the territory is ex officio a deputy bailiff of the court in and for the municipal corporation or township within which he is commissioned as such police officer or police constable, and shall perform such duties in respect to cases within his jurisdiction as are required of him by a judge of said court or by the clerk or bailiff or deputy bailiffs thereof, without additional compensation. \* \* \*"

It appears that the powers and duties of a police constable are in a measure related to those of an elected constable and that he is governed more or less by the laws relating to elected constables, although the present provision of the statute puts him, to a certain degree, in a class by himself.

The statutes are silent as to any more definite enumeration of his duties, and there is no indication in the law that he acts under the orders of or subject to the control of the township trustees or of any other officer except in so far as he acts as a deputy bailiff to a municipal court. It would seem to follow from the statute relative to his appointment that the trustees could dispense with his services at any time they saw fit.

The law is absolutely silent as to any provision by the township trustees for his equipment or transportation. However, the same may be said as to elected constables. Both the police constables and the regularly elected constables manifestly have certain duties that would involve traveling and they must incur some expense in that respect, as well as in providing certain equipment necessary or useful in their work. The regular constables are allowed mileage for the distance necessarily traveled by them in serving writs, orders and notices, to wit, 50¢ for the first mile and for each additional mile 15¢. There is no provision in the section relating to the appointment of police constables for allowing any mileage for their traveling.

It would appear that the legislature has seen fit to leave police constables as well as elected constables to their own resources in providing themselves means of transportation and other equipment suitable for their duties as peace officers. If there is a defect in the legislation on this subject, it must be remedied by the legislature.

I note a former opinion, to wit No. 1066, Opinions of the Attorney General for 1939, page 1518, in which it was held:

"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."

The uniforms referred to in the second branch of the above syllabus, were those mentioned in Section 12616-2, General Code, requiring the state highway patrol and every other peace officer to wear a distinctive uniform while on duty for the exclusive or main purpose of enforcing the motor vehicle laws. The then Attorney General called attention to the authority given to the county commissioners by Section 2419 of the General Code, to provide all necessary equipment for the proper and convenient conduct of the various county offices. Attention was further called to several opinions in which by virtue of that section it was held that county commissioners could purchase necessary equipment for the sheriff and his deputies, such as handcuffs and pistols, a camera, police siren, and high powered rifles. Attention was further called to the fact that there was nothing in the statutes of a corresponding nature authorizing township trustees to furnish supplies or equipment for constables. It is true that the constables dealt with in that opinion were the elected constables who are not appointed or paid by the trustees, but I do not see that the police constables are favored by the law as to their police equipment. In the absence of any such authority given to the township trustees by statute the then Attorney General applied the well established rule that public officers and boards created by statute, have only such powers as are expressly granted to them by statute or implied from the grant as necessary for carrying out the powers granted. As to this proposition generally, see 32 Ohio Jurisprudence, pages 933 and 934.

Accordingly, in specific answer to your question it is my opinion that township trustees are without legal authority to buy police equipment for police constables appointed by them pursuant to the provisions of Section 509.16 of the Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General