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POLICEMAN, SPECIAL—MAY LAWFULLY CARRY CONCEALED WEAPONS, WHILE ON DUTY—REQUIRED TO FURNISH BOND, ONE THOUSAND DOLLARS — SECTIONS 7925, 7925-1, 12819 GENERAL CODE.

SYLLABUS:

Special policemen, duly appointed and qualified under the provisions of Sections 7925 and 7925-1, General Code, by the authorities named in such sections may lawfully carry concealed weapons while on duty, provided such appointees give bond in the sum of one thousand dollars, as required by the provisions of Section 12819 of the General Code.

Columbus, Ohio, February 20, 1942.

Mr. B. F. Renkert, Business Manager, Kent State University,
Kent, Ohio.

Dear Sir:

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

“A recent news release which came to our attention stated that no authority existed in the present Code for guards and policemen to carry firearms. In order to carry firearms, it would be necessary for such guards and policemen to be sworn in as Deputy Sheriffs.

Section 7925, General Code, states that ‘the board of trustees of Ohio, Miami, Ohio state, Bowling Green state, Kent state and Wilberforce universities, and the board of control of the Ohio agricultural experiment station are hereby authorized to designate one or more employes of the institution, as special policemen, and as such said employes shall take an oath of office, wear the badge of office, and give bond to the state of Ohio for the proper and faithful discharge of their duties in such amount as the board of trustees may require.’

Inasmuch as there is no particular reference in Section 7925 permitting such special policemen to carry firearms nor is any reference made in Section 7925-1, General Code, to this matter, will you, therefore, kindly advise us if special policemen under Sections 7925 and 7925-1 are permitted to carry firearms while on duty or if it would be necessary for said policemen to be sworn in as Deputy Sheriffs?”

Sections 7925 and 7925-1, General Code, respectively provide as follows:

Section 7925:

“The board of trustees of Ohio, Miami, Ohio state, Bowling Green state, Kent state and Wilberforce universities, and the board of control of the Ohio agricultural experiment station are hereby authorized to designate one or more employes of the institution, as special policemen, and as such said employes shall take an oath of office, wear the badge of office, and give bond to the state of Ohio for the proper and faithful discharge of their duties in such amount as the board of trustees may require.”

Section 7925-1:

“It shall be the duty of such officers to protect the property of such institution, suppress nuisances and disturbances and breaches of the peace, and enforce laws for the preservation of good order. Upon view or information they may arrest, without warrant, any person trespassing upon the grounds or destroying property of the institution, or violating a law of the state or violating a rule or regulation properly prescribed by the governing board of the institution, and particularly regulations regarding automobiles or other traffic on the premises under the control of such governing board, and bring such person before the court of common pleas, or other local court of competent jurisdiction, or a magistrate within the county, to be dealt with according to law.”

Section 12819, General Code, is also pertinent to your inquiry. This section reads:

“Whoever carries a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person shall be fined not to exceed five hundred dollars, or imprisoned in the county jail or workhouse not less than thirty days nor more than six months, or imprisoned in the penitentiary not less than one year nor more than three years. Provided, however, that this act (G.C. sec. 12819) shall not affect the right of sheriffs, regularly appointed police officers of incorporated cities and villages, regularly elected constables, and special officers as provided by sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed when on duty. Provided further, that it shall be lawful for deputy sheriffs and specially appointed police officers, except as are appointed or called into service by virtue of the authority of said sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed if they first give bond to the state of Ohio, to be approved by the clerk of the court of common pleas, in the sum of one thousand dollars, conditioned to save the public harmless by reason of any unlawful use of such weapons carried by them; and any person injured by such improper use may have recourse on said bond.”

As stated in Opinion 4793, rendered under date of February 9, 1942, to the State Bridge Commission of Ohio:

Of the sections of the General Code named in Section 12819, Section 2833 prescribes the general powers and duties of county sheriffs and provides inter alia that in 'the execution of the duties required of him by law, the sheriff may call to his aid such person or persons or power of the county as may be necessary.' Section 4373 authorizes appointment by the mayor of a city of additional patrolmen and officers for temporary service in 'case of riot or other like emergency.' Section 10070 has to do with agents of humane societies. Section 10108 makes provision for 'day and night watchman of their grounds,' by the cemetery officers named in such section. And Section 12857 relates to persons appointed 'by a sheriff, coroner, constable or other ministerial officer' to assist in apprehending and conveying a criminal or one charged with crime. Obviously guards of the kind concerned in your inquiry do not come within any of the exceptions above outlined.

Nor do they come within the provisions of Section 9150, General Code, authorizing the Governor to appoint policemen for banks, building and loan associations and railroads of the kinds designated in such section."

While the type of special policemen authorized by Sections 7925 and 7925-1, supra, is not included in the specific exceptions enumerated in Section 12819, supra, viz., 2833, 4373, 10070, 10108 and 12857, you will note that Section 12819 expressly and specifically provides "that it shall be lawful for * * * specially appointed police officers" other than those referred to in the above enumerated sections, to go armed if they first give bond to the state of Ohio in the sum of one thousand dollars. This bond is, of course, additional to that required by the provisions of Section 7925, supra, which is a general official bond conditioned upon the proper and faithful performance of the duties of the position or office and not a bond especially pertaining to the carrying of concealed weapons.

Certainly those institutional employes lawfully designated as special policemen are "specially appointed police officers," as that term is used in Section 12819. They are expressly so called in the statute. And they are required to take an oath of office, wear the badge of office, and give bond for the faithful discharge of their duties. Moreover, they are broadly empowered in Section 7925-1 to suppress nuisances and disturbances and breaches of the peace, enforce laws for the preservation of good order,

and upon view or information to arrest without a warrant any person trespassing upon the institutional grounds or destroying the property thereof or *violating a law of this state*. In addition, they are given peculiar powers with reference to regulations pertaining to traffic on the premises of the appointing authority.

In the New Century Dictionary the word "police" is defined as follows:

"The regulation and control of a community, esp. with reference to the maintenance of public order, safety, health, morals, etc.; also, the department of the government concerned with this, esp. with the maintenance of order; also, an organized civil force for maintaining order, preventing and detecting crime, and enforcing the laws; the members of such a force (construed as pl.); hence any body of men officially maintained or employed to keep order, enforce regulations, etc.; * * *"

In Vol. II, Hale's Pleas of the Crown, p. 805 and 806, it is said that:

"There are certain officers and ministers of public justice that, *virtute officii*, are empowered by law to arrest felons, or those that are suspected of felony; and that, before conviction, and also before indictment. * * * The officers that I herein principally intend are (1) justices of the peace, (2) sheriffs, (3) coroners, (4) constables, (5) watchmen. And when I mention these I also include all that come in their aid and assistance; for every man in such cases is bound to be aiding and assisting these officers, upon their charge and summons, in preserving the peace and apprehending of malefactors, especially felons."

In commenting upon this section, it was held in the case of *Porter v. State*, 124 Ga. 297, 52 S.E. 283, 2 L.R.A. (N.S.) 730 (1905), the court quoting the above passage with approval, that the "term 'policeman' has been held to be the legal equivalent of 'watchman' at common law with respect to the power to arrest without warrant," citing with approval the case of *The State v. Evans*, 161 Mo. 95, 61 S.W. 590, 84 Am.St.Rep. 669 (1900), in which the same conclusion was reached.

While the above discussion has to do with the carrying of concealed weapons, that is, the type of weapon ordinarily carried by an officer of the law, it is noted that your request is concerned only with "firearms." In this connection it should be pointed out that there is nothing in the law of Ohio that prohibits or makes it a crime to carry a firearm in the

open, that is, one that is not concealed, except that by the terms of Section 12819-4, machine guns, light machine guns or sub-machine guns may only be owned, possessed, transported or carried by the officers named in such section and in accordance with the provisions thereof.

In view of the plain wording of the sections of the General Code under consideration, upon reason and upon the authorities cited, it is my opinion that special policemen, duly appointed and qualified under the provisions of Sections 7925 and 7925-1, by the authorities named in such section may lawfully carry concealed weapons while on duty, provided such appointees give bond in the sum of one thousand dollars, as required by the provisions of Section 12819 of the General Code.

Respectfully,

THOMAS J. HERBERT
Attorney General.