

OPINION NO. 88-048

Syllabus:

1. As used in R.C. 311.01(B)(8), the phrase "valid certificate of training as a law enforcement officer" is not limited to a peace officer certificate earned pursuant to R.C. 109.77.
2. A person who has held, within three years prior to the qualification date, a valid certificate of training for a position as a law enforcement officer compensated with governmental funds, meets the requirement for the position of county sheriff set forth in R.C. 311.01(B)(8). R.C. 311.01(B)(8) does not require that such person actually has been compensated with governmental funds either for training or for performance of his duties as a law enforcement officer.

3. Experience as a county probation officer qualifies as law enforcement experience for purposes of R.C. 311.01(B)(9).

To: John H. Roszmann, Fayette County Prosecuting Attorney, Washington Court House, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, July 6, 1988

I have before me your request for my opinion on several questions concerning the qualifications imposed by R.C. 311.01(B) on candidates for county sheriff. In light of discussions between you and a member of my staff, I have rephrased your questions as follows:

1. Is the "valid certificate of training as a law enforcement officer" required under R.C. 311.01(B)(8) limited to a peace officer certificate earned pursuant to R.C. 109.77?
2. Under R.C. 311.01(B)(8), must a candidate for county sheriff have been compensated with governmental funds for his duties as a law enforcement officer or must the training to obtain a certificate have been paid for with governmental funds?
3. Does experience as a county probation officer qualify as law enforcement experience under R.C. 311.01(B)(9)?

R.C. 311.01(A) provides for the election of a county sheriff every four years. R.C. 311.01(B) lists the qualifications a person must have in order to be eligible for the position of county sheriff. Under R.C. 311.01(B)(8), a candidate for county sheriff must "[have] held, within three years prior to the qualification date, a valid certificate of training as a law enforcement officer compensated with governmental funds." (Emphasis added.)

In your first question, you ask whether the valid certificate of training as a law enforcement officer required under R.C. 311.01(B)(8) is limited to a peace officer certificate earned pursuant to R.C. 109.77. R.C. 109.71-.80 establishes a program for ensuring that Ohio peace officers receive adequate training. R.C. 109.71 creates the Peace Officer Training Council (POTC). R.C. 109.75 authorizes the executive director of the POTC to approve peace officer training schools. See also R.C. 109.73 (requiring the POTC to recommend rules pertaining to peace officer training to the attorney general). R.C. 109.77 requires, with certain exceptions, that a person seeking an appointment as a peace officer first obtain a certificate attesting to that person's satisfactory completion of an approved training program. You ask whether the "valid certificate of training as a law enforcement officer" required under R.C. 311.01(B)(8) is limited to a certificate earned pursuant to R.C. 109.77.

In attempting to ascertain the General Assembly's intention in the enactment of a statute, it may be helpful to compare language used in related statutes. See generally *Lake Shore Electric Ry. Co. v. PUCO*, 115 Ohio St. 311, 319, 154 N.E. 239, 242 (1926) (had the General Assembly intended a term to have a particular meaning, it could easily have found language to express that purpose, having used such language in other connections). It is noteworthy that R.C. 311.01(D) refers to a "training course conducted by the Ohio peace officer training council pursuant to division (A) of section 109.80 of the Revised Code". By contrast, R.C. 311.01(B)(8) does not specifically refer to POTC training, but instead requires only that each candidate have held a "valid certificate of training as a law enforcement officer." It is apparent, therefore, that if the General Assembly had intended that R.C. 311.01(B)(8) require POTC training, it could easily have found the means to express that intention, having used appropriate language to effect that purpose in another division of R.C. 311.01. Thus, I conclude that as used in R.C. 311.01(B)(8), the phrase "valid certificate of training as a law enforcement officer" is not limited to a peace officer certificate earned pursuant to R.C. 109.77.

I turn now to your second question, in which you ask whether under R.C. 311.01(B)(8), a candidate for county sheriff must have been compensated with

governmental funds for his duties as a law enforcement officer, or whether the training to obtain a valid certificate must have been paid for with governmental funds. Pursuant to R.C. 311.01(B)(8), a candidate for sheriff is required to "[have] held, within three years prior to the qualification date, a valid certificate of training as a law enforcement officer *compensated with governmental funds.*" (Emphasis added.) R.C. 1.42 requires that statutes be construed using rules of grammar and common usage. I conclude that in R.C. 311.01(B)(8), the phrase "compensated with governmental funds" modifies the term "law enforcement officer." I reach this conclusion because the immediate antecedent of "compensated with governmental funds" is "law enforcement officer." *See generally Carter v. Division of Water*, 146 Ohio St. 203, 209, 65 N.E.2d 63, 66 (1946) (citing the rule of statutory construction that qualifying or limiting words refer solely to the last antecedent). Therefore, the training need not have been paid for with governmental funds, and I conclude that a person who has held, within three years prior to the qualification date,¹ a valid certificate of training for a position as a law enforcement officer compensated with governmental funds meets the requirement for the position of county sheriff set forth in R.C. 311.01(B)(8).

Your question raises the issue of whether volunteer service as a law enforcement officer meets the requirement set forth in R.C. 311.01(B)(8), since a volunteer is not "compensated with governmental funds." While the language of the statute is far from clear in this regard, I find it most likely that the General Assembly did not intend to exclude volunteer law enforcement officers from qualifying as candidates for county sheriff. Rather, it appears that the General Assembly intended to exclude persons whose only training is for a private security force. Thus, a person who holds a certificate of training for a law enforcement officer position which normally is compensated by governmental funds fulfills the requirement in R.C. 311.01(B)(8). R.C. 311.01(B)(8) does not require that such person actually has been compensated with governmental funds for his duties as a law enforcement officer. My conclusion is reinforced by a further examination of the statutory scheme of R.C. 311.01(B). I note that subdivision (B)(9) requires certain law enforcement experience, while subdivision (B)(8) is concerned only with the training required of candidates.

In your third question you ask whether experience as a county probation officer qualifies as law enforcement experience under R.C. 311.01(B)(9). R.C. 311.01(B)(9) requires that a candidate for county sheriff:

Has at least five years of full-time law enforcement experience in which the duties were related to the enforcement of statutes, ordinances, or codes and has at least two years of supervisory experience or its equivalent, or, in place of two years of supervisory experience, has completed satisfactorily at least two years of post-secondary education or the equivalent in semester or quarter hours in a college or university authorized to confer degrees by the Ohio board of regents or the comparable agency of another state in which the college or university is located. (Emphasis added.)

I find that, as required by R.C. 311.01(B)(9), county probation officers have "law enforcement experience in which the duties [are] related to the enforcement of statutes, ordinances, or codes." *See* R.C. 2301.31 (authorizing county probation officers to arrest parolees who violate their conditions of parole, as defined in R.C. 2967.01, or who violate the rules and regulations governing parolees); 9 Ohio Admin. Code 5120:1-1-12 (imposing certain conditions on parolees, such as prohibiting parolees from possessing firearms). *See also* R.C. 2901.01(K)(2) (defining "law enforcement officer" as an employee or officer of a political subdivision who has a statutory duty to conserve the peace or to enforce certain laws and who has the authority, within the scope of these duties, to make arrests).

¹ "Qualification date" is defined in R.C. 311.01(H)(1) and refers to the last day on which a person may qualify to be a candidate for election or to be appointed to the position of county sheriff.

My conclusion that experience as a probation officer qualifies as law enforcement experience for purposes of R.C. 311.01(B)(9) is consistent with *State v. Roberts*, 32 Ohio St. 3d 225, 513 N.E.2d 720 (1987). In *Roberts*, the Ohio Supreme Court addressed the issue of whether statements by a defendant to his probation officer are admissible against a defendant who was not warned of his *Miranda* rights. The court noted that the issue turned on whether probation officers are considered to be law enforcement officers. *Id.* at 227, 513 N.E.2d at 722. The court went on to hold that statements by an in-custody probationer to his probation officer are inadmissible unless the probationer was first warned of his *Miranda* rights, thus implicitly concluding that probation officers are law enforcement officers.

In light of the foregoing, I conclude that experience as a county probation officer qualifies as law enforcement experience for purposes of R.C. 311.01(B)(9). Whether a particular probation officer meets the other requirements of R.C. 311.01(B)(9) is, of course, a factual determination which must be made based on the facts of that particular case.

Therefore, it is my opinion and you are advised that:

1. As used in R.C. 311.01(B)(8), the phrase "valid certificate of training as a law enforcement officer" is not limited to a peace officer certificate earned pursuant to R.C. 109.77.
2. A person who has held, within three years prior to the qualification date, a valid certificate of training for a position as a law enforcement officer compensated with governmental funds, meets the requirement for the position of county sheriff set forth in R.C. 311.01(B)(8). R.C. 311.01(B)(8) does not require that such person actually has been compensated with governmental funds either for training or for performance of his duties as a law enforcement officer.
3. Experience as a county probation officer qualifies as law enforcement experience for purposes of R.C. 311.01(B)(9).