

Note from the Attorney General's Office:

1967 Op. Att'y Gen. No. 67-029 was overruled by
1984 Op. Att'y Gen. No. 84-008.

OPINION NO. 67-029

Syllabus:

A special constable, who is empowered to carry firearms, and appointed pursuant to Sections 1907.201 and 1907.211, Revised Code, is a "peace officer", and, as such, must be certified by the executive director of the Ohio Peace Officer Training Council as having satisfactorily completed a basic training course within one year of his original appointment.

To: James I. Shaw, Auglaize County Pros. Atty., Wapakoneta, Ohio
By: William B. Saxbe, Attorney General, March 13, 1967

Your letter of request for my opinion contains the following question:

"Is a Special Constable appointed by a County Court Judge under Ohio Revised Code Section 1907.201 and 1907.211 a 'Peace Officer' requiring a certificate by the Executive Director of the Ohio Peace Officer Training Council?"

Sections 1907.201 and 1907.211, Revised Code, state:

Section 1907.201

"Upon the written application of the director of public works or of three freeholders of the county in which a county court judge resides, such judge may appoint one or more electors of the county special constables who shall guard and protect the property of this state, or the property of such freeholders, and the property of this state under lease to such freeholders, designated in general terms in such application, from all unlawful acts, and so far as necessary for that purpose, a constable so appointed has the same authority and is subject to the same obligations as other constables."

Section 1907.211

"The judge of a county court appointing a constable as provided in section 1907.201 (1907.20.1) of the Revised Code, shall make a memorandum of such appointment upon his docket, and such appointment shall continue in force for one year, unless such judge revokes such appointment sooner. A constable appointed under this section and section 1907.201 (1907.20.1) of the Revised Code, shall be paid in full for his services by the freeholders for whose benefit he was appointed, and shall receive no compensation except from such freeholders."

Section 109.77, Revised Code, which requires the certification of peace officers, reads as follows:

"Notwithstanding any general, special, or local law or charter to the contrary, no person shall after January 1, 1966, receive an original appointment on a permanent basis as a peace officer of any county, township, or municipal corporation unless such person has previously been awarded a certificate by the executive director of the Ohio peace officer training council, attesting to his satisfactory completion of an approved state, county, or municipal police basic training program; and every person who is appointed on a temporary basis or for a probationary term or on other than a permanent basis as a peace officer of any county, township, or municipal corporation, shall forfeit his position as such unless he previously has satisfactorily completed, or within the time prescribed by regulations promulgated by the attorney general pursuant to section 109.74 of the Revised Code, satisfactorily completes a state, county, or municipal peace officer basic training for temporary or probationary officers and is awarded a certificate by such director attesting thereto."

Special constables, appointed pursuant to Sections 1907.201 and 1907.211, Revised Code, are, at least nominally, employees of the county. (Opinion Number 171, Opinions of the Attorney General for 1966.) Your question then is whether or not these special constables are peace officers. This can be determined by an examination of Rule PC 1-02 (E), Rules and Regulations of the Ohio Peace Officer Training Council, which reads as follows:

"(E) The term 'Peace Officer' means a member of a police force or other organization, employed or commissioned by a township, a county, or municipal corporation, who is responsible for the enforcement of general criminal laws of the state, and empowered to carry firearms, but shall not include any person serving as such solely by virtue of his occupying other office or position, nor shall such term include a sheriff, or any person having an equivalent title who is appointed or employed by a county to exercise equivalent supervisory authority."

Therein there are three basic requirements.

First, a special constable is employed or commissioned by the county. (Section 1907.201, Revised Code, and Opinion Number 171, supra.)

Second, a special constable "has the same authority and is subject to the same obligations as other constables". (Section 1907.201, supra.) In Opinion Number 137, Opinions of the Attorney General for 1966, I stated that:

"An examination of these sections (Sec-

tions 509.05 and 509.10, Revised Code) indicates that township police constables do enforce the general criminal laws of this state."
(Parenthetical phrase added)

A special constable, having the same authority as other constables, would thus also enforce the general criminal laws of this state within his jurisdiction.

Third, whether or not special constables are empowered to carry firearms is, of course, a question of fact; however, in the event that they are so empowered, all of the criteria of Rule PC 1-02 (E), supra, are met.

A similar question was presented to me in Opinion Number 179, Opinions of the Attorney General for 1966, concerning special policemen appointed pursuant to Section 737.05, Revised Code. In that opinion I held that, even though special policemen are paid and employed by private citizens, such private policemen, being duly commissioned police officers with powers and jurisdiction as such (Neapolitan v. U.S. Steel Corp., 77 Ohio Law Abs., 376 (1956)), must be certified by the Executive Director of the Ohio Peace Officer Training Council as having satisfactorily completed a basic training course. Private policemen are often re-commissioned on an annual or semi-annual basis, however, the source of their authority remains the same and Rule PC-1-11, Rules and regulations of the Peace Officer Training Council, applies to them. This rule reads, in pertinent part, as follows:

"Every person who is appointed as a peace officer after the effective date of the Ohio Peace Officer Training Act, on other than a permanent basis, shall forfeit his position as such unless he has received, within one year from the time of his appointment, a certificate from the Executive Director attesting to his satisfactory completion of the Basic Course."

This reasoning is equally applicable to special constables appointed pursuant to Sections 1907.201 and 1907.211, supra.

Therefore, it is my opinion, and you are hereby advised that a special constable, who is empowered to carry firearms, and appointed pursuant to Sections 1907.201 and 1907.211, Revised Code, is a "peace officer", and, as such, must be certified by the executive director of the Ohio Peace Officer Training Council as having satisfactorily completed a basic training course within one year of his original appointment.