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POLICE PENSION FUND—DISABILITY, INCURRED WHILE  
IN PERFORMANCE OF DUTIES—§741.49 R.C.—CRITERIA OF  
DUTIES OF POLICE OFFICERS.

SYLLABUS:

1. There is no right to disability benefits from the police pension fund under Section 741.49 (C), Revised Code, unless the disability was incurred in the performance of official duty of the department of which the claimant is a member.
2. "Official duty," as used in Section 741.49, Revised Code, means duty performed having some direct connection with the duties, responsibilities, and authority of the police department with which the claiming member was affiliated.
3. If a member of a municipal police department is injured while in the discharge of his official duty as a member of the department, in or outside the municipality, and whether or not his own negligence contributes to the injury, he is eligible for disability benefits under the provisions of Section 741.49 (C), Revised Code.
4. If a member of a municipal police department is injured other than in the discharge of his official duties, he may be granted disability benefits under the provisions of Section 741.49 (D), Revised Code, unless the injuries are the result of his own negligence.

5. If a member of a municipal police department, while on official duty outside the corporate limits of the municipality of which he is a member of the police department, is injured during his attempt to enforce any state law, whether or not directly connected with his municipality, his injury is incurred in the performance of official duty.

6. A municipal police officer who, at the request of the sheriff or a deputy sheriff of the county in which his municipality is situate, accompanies the sheriff, or his deputy, on investigation of a complaint arising outside the municipality and which is of no direct concern to the police department of the municipality, may not be granted disability benefits under Section 741.49 (C), Revised Code, for injuries received during such investigation; but, if eligible, he may be granted benefits under Section 741.49 (D), Revised Code, unless his injuries were directly caused by his own negligence.

Columbus, Ohio, January 26, 1959

Hon. John D. Sears, Jr., Prosecuting Attorney  
Crawford County, Bucyrus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“If a municipal police officer is requested by the sheriff or deputy sheriff to accompany said sheriff or deputy on a complaint outside of the municipality and while outside the municipality said police officer is injured, is such police officer entitled to the benefits under the Police Pension Fund as set forth in Section 741.49, Sub-section C of the Revised Code of Ohio?”

The pertinent parts of Section 741.49, Revised Code, to which you refer, read as follows :

“(C) A member of the fund who is partially disabled as a result of the performance of his official duties as a member of the department and such disability prevents him from performing those duties and impairs his earning capacity, shall be paid monthly disability benefits in an amount to be fixed by the board.  
\* \* \*

“(D) A member of the fund who has completed five or more years of active service in the department and has incurred disability not caused or induced by the actual performance of his official duties as a member of the department, or by his own negligence, and such disability prevents him from performing his official duties as a member of the department, and impairs his earning capacity, shall receive monthly benefits in an amount to be fixed by the board. \* \* \* .”

Your query lacks many details necessary to a definitive answer, and this requires me to make certain assumptions. For example, it is not clear why the policeman was requested to accompany the sheriff. Was he invited only to provide company for the sheriff, or to give moral or physical support to the sheriff, or to perform some official duty connected with the police department of which he was a member? Surely, if the sheriff or his deputy was answering a call within the jurisdiction of his office only, and of no concern to the municipal police department, and the sheriff simply asked a friend on the police force to go along with him "for the ride," the policeman would not be on "official duty." At the other extreme, if a filling station in the municipality had been robbed and a city policeman had seen the robber but had been unable to capture him, and thereafter the sheriff had reported that he believed the robber was hiding in the county outside the city and asked the policeman to go with him to identify the suspect, the trip of the policeman would surely be on official business connected with his department. Between these extremes may be a multitude of situations, many of them border-line and difficult of determination as to the status of the officer.

It has been held that a police officer is an officer of the state and clothed with a part of the sovereignty of the state. Opinion No. 2318, Opinions of the Attorney General for 1953, p. 39 Section 2935.03, Revised Code, provides in part:

"A sheriff, deputy sheriff, marshal, deputy marshal, watchman, or police officer shall arrest and detain a person found violating a law of this state, or an ordinance of a municipal corporation, until a warrant can be obtained."

This line of authority appears to give broad powers to any police officer. However, it offends common sense to assume that every police officer of every Ohio municipality has unlimited police jurisdiction throughout the state. A "rookie" patrolman of a small city, for example, who wanted more experience and "action," surely could not take a day off and begin police operations in Cleveland, Cincinnati, or Columbus, and be "on official duty" while making arrests in those cities. However, if a municipal police officer is sent to a neighboring city on business of the department—say to return a wanted fugitive from justice—and enroute sees a crime being committed and in attempting to arrest the offender is injured, there would be no question that he was on official business. As a peace officer charged with the duty of enforcing all state laws he was

clearly within his jurisdiction in arresting the offender even though outside the territorial limits of his immediate jurisdiction.

You will note, and I think it is significant, that there constantly recurs in the several subsections of Section 741.49, Revised Code, these words: "performance of his official duties *as a member of the department.*" I have emphasized the words "as a member of the department." It is quite true that this office and the courts have held that a police officer is an officer of the state and is clothed with part of the sovereignty of the state. His obligation to enforce state and federal laws is an obligation imposed by statute and is one of the "official duties" of every peace officer of the state. But the official duties of a police officer, when modified by the words "as a member of the department," are somewhat less general than state-wide jurisdiction in law enforcement activities. These modifying words mean that the official duty must have some direct, reasonable, connection with the responsibilities of the police department of which the officer is a member. Generally, the responsibility of a police department does not extend beyond the corporate limits of the municipality which supports it, although the discharge of that responsibility may require members of the department to travel outside the city, in "hot pursuit" of an offender, to return a prisoner, to investigate a crime committed within the city, and other conceivable situations.

It must be noted that great discretion is lodged by statute in the trustees of the pension fund as to whom benefits shall be granted and in what amount. In exercising this discretion the trustees must necessarily determine in each case whether the applicant is eligible under the law for benefits. Each individual case must stand on its own bottom, and unless the trustees abuse their discretion, their decision must stand.

Some guiding principles may be pronounced however, and it is my opinion and you are accordingly advised that:

1. There is no right to disability benefits from the police pension fund under Section 741.49 (C), Revised Code, unless the disability was incurred in the performance of official duty of the department of which the claimant is a member.

2. "Official duty," as used in Section 741.49, Revised Code, means duty performed having some direct connection with the duties, responsibilities, and authority of the police department with which the claiming member was affiliated.

3. If a member of a municipal police department is injured while in the discharge of his official duty as a member of the department, in or outside the municipality, and whether or not his own negligence contributes to the injury, he is eligible for disability benefits under the provisions of Section 741.49 (C), Revised Code.

4. If a member of a municipal police department is injured other than in the discharge of his official duties, he may be granted disability benefits under the provisions of Section 741.49 (D), Revised Code, unless the injuries are the result of his own negligence.

5. If a member of a municipal police department, while on official duty outside the corporate limits of the municipality of which he is a member of the police department, is injured during his attempt to enforce any state law, whether or not directly connected with his municipality, his injury is incurred in performance of official duty.

6. A municipal police officer who, at the request of the sheriff or a deputy sheriff of the county in which his municipality is situate, accompanies the sheriff, or his deputy, on investigation of a complaint arising outside the municipality and which is of no direct concern to the police department of the municipality, may not be granted disability benefits under Section 741.49 (C), Revised Code, for injuries received during such investigation; but, if eligible, he may be granted benefits under Section 741.49 (D), Revised Code, unless his injuries were directly caused by his own negligence.

Respectfully,

MARK MCELROY

Attorney General