

**OPINION NO. 85-021****Syllabus:**

The positions of deputy sheriff and chief of police of a township police district within the same county are incompatible.

---

**To: Stephen M. Stern, Jefferson County Prosecuting Attorney, Steubenville, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, May 14, 1985**

I have before me your request for my opinion in which you ask whether a person may hold the positions of chief deputy sheriff and chief of police of a township police district within the same county.

In 1979 Op. Att'y Gen. No. 79-III, my predecessor established seven questions, which must be addressed to determine whether two public positions are incompatible. Two positions are considered incompatible if, *inter alia*, one is subordinate to or a check upon the other or if an individual serving in both positions would be subject to a conflict of interest. See State ex rel. Attorney General v. Gebert, 12 Ohio C.C. (n.s.) 274 (Cir. Ct. Franklin County 1909). In order to resolve these questions, it is necessary to examine the law of Ohio governing the two positions about which you ask.

Pursuant to R.C. 505.48, "[t]he trustees of any township may, by resolution adopted by two-thirds of the members of the board, create a township police district comprised of all or a portion of the unincorporated territory of the township as the resolution may specify." In a township which is not a civil service township, such as the one in question, see R.C. 124.40(B); R.C. 505.49(B), the board of township trustees appoints the chief of police of the township police district. R.C. 505.49(A). R.C. 505.49(A) provides in pertinent part as follows:

The township trustees by a two-thirds vote of the board may adopt rules necessary for the operation of the township police district, including a determination of the qualifications of the chief of police, patrolmen, and others to serve as members of the district police force.

The township trustees by a two-thirds vote of the board shall appoint a chief of police for the district, determine the number of patrolmen and other personnel required by the district, and establish salary schedules and other conditions of employment for the employees of the township police district. The chief of police of the district shall serve at the pleasure of the township trustees and shall appoint patrolmen and such other personnel as the district may require, subject to rules and limits as to qualification, salary ranges, and numbers of personnel established by the township board of

trustees. The township trustees may include in the township police district and under the direction and control of the chief of police, any constable appointed pursuant to section 509.01 of the Revised Code, or designate the chief of police or any patrolman appointed by him as a constable, as provided for in section 509.01 of the Revised Code, for the township police district.

Under R.C. 505.49(A), the township trustees by a two-thirds vote of the board may adopt rules necessary for the operation of the township police district, including a determination of the qualifications of the chief of police of the district police force. Pursuant to R.C. 505.49(A), the township trustees by a two-thirds vote of the board "shall appoint a chief of police for the district. . .and establish salary schedules and other conditions of employment for the employees of the township police district." R.C. 505.49(A) provides that the chief of police of the township police district "shall serve at the pleasure of the township trustees and shall appoint patrolmen and such other personnel as the district may require, subject to rules and limits as to qualifications, salary ranges, and numbers of personnel established by the township board of trustees." R.C. 505.49(A) further provides that the board of township trustees "may include in the township police district and under the direction and control of the chief of police, any constable appointed pursuant to section 509.01 of the Revised Code, or designate the chief of police or any patrolman appointed by him as a constable, as provided for in section 509.01 of the Revised Code, for the township police district." See R.C. 509.06-.12 (setting forth the duties of a township constable). The territorial jurisdiction of a township police officer is limited to the area of the township specified by the board of township trustees as the township police district. R.C. 505.48. See 1971 Op. Att'y Gen. No. 71-076.

A deputy sheriff is appointed by the county sheriff. R.C. 311.04; R.C. 325.17. "The sheriff is the chief law enforcement officer in the county, with jurisdiction coextensive with the county, including all municipalities and townships." In re Sulzmann, 125 Ohio St. 594, 597, 183 N.E. 531, 532 (1932). The duties of a deputy sheriff were thoroughly examined in In re Termination of Employment, 40 Ohio St. 2d 107, 114-15, 321 N.E.2d 603, 608-09, wherein the court stated:

Deputy sheriffs are clearly employed by and directly responsible to their sheriffs, who are elected county officials. . . .

. . . A deputy sheriff may be called upon to serve process upon witnesses (R.C. 3.10, 117.03), and to serve writs and orders such as levys on property, writs of attachment, and summons to jurors. (R.C. 311.17.) He may perform ordinary police functions, such as transporting prisoners (R.C. 339.57), guarding prisoners in the county jail (R.C. 341.05), and exercising the general duties of a peace officer (R.C. 2935.01). For many deputies, a principal duty is to patrol state highways (R.C. 4513.39), while others are assigned as bailiffs in county courts (R.C. 2301.12). . . . For many, the duties assigned are virtually identical to those assigned to a member of a metropolitan police force or of the State Highway Patrol, or to a bailiff in the civil courts.

. . . .

. . . there are cases where a deputy sheriff is in a true fiduciary relationship with the sheriff, e.g., where a deputy sheriff has charge of deposits of bond (R.C. 2331.16), or acts as a receiver of property (R.C. 2333.22).

Upon an examination of the law governing these two positions, it is apparent that there is a conflict of interest between the positions of deputy sheriff and township police chief. One person may not simultaneously hold two public positions if he would be subject to divided loyalties and conflicting duties or exposed to the temptation of acting other than in the best interest of the public. See State ex rel. Hover v. Wolven, 175 Ohio St. 114, 191 N.E.2d 723 (1963); Op. No. 79-111. I believe that one person who holds the positions of deputy sheriff and chief of police of a

township police district within the same county would clearly be subject to divided loyalties. As noted above, the county sheriff has jurisdiction coextensive with the county including all townships within the county, In re Sulzmann, and a deputy sheriff is directly responsible to the county sheriff. In re Termination of Employment. Thus, a deputy sheriff and township police officer would both have jurisdiction over territory within the township police district. Since both the deputy sheriff and township police chief have jurisdiction within the township police district, a situation is created in which one person holding the positions of deputy sheriff and township police chief would be subject to divided loyalties. To the extent that law enforcement standards, policies and techniques established by the board of township trustees, see R.C. 505.49, differ from those of the county sheriff, see R.C. 311.07, it is apparent that a person who simultaneously serves as a deputy sheriff and township police chief within the same county would be subject to conflicting duties and interests.

Furthermore, I note that a contract between a township and a county sheriff, depending upon its terms, may give rise to a relationship between the chief of police of a township police district and a deputy sheriff, such that one position is subordinate to, or a check upon, the other. R.C. 505.50, which authorizes a board of township trustees to contract for additional police protection services, provides in pertinent part as follows:

The board of trustees of any township may enter into a contract with one or more townships, a municipal corporation, or the county sheriff upon such terms as are mutually agreed upon for the provision of additional police protection services either on a regular basis or for additional protection in times of emergency. Such contract shall be agreed to in each instance by the respective board or boards of township trustees, the county commissioners, or the legislative authority of the municipal corporation involved. Such contract may provide for a fixed annual charge to be paid at the time agreed upon in the contract.

Thus, where a township police district has been created, the board of township trustees may, pursuant to R.C. 505.50, provide additional police protection through a contract with one or more townships, a municipal corporation or the county sheriff. See 1976 Op. Att'y Gen. No. 76-027; 1971 Op. Att'y Gen. No. 71-045. If a board of township trustees which has created a township police district should decide to contract with the county sheriff pursuant to R.C. 505.50, it is conceivable that the terms of the contract could place a township police chief in a position of supervising the county sheriff and deputy sheriffs. See Op. No. 76-027. Under such an arrangement a deputy sheriff could be placed in a position subordinate to the chief of police of a township police district or, the chief of police of a township police district could act as a check upon a deputy sheriff. Id.

I note that R.C. 509.06 could give rise to another situation in which a county sheriff and deputy sheriffs are subject to the control of a township police chief.

---

<sup>1</sup> Upon creating a township police district, a board of township trustees may not obtain all police protection by contract, since R.C. 505.50 authorizes only contracts for additional protection where, pursuant to R.C. 505.49 and R.C. 505.50, basic protection has been provided through the employment of a chief of police, necessary patrolmen and the acquisition of equipment. 1976 Op. Att'y Gen. No. 76-027; 1971 Op. Att'y Gen. No. 71-045.

<sup>2</sup> I note that if one person served as both township police chief and deputy sheriff, and the township and county were to contract for the provision of police protection services, the individual in question could arguably be deemed to have an unlawful interest in a public contract in violation of R.C. 2921.42. See 1976 Op. Att'y Gen. No. 76-027. The Ohio Ethics Commission, which has the authority to render advisory opinions interpreting R.C. 2921.42, see R.C. 102.08, should be contacted for further guidance regarding this matter.

R.C. 509.06 provides as follows: "Constables, marshals, chiefs of police, and other police officers, in discharging their duties, may call the sheriff or a deputy sheriff to their aid in state cases." If a township police chief should decide to call the sheriff or a deputy sheriff to his aid in a case, it is conceivable that the county sheriff or deputy sheriff would be subject to the supervision of the township police chief.

I also note that R.C. 311.07(B) could give rise to a situation in which a board of township trustees and the township police chief are subject to the control of a county sheriff. R.C. 311.07(B) provides in pertinent part as follows:

The sheriff of a county may call upon . . . the chairman of the board of township trustees of any township within his county or in adjoining counties, to furnish such law enforcement or fire protection personnel, or both, together with appropriate equipment and apparatus, as may be necessary to preserve the public peace and protect persons and property in the requesting sheriff's county in the event of riot, insurrection, or invasion. Such aid shall be furnished to the sheriff requesting it, insofar as possible without withdrawing from the political subdivision furnishing such aid minimum police and fire protection appearing necessary under the circumstances.

If the county sheriff should decide to call upon the chairman of the board of township trustees to furnish necessary law enforcement personnel, equipment and apparatus in the event of a riot, insurrection or invasion, it is conceivable that the township police chief would be subject to the supervision of the county sheriff.

Because of the great potential for a conflict of interest arising under any of these statutes, R.C. 505.50, R.C. 509.06 or R.C. 311.07(B), I must conclude that the two positions in question are incompatible.

I note that in 1955 Op. Att'y Gen. No. 6025, p. 650, my predecessor concluded that the positions of police constable and deputy sheriff are incompatible. While I am in agreement with the conclusion reached in 1955 Op. No. 6025 for the reasons stated above, I do not believe that the reasoning set forth in 1955 Op. No. 6025 may be used any longer as a basis for finding the positions of deputy sheriff and township police chief within the same county to be incompatible. At the time 1955 Op. No. 6025 was issued, R.C. 4513.39 provided that the state highway patrol and sheriffs or their deputies "shall exercise, to the exclusion of all other peace officers except within municipal corporations, the power to make arrests for violations, on all state highways," of various statutory provisions relating to motor vehicle and traffic offenses. Township peace officers were not permitted to make arrests on state highways, even though an offense might take place on a part of a state highway within the township. See State v. Holbert, 38 Ohio St. 2d 113, 311 N.E.2d 22 (1974). 1955 Op. No. 6025 reasoned that a conflict might arise where an individual holding the two positions would be required to decide whether he should, as a deputy sheriff, pursue a traffic violator on a state highway pursuant to R.C. 4513.39, or whether he should, instead, pursue his regular police duties within the township. As a deputy sheriff, he would have a duty to act on behalf of the county sheriff, while as a police constable, he would also be obligated to fulfill his township responsibilities. 1955 Op. No. 6025 concluded that the interests in such a situation are conflicting and under such circumstances it would be physically impossible for an individual to discharge the duties of both positions.

Since the issuance of 1955 Op. No. 6025, however, R.C. 4513.39 has been amended. R.C. 4513.39 currently provides:

(A) The state highway patrol and sheriffs or their deputies shall exercise, to the exclusion of all other peace officers except within municipal corporations and except as specified in division (B) of this section, the power to make arrests for violations on all state highways, of [various motor vehicle and traffic laws].

(B) A member of the police force of a township police district

created under section 505.48 of the Revised Code, and a township constable appointed pursuant to section 509.01 of the Revised Code, who has received a certificate from the Ohio peace officer training council under section 109.75 of the Revised Code, shall exercise the power to make arrests for violations of those sections listed in division (A) of this section on those portions of all state highways, except for those highways included as part of the interstate system, as defined in section 5516.01 of the Revised Code, which are located within:

- (1) The township police district, in the case of a member of a township police district police force;
- (2) The unincorporated territory of the township, in the case of a township constable.

See Am. Sub. H.B. 738, 114th Gen. A. (1982) (eff. June 25, 1982); Sub. H.B. 207, 113th Gen. A. (1980) (eff. March 13, 1981). See also Am. Sub. H.B. 632, 115th Gen. A. (1984) (eff. March 28, 1985). Township constables and police officers now have the authority to make arrests on those portions of state highways which are located within the township or township police district, so long as the highway is not included as part of the interstate system. A township police officer may, in accordance with his responsibility toward the township, pursue and arrest traffic violators on state highways within the police district. In light of the amendments to R.C. 4513.39, the possibility that a situation such as the one posed in 1955 Op. No. 6025, where an individual would simultaneously owe separate duties to the county and to the township, no longer exists. Although the reason set forth in 1955 Op. No. 6025 for finding the positions of deputy sheriff and chief of police of a township police district within the same county to be incompatible is no longer correct, I agree, for the reasons set forth above, that the positions are still incompatible.

Accordingly, it is my opinion and you are so advised that the positions of deputy sheriff and chief of police of a township police district within the same county are incompatible.