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VILLAGE MARSHAL—§737.15 R.C.—REQUIRED TO BE AN ELECTOR OF VILLAGE HE SERVES AS MARSHAL.

SYLLABUS:

A village marshal appointed pursuant to Section 737.15 Revised Code, is required to be an elector of the village which he serves as marshal.

Columbus, Ohio, January 15, 1958

Hon. Robert E. Cook, Prosecuting Attorney  
Portage County, Ravenna, Ohio

Dear Sir:

I have your request for my opinion in which you present the following question:

“Must a Village Marshal, designated Chief of Police, appointed under authority of Revised Code 737.15, be an elector of the Village which he serves as Marshal or Chief of Police?”

I invite your attention to Section 737.15, Revised Code, reading as follows:

“*Each village shall have a marshal, designated chief of police, appointed by the mayor with the advice and consent of the legislative authority of the village, who is an elector thereof, and who shall continue in office until removed therefrom as provided by sections 733.35 to 733.39, inclusive, of the Revised Code. In case of the removal of a marshal or chief of police of a village, an appeal may be had from the decision of the legislative authority to the court of common pleas to determine the sufficiency of the cause*

of removal. Such appeal shall be taken within ten days from the finding of such legislative authority.” (Emphasis added)

From this unambiguous language it appears to be clear that the General Assembly has meant to leave no doubt that a marshal of a village shall be an elector of such village. I know of no judicial expression which has limited or modified this legislative provision.

You suggest that Opinion No. 2318, Opinions of the Attorney General for 1953, p. 39, may have placed such an interpretation upon Section 4666, General Code, Section 733.68, Revised Code, that a conflicting situation would seem to exist. The syllabus of Opinion No. 2319, *supra*, reads as follows:

“1. Police protection, being a matter of state-wide concern, police departments and the members thereof are subject to the general control of the state. Policemen, deriving their power of arrest from the state, are invested by law with a portion of the sovereignty of the state, and are officers of the state.

“2. Policemen, being officers of the state, are not such officers ‘of the corporation’ within the meaning of Section 4666, General Code, as are required to be electors ‘within the corporation.’ Opinion No. 2357, Opinions of the Attorney General for 1928, page 1742, overruled.

“3. There being no state statute requiring policemen to be residents of the municipality or specifically authorizing them to be non-residents, each municipality is free to determine for itself whether it will require such policemen to be residents of such municipality.”

It should be noted that this opinion was issued in answer to a question submitted by the Bureau of Inspection and Supervision of Public Offices concerning the situation in the city of Columbus. That opinion does not contain a reference to Section 737.15, Revised Code, Section 4384, General Code, for the obvious reason that a village was not involved.

This distinction is of additional force when it is seen that Section 737.05, Revised Code, providing for the police departments in cities, contains no such similar requirement that the chief of police of a city need be an elector of such city.

In a recent opinion, Opinion No. 1311, Opinions of the Attorney General for 1957, p. 684, I held a village fire chief to be an officer of a municipality within the meaning of Section 733.68, Revised Code. The third paragraph of the syllabus reads as follows:

“3. A village fire chief is an officer of a municipality within the meaning of Section 733.68, Revised Code, and as such must be an elector of the said municipality, unless otherwise provided in the charter (Opinion No. 2318, Opinions of the Attorney General for 1953, page 39, modified on the authority of *Lynch v. Cleveland*, 164 Ohio St., 437).”

I do not regard the decision in *State, ex rel. Lynch v. City of Cleveland*, 164 Ohio St., 437, to have changed the law on the specific point here in question. In the *Lynch* case, *supra*, the court held that the “method of selecting a chief of police is a matter of local self-government within the meaning of the first part of Section 3, Article XVIII, Ohio Constitution, providing that ‘Municipalities shall have authority to exercise all powers of local self-government’.”

Therefore, it is my opinion and you are accordingly advised that a village marshal appointed pursuant to Section 737.15, Revised Code, is required to be an elector of the village which he serves as marshal.

Respectfully,

WILLIAM SAXBE

Attorney General