

OPINION NO. 71-076

Syllabus:

1. The territorial jurisdiction of a township police constable extends throughout the county in which his township is located.

2. Pursuant to Section 505.441, Revised Code, the territorial jurisdiction of a township police constable can be extended by contract to a township located in another county.

3. A township police officer and constable both have jurisdiction throughout the state when in pursuit of a fugitive from the law.

4. The territorial jurisdiction of a township police officer is limited to the unincorporated areas of the township as specified by the board of township trustees in the resolution creating the township police district. The territorial jurisdiction of a township police officer, however, may be extended to include another township police district by a contract entered pursuant to Section 505.50, Revised Code.

5. A township policeman may not use township-owned or leased equipment outside of the township police district in the absence of permission from the board of township trustees, but a township police

constable may use such equipment throughout his territorial jurisdiction and without the express permission of the board of township trustees. Both the policeman and the constable may use such equipment anywhere when in pursuit of a fugitive.

To: J. Walter Dragelevich, Trumbull County Pros. Atty., Warren, Ohio
By: William J. Brown, Attorney General, November 12, 1971

I have before me your predecessor's request for my opinion, which he stated as follows:

"I would appreciate an opinion from your office regarding the following questions:

"(1) What is the authority and territorial jurisdiction of Township Police and/or Township Constables.

"(2) Do Township Police and/or Constables have jurisdiction within the limits of a municipality when said municipality is a part of the Township for which they are appointed.

"(3) Do Township Police and/or Constables have any authority outside the Township for which they are appointed.

"(4) Do Township Police and/or Constables have any authority or jurisdiction in an adjacent County to their respective Township.

"(5) Are Township Police and/or Constables authorized to use Township-owned or leased equipment outside the Township without the permission of the Board of Township Trustees."

Questions one through four, inclusive, of his letter, relate primarily to the territory over which a township police officer and a township police constable may exercise authority. Due to the common subject matter of all four questions, I feel that they can best be answered by a careful consideration of the following two points: (1) the territorial jurisdiction of a township police constable, and (2) the territorial jurisdiction of a township police officer.

It is appropriate first to establish and clarify the distinction between the position of township police constable and that of township police officer.

The statutory authority providing for the appointment of township police constables is found in Section 509.01, Revised Code, which reads in part, as follows:

"The board of township trustees may designate any qualified persons as police constables, and may provide such police constables, such automobiles, communication systems, uniforms, and police equipment as such board deems necessary. * * * The board may pay each police constable, from the general funds of the township, such compensation as the

board by resolution prescribes for the time actually spent in keeping the peace, protecting property, and performing duties as a police constable. Such police constable shall not be paid fees in addition to the compensation allowed by the board for services rendered as a police constable. All constable fees provided for by section 509.15 of the Revised Code, where due for services rendered while the police constable performing such services is being compensated as a police constable for his performance, shall be paid into the general fund of the township."

The statute authorizing the creation of a township police district, however, is Section 505.48, Revised Code, which reads as follows:

"The 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. If the township police district does not include all of the unincorporated territory of the township, the resolution creating the township police district shall contain a complete and accurate description of the territory of the district. The territorial limits of the township police district may be altered by a resolution adopted by a two-thirds vote of the board of trustees at any time one hundred twenty days after the district has been created and is operative. A township police district comprising only a part of the unincorporated territory of the township shall be given a separate and distinct name in the resolution authorizing its creation."

After such district has been created, the board of township trustees is granted the power, under Section 505.49, Revised Code, to appoint a township police force. This Section reads, in pertinent part, as follows:

"The township trustees by a two-thirds vote of the board may adopt rules and regulations 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 the rules, regulations, and limits 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."

It should be noted that Section 505.49, supra, specifically states that any township constable appointed pursuant to Section 509.01, supra, may also be a member of the township police force. Irrespective of the fact that an individual may hold both positions concurrently, the offices of a township police officer and a township police constable are separate and distinct.

The territorial jurisdiction of a township police constable is provided for in Section 509.05, Revised Code, which reads, as follows:

"In addition to the county sheriff, constables shall be ministerial officers of the county court in all cases in their respective townships, and in criminal cases, they shall be such officers within the county. They shall apprehend and bring to justice felons and disturbers of the peace, suppress riots, and keep and preserve the peace within the county. They may execute all writs and process, in criminal cases, throughout the county in which they reside, and in which they were elected or appointed. If a person charged with the commission of a crime or offense flees from justice, any constable of the county wherein such crime or offense was committed shall pursue and arrest such fugitive in any other county of the state and convey him before the county court of the county where such crime or offense was committed.

"Such constables shall serve and execute all warrants, writs, precepts, executions, and other process directed and delivered to them, and shall do all things pertaining to the office of constable.

"The authority of a constable in serving any process, either civil or criminal, and in doing his duties generally shall extend throughout the county in which he is appointed, and in executing and serving process issued by a judge of the county court, he may exercise the same authority and powers over goods and chattels, and the persons of parties, as is granted to a sheriff or coroner, under like process issued from courts of record." (Emphasis added)

The territorial jurisdiction of a township police constable, therefore, generally includes the entire county in which the township is located.

It has been held in Dayton v. Brennan, 64 Ohio L. Abs. 525 (1952), that the jurisdiction of a township police constable is equivalent to that of a county sheriff. The Court held as follows:

"While the sheriff is the chief law enforcement officer in the county, constables have equal

and concurrent authority not only in the townships in which they were elected or appointed, but throughout the county."

Thus, it may be concluded that the jurisdiction of a township police constable extends throughout the entire county. This territory would include, of course, all municipal corporations located in that county.

Furthermore, it should be noted, that under certain circumstances the jurisdiction of a township constable may extend beyond the county.

It is possible for one township to enter into a contractual agreement with one or more townships, municipal corporations or county sheriffs for the express purpose of obtaining police protection. Such an agreement is authorized by Section 505.441, Revised Code, which reads as follows:

"In order to obtain police protection, or to obtain additional police protection in times of emergency, any township may enter into a contract with one or more townships, municipal corporations, or county sheriffs upon such terms as are agreed to by them, for services of police departments or use of police equipment, or the interchange of the service of police departments or use of police equipment within the several territories of the contracting subdivisions, if such contract is first authorized by respective boards of township trustees or other legislative bodies.

"Section 701.02 of the Revised Code, so far as it is applicable to the operation of police departments, applies to the contracting political subdivisions and police department members when such members are rendering service outside their own subdivision pursuant to such contract.

"Police department members acting outside the subdivision in which they are employed may participate in any pension or indemnity fund established by their employer to the same extent as while acting within the employing subdivision and are entitled to all the rights and benefits of sections 4123.01 to 4123.94, inclusive, of the Revised Code, to the same extent as while performing service within the subdivision.

"Such contract may provide for a fixed annual charge to be paid at the time agreed upon and stipulated in the contract."

Through one of these "mutual aid" contracts, the township which is to obtain the police protection would be included in the territorial jurisdiction of the constables of the township providing the protection. Opinion No. 66-183, Opinions of the Attorney General for 1966. It would appear from the statutory language of Section 505.441, supra, that these contracts are permitted even when the contracting subdivisions are located in separate counties. Opinion No. 71-045, Opinions of the Attorney General for 1971.

Moreover, it has been held that the authority of a police officer performing his duties pursuant to one of these contracts is identical to his authority in his home township. In Opinion No. 68-155, Opinions of the Attorney General for 1968, it is stated as follows:

* * * * *

"Sections 505.441 and 737.04, supra, require the conclusion that a police officer pursuing his official duty to another jurisdiction pursuant to a mutual police protection contract may make lawful arrests as an inherent part of the duties and responsibilities of his position. Sections 505.441 and 737.04, supra, make provision for workmen's compensation and negligence coverage, which lends additional emphasis to the belief that the legislative intent was that such officers should perform completely their official functions while in another jurisdiction pursuant to a police protection contract.

* * * * *

(Emphasis added)

In addition to the jurisdictional extension authorized by Section 505.441, supra, there is yet another instance when the jurisdiction of a township police constable may reach beyond county lines. A township police constable has statewide jurisdiction while in pursuit of a fugitive who has committed a crime or an offense in the county in which the constable was appointed. This authority is granted by the "hot pursuit" provision contained in Section 509.05, supra. See, also, State v. Marshall, 61 Ohio L. Abs. 568, 582 (1952); Opinion No. 2998, Opinions of the Attorney General for 1931.

The territorial jurisdiction of a township police officer, on the other hand, is considerably narrower.

A township policeman naturally has jurisdiction throughout the territory of the township police district which appointed him. The statutes relating to the creation and operation of township police districts, however, contain no provisions for the extension of this territorial jurisdiction beyond the specified boundaries of the district. It follows, therefore, that under ordinary circumstances, the territorial jurisdiction of a township police officer includes only the area of the township police district.

Territorial jurisdiction of a township police officer can be extended, however, by a contract pursuant to Section 505.50, Revised Code. That Section, pertaining to police districts, reads, 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."
(Emphasis added)

Thus, a township police district is authorized to extend its territorial jurisdiction to include another township police district by a contractual arrangement pursuant to Section 505.50, supra, if under the terms of the contract such township is to provide police protection to another township police district. Opinion No. 71-045, supra. And, of course, the township policeman has the same authority as the constable when in "hot pursuit" of a fugitive.

In conclusion, therefore, it may be stated that the territorial jurisdiction of a township police officer generally includes only the specified area of the township police district but may extend beyond the boundaries of such district when authorized by a contract entered pursuant to Section 505.50, supra, or when the officer is in "hot pursuit" of a fugitive.

Your predecessor's inquiry regarding the power of a township police officer in relation to a municipality which is located in the same township, warrants special attention. Section 505.48, supra, specifically restricts the area of a township police district "to all or any portion of the unincorporated area of the township."
(Emphasis added.) Section 505.49, supra, provides for the creation of a police force only within the limits of the police district. It is self-evident, therefore, that a municipal corporation, even if it is located in the same township, cannot be made a part of a township police district and, consequently, is not under the jurisdiction of the township police force. Opinion No. 1255, Opinions of the Attorney General for 1964, dealt with precisely this same issue and reached the same conclusion. Syllabus No. 2 of that Opinion provides as follows:

"When there is located within a township a municipality or part thereof, the portion of the township in which the municipality is located may not be included in the township police district."

The final question asked is whether a township police constable or a township police officer may use township-owned or leased police equipment outside of the township without the express permission of the board of township trustees.

This question is easily resolved in the case of township police officers. Since their territorial jurisdiction extends only to the defined limits of the township police district, their official duties would, under normal circumstances, not take them out of the district. As stated earlier, the only possible extension of this jurisdiction is by a contractual agreement entered pursuant to Section 505.50, supra. Since a contract of this type is impossible without the express authorization of the board of township trustees, the authorization of such a contract is tantamount to express permission by the board for the police to make use of township-owned or leased equipment while performing their official duties under the contract. The "hot pursuit" exception would, of course, apply here also.

In conclusion, therefore, it may be said that a township police officer is not permitted to use township-owned or leased police equipment outside of the township in the absence of authorization contained

in a contract executed by a board of township trustees, or when in "hot pursuit" of a fugitive.

In the case of township police constables, however, the situation is considerably more complex. Section 509.01, supra, simply states that the "board of township trustees * * * may provide such police constables, such automobiles, communication systems, uniforms, and police equipment as such board deems necessary." Although the statute does not specifically state where a police constable is permitted to use this equipment, by necessary implication he must be permitted to use it throughout his territorial jurisdiction. This territory would, of course, include the entire county and, under the circumstances discussed earlier, beyond the county. In short, a township police constable is authorized to use township-owned or leased equipment wherever his duties, as prescribed by the law, may lead him, and this would again include "hot pursuit".

While not expressly related to your question, your attention is directed to the provisions of Section 509.15, Revised Code. This Section provides that specified fees and expenses be taxed as costs from the judgment debtor and paid to the general fund of the appropriate township as a form of compensation for services rendered by township constables. Section 509.15, supra, considerably alleviates the financial burden incurred by a township when a police constable uses township-owned or leased police equipment outside of his home township.

In conclusion, therefore, a township police constable is authorized to use township-owned or leased police equipment throughout his territorial jurisdiction and without the express permission of the board of township trustees.

In specific answer to the questions asked, it is my opinion and you are so advised, that:

1. The territorial jurisdiction of a township police constable extends throughout the county in which his township is located.
2. Pursuant to Section 505.441, Revised Code, the territorial jurisdiction of a township police constable can be extended by contract to a township located in another county.
3. A township police officer and constable both have jurisdiction throughout the state when in pursuit of a fugitive from the law.
4. The territorial jurisdiction of a township police officer is limited to the unincorporated areas of the township as specified by the board of township trustees in the resolution creating the township police district. The territorial jurisdiction of a township police officer, however, may be extended to include another township police district by a contract entered pursuant to Section 505.50, Revised Code.
5. A township policeman may not use township-owned or leased equipment outside of the township police district in the absence of permission from the board of township trustees, but a township police constable may use such equipment throughout his territorial jurisdiction and without the express permission of the board of township trustees. Both the policeman and the constable may use such equipment anywhere when in pursuit of a fugitive.