

**OPINION NO. 66-137****Syllabus:**

1. Each township constable, appointed on a permanent basis after January 1, 1966, pursuant to Section 509.01, Revised Code, and each chief and member of a township police district, appointed on a permanent basis after January 1, 1966, pursuant to Section 505.01, Revised Code, must have been certified by the executive director of the Ohio Peace Officers Training Council as having completed an approved state, county, or municipal police basic training program.

2. A board of township trustees may pay the expenses of the required training for the chief and members of a township police district, and may make such payments in advance pursuant to Section 505.54, Revised Code.

3. A board of township trustees may pay necessary travel, and other, expenses incurred incident to a township police constable's being trained as required by Section 109.77, Revised Code. (Opinion No. 2170, Opinions of the Attorney General for 1930, approved and followed.) Since such expenses are not specifically provided for by statute, it is within the discretion of the board of township trustees to pay such expenses in advance.

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**To: Roger Cloud, Auditor of State, Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, August 16, 1966**

The questions presented in your letter of request for my opinion read as follows:

- "1. Is each township constable appointed pursuant to section 509.01, R. C., as well as the chief of police, patrolmen and others appointed pursuant to section 505.49, R. C. to serve as members of a township police district, required to have a certificate awarded 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?
- "2. If such is required, may the township reimburse such a person out of township funds for the expenses incurred in taking such a training course, and if so, may the expenses be advanced prior to attendance at such a training program?"

Section 109.75, Revised Code, states in part:

"The executive director of the Ohio peace officer training council, on behalf of the

council, shall have the following powers and duties, to be exercised with the general advice of the council and, to be exercised only in accordance with rules and regulations promulgated by the attorney general pursuant to section 109.74 of the Revised Code:

" \* \* \* \* \*"

"(C) To certify peace officers who have satisfactorily completed basic training programs and to issue appropriate certificates to such peace officers;

" \* \* \* \* \*"

Section 109.77, Revised Code, reads in pertinent part 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; \* \* \*"

The answer to your first question hinges upon whether or not township police constables appointed pursuant to Section 509.01, Revised Code, and the chief, and members, of a township police district, appointed pursuant to Section 505.49, Revised Code, are "peace officers" as this term has been defined by the rule and regulations adopted and promulgated pursuant to Section 109.74, Revised Code. Rule PC-1-02 (E), Rules and Regulations and Procedures of the Ohio Peace Officers Training Council, states:

"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."

This rule establishes three basic criteria, the first of which is that a peace officer be appointed, or employed, by a township, county, or municipal corporation. Both a township constable and the chief, and members, of a township police dis-

strict meet this requirement. The second is that a peace officer be responsible for the enforcement of the general criminal laws of Ohio. Section 509.05, Revised Code, 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."

Section 509.10, Revised Code, states:

"Each constable shall apprehend, on view or warrant, and bring to justice, all felons, disturbers, and violators of the criminal laws of this state, and shall suppress all riots, affrays, and unlawful assemblies which come to his knowledge, and shall generally keep the peace in his township."

An examination of these sections indicates that township police constables do enforce the general criminal laws of this state. This conclusion is not disturbed by Section 4513.39, Revised Code, which grants exclusive authority to the State Highway Patrol, sheriffs, and sheriffs' deputies to make arrests for certain traffic violations on state highways outside municipalities, as, by necessary implication, township police constables may make arrests for violations of all state laws on township and county roads within their township.

While there is no section of the Revised Code which specifically sets forth the enforcement duties or authority of the chief and members of a township police district, Section 505.49, Revised Code, does provide the following:

" \* \* \* \* \*"

" \* \* \* 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."

This statutory provision for interchangeability of officers of a township police district and township police constables would indicate that both are charged with the enforcement of the general criminal laws of Ohio. Thus both township police constables and officers of a township police district meet the second requirement of Rule PC-1-02 (E), Rules and Regulations and Procedures of the Ohio Peace Officers Training Council.

If township police constables, and the chief and members of a township police district, are empowered to carry firearms, the third requirement is met, and both township police constables and the chief, and members, of a township police district are, for purposes of Sections 109.71 through 109.77, inclusive of the Revised Code, peace officers.

Section 109.77, Revised Code, 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 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 school for temporary or probationary officers and is awarded a certificate by such director attesting thereto."

Inherent in this section is the idea that any peace officer appointed prior to January 1, 1966, may continue in his capacity

without having been certified by the executive director of the Ohio Peace Officer's Training Council; however, any peace officer being appointed on a permanent basis after January 1, 1966, must be certified prior to such appointment. My answer to your first question is that any township police constable, or chief, and members, of a township police district, must be certified by the executive director of the Ohio Peace Officer's Training Council as having completed a satisfactory basic training course, before such peace officer may receive an original permanent appointment after January 1, 1966.

Your second question concerns the propriety of township trustees' paying the expenses connected with the training necessary for certification of a peace officer by the executive director, and whether or not such payments may be made in advance.

Section 109.77, supra, prohibits the appointment of a peace officer, on a permanent basis, by a county, township, or municipal corporation, after January 1, 1966, unless such officer has previously been awarded a certificate by the executive director of the Ohio Peace Officers Training Council attesting to his satisfactory completion of an approved state, county, or municipal police basic training program. Thus, township trustees may appoint, and the chief of a township police district may appoint, a peace officer who has previously been certified on a permanent basis.

The alternative to this would be to appoint a peace officer on a temporary basis. Rule PC-1-11, of the Rules and Regulations and Procedures Adopted by the Peace Officers Training Council, which were promulgated pursuant to Section 109.74, Revised Code, establishes the time limit within which a peace officer appointed on a temporary basis must be certified as one year. The township trustees have authority to pay certain expenses under Section 505.54, Revised Code, set forth below:

"The board of trustees of the township may, upon nomination by the chief of police, send one or more of the officers, patrolmen, or other employees of the township police district to a school of instruction designed to provide additional training or skills related to the employee work assignment in the district. The trustees may make advance tuition payments for any employee so nominated and may defray all or a portion of the employee's expenses while receiving this instruction."

If the chief of a township police district chooses to appoint, on a temporary basis, after January 1, 1966, peace officers who have not been previously certified, Section 505.54, supra, gives the township trustees the authority to pay the necessary expenses. Section 505.54, supra, is limited to members of a township police district.

No specific statutory authority to pay expenses for training of township police constables has been granted. Similar questions, however, have been posed and answered by opinions of attorneys general with regard to reimbursement of township trustees

for travel expenses incurred in the performance of official duties (Opinion No. 243, Opinions of the Attorney General for 1957) and reimbursement of a county coroner for travel expenses incurred on official business (Opinion No. 1869, Opinions of the Attorney General for 1952). Both of these opinions held that expenses incurred in the performance of official duties were properly reimbursable, and both of these opinions relied heavily on the authority of the adroit reasoning of Opinion No. 2170, Opinions of the Attorney General for 1930. Paragraphs two and three of the syllabus of that opinion read as follows:

"2. In the absence of statutory or charter provision prohibiting or limiting such action, a public officer or public employe may lawfully be reimbursed from public funds for traveling and other personal expenses actually and necessarily incurred by him in the performance of a public duty in furtherance of a definite project or undertaking then under way or in immediate prospective contemplation, provided in the exercise of a sound and proper discretion, it appears that the incurring of said expenses is necessary for the benefit of the political subdivision which the officer or employee serves, and in the performance of a duty enjoined or authorized by law. If by statute or charter provision such expenses are limited the officer or employe may be reimbursed within the limitations allowed by such law only.

"3. Keeping in mind the rule of law stated in the second branch of this syllabus, the determination of the lawfulness of the allowance of traveling and other personal expenditures of a public officer or employe when in the performance of his public duties requires consideration of pertinent questions of fact, and is thereby reduced to a pure question of auditing."

It cannot be questioned that any expenses incurred by a township police constable in attending the basic training course, required prior to permanent appointment by Section 109.77, Revised Code, would be incurred in the performance of an official duty. As such, these expenses would be reimbursable.

In direct answer to your questions, it is my opinion and you are hereby advised that:

1. Each township constable, appointed on a permanent basis after January 1, 1966, pursuant to Section 509.01, Revised Code, and each chief and member of a township police district, appointed on a permanent basis after January 1, 1966, pursuant to Section 505.01, Revised Code, must have been certified by the executive director of the Ohio Peace Officers Training Council as having completed an approved state, county, or municipal police basic training program.

2. A board of township trustees may pay the expenses of the required training for the chief and members of a township police district, and may make such payments in advance pursuant to Section 505.54, Revised Code.

3. A board of township trustees may pay necessary travel, and other, expenses incurred incident to a township police constable's being trained as required by Section 109.77, Revised Code. (Opinion No. 2170, Opinions of the Attorney General for 1930, approved and followed.) Since such expenses are not specifically provided for by statute, it is within the discretion of the board of township trustees to pay such expenses in advance.