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CONSTABLE IS MINISTERIAL OFFICER OF COUNTY COURT,
AUTHORIZED TO SERVE SUMMONS IN CIVIL ACTIONS IN
SUCH COURTS. SECS. 509.01, 509.05 R.C.

SYLLABUS:

Pursuant to Section 509.05, Revised Code, a constable appointed under Section 509.01, Revised Code, is a ministerial officer of the county court and is authorized to serve summons in civil actions in such court.

Hon. Robert O. Hamilton, Prosecuting Attorney
Union County, Marysville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I would like your opinion on the following question:

“Are Police constables appointed under Section 509.01 ministerial officers of the county court for the purpose of serving summons in Civil actions?

“This section provides that they keep the peace, protect property and perform duties as a police constable.

“The question is then, what are the ‘duties’ of a police constable? Section 1911.01 has been amended by substituting Sheriff for Constable, and Section 1907.511 states that the Sheriff is the ministerial officer (effective 9-16-57).

“The confusion in my mind arises from the amendment of Section 1911.05. In this amendment the word ‘Sheriff’ did not replace ‘Constable’ but was added as a ministerial officer.

“Constable still remains in several other sections.”

Section 1907.511, Revised Code, enacted by Amended House Bill No. 914 of the 102nd General Assembly, effective on January 1, 1958, provides:

“The county sheriff shall be the ministerial officer of the county court in all civil and criminal cases in which the county court has jurisdiction.”

Section 509.05, Revised Code, as amended by Amended House Bill No. 914, *supra*, effective on January 1, 1958, reads:

“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)

On the question of the ministerial officer of a county court, my predecessor, in Opinion No. 1427, Opinions of the Attorney General for 1957, page 741, stated in paragraph 2 of the syllabus:

“Under the provisions of Sections 509.05 and 1907.511, Revised Code, the ministerial officers of a county court are the sheriff and all of the township constables of the townships within the county court district. * * *”

Prior to November 6, 1959, constables were elected pursuant to Section 509.01, Revised Code, and Police Constables were appointed under Section 509.16, Revised Code. In Amended House Hill No. 571, *supra*, existing Section 509.01, Revised Code, providing for elected constables, was repealed. In the same bill, a new Section 509.01, Revised Code, providing for appointed police constables was enacted. The former police constable section, Section 509.16, Revised Code, was also repealed. The effect of Amended House Bill No. 571, in this regard, therefore, was to provide for one class of constables— those appointed pursuant to new Section 509.01, Revised Code. As Section 509.05, Revised Code, provides, such constables are ministerial officers of the county court in all cases in their respective townships, and in criminal cases, they are such officers within the county. The sheriff, of course, remains a ministerial officer of the county court pursuant to Section 1907.511, Revised Code.

Your letter states that “Section 1911.01 has been amended by substituting Sheriff for Constable”; the letter also states that “The confusion in my mind arises from the amendment of Section 1911.05.” In this regard you will note that both Section 1911.01 and Section 1911.05, Revised Code, were repealed by Amended House Bill No. 571, *supra*, effective November 6, 1959.

On reviewing Amended House Bill No. 571, *supra*, I have found one section which could possibly cause some confusion as to the authority of a constable as ministerial officer of the county court. This is Section 1911.012, Revised Code, enacted by said bill, and reading as follows:

“Writs and process in a county court shall be served, returned, and publication made in the manner provided for services, return, and publication of summons, writs, and process in the court of common pleas.

In any civil action or proceeding at law in which the subject matter of the action or proceeding is located within the territory or a defendant resides or is served with summons within said territory, the court may issue summons, orders of interpleader, all other writs, and mesne and final process, including executions necessary or proper for the complete adjudication of the issues and determination of the action, to the sheriff for service in the county in which the court is situated and to the sheriff of any other county against one or more of the remaining defendants.”

“All warrants, executions, subpoenas, writs, and processes in all criminal and quasi-criminal cases may be issued to a police officer of the appropriate municipal corporation or to the sheriff of the appropriate county.”

This section provides for service of writs and process of a county court but refers only to service by sheriffs without mentioning service by constables. It might be argued, therefore, that constables are not authorized to make such service. I am of the opinion, however, that Section 1911.012, Revised Code, and Section 509.05, Revised Code, must be read together to ascertain the intent of the Legislature in this regard. As noted earlier, Section 509.05, Revised Code, provides that constables "shall be ministerial officers of the county court in all cases in their respective townships." The section further authorizes constables to "serve and execute all warrants, writs, precepts, executions, and other process directed and delivered to them." Constables being so authorized, the fact that they are not mentioned in Section 1911.012, Revised Code, does not prohibit them from making the service provided for in said section.

Further reviewing Amended House Bill No. 571, *supra*, I note that amendments were made to numerous code sections to specify that either the sheriff or a constable could act as ministerial officer of the county court. This was undoubtedly done to clarify the law since although both sheriffs and constables were made ministerial officers of the court in 1957, many specific sections of law referred only to the constable taking action in such capacity. There now is no question about the authority of both the sheriffs and the constables to act as ministerial officers of the county court.

Answering your specific question, therefore, it is my opinion and you are advised that pursuant to Section 509.05, Revised Code, a constable appointed under Section 509.01, Revised Code, is a ministerial officer of the county court and is authorized to serve summons in civil actions in such court.

Respectfully,

MARK McELROY
Attorney General