

**OPINION NO. 92-001**

**Syllabus:**

1. Experience as a member of the legislative authority of a village, public school teacher, or trustee of a non-profit corporation does not qualify as law enforcement experience for purposes of R.C. 311.01(B)(9).
2. College or other post-secondary education does not qualify as law enforcement experience for purposes of R.C. 311.01(B)(9).

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**To: R. Alan Corbin, Brown County Prosecuting Attorney, Georgetown, Ohio**

**By: Lee Fisher, Attorney General, January 28, 1992**

You have requested an opinion concerning the qualifications required of a candidate for county sheriff. Specifically, you ask whether experience as a member of the legislative authority of a village, as a public school teacher, or as a trustee of a non-profit corporation, or whether college or post-secondary education, qualifies as law enforcement experience for purposes of R.C. 311.01(B)(9). Under R.C. 311.01(B)(9), a candidate for county sheriff must

[have] at least five years of full-time law enforcement experience in which the duties were related to the enforcement of statutes, ordinances, or codes and [have] at least two years of supervisory experience or its equivalent, or, in place of two years of supervisory experience, [have] completed satisfactorily at least two years of post-secondary education or the equivalent in semester or quarter hours in a college or university authorized to confer degrees by the Ohio board of regents or the comparable agency of another state in which the college or university is located.

R.C. 311.01(B)(9) thus requires a candidate for county sheriff to have at least five years of full-time law enforcement experience in which the duties were related to the enforcement of statutes, ordinances, or codes, and to have supervisory experience, or the appropriate amount of post-secondary education in lieu of supervisory experience.

**I. What Qualifies As Law Enforcement Experience Under R.C. 311.01(B)(9)**

As a general matter, a private individual has no duty to enforce the statutes, ordinances, or codes of Ohio, or any of the political subdivisions thereof. *See, e.g.*, R.C. 2935.04 ("[w]hen a felony has been committed, or there is reasonable ground to believe that a felony has been committed, any person without a warrant may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained" (emphasis added)); Ohio R. Crim. P. 4(A)(1) ("[i]f it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant, or a summons in lieu of a warrant, shall be issued by a judge, magistrate, clerk of court, or officer of the court designated by the judge, to any law enforcement officer<sup>1</sup> authorized by law to execute or serve it" (footnote

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<sup>1</sup> As used in the Ohio Rules of Criminal Procedure,

"[l]aw enforcement officer" means a sheriff, deputy sheriff, constable, municipal police officer, marshal, deputy marshal, or state highway patrolman, and also means any officer, agent, or

added)); *Stoeckel v. Industrial Comm'n*, 31 Ohio Op. 331, 16 Ohio Supp. 171 (C.P. Hamilton County 1945) (a private citizen has no duty to make an arrest), *aff'd*, 77 Ohio App. 159, 66 N.E.2d 776 (Hamilton County 1945); *Blackman v. Cincinnati*, 18 Ohio Op. 129, 32 Ohio Law Abs. 125 (C.P. Hamilton County 1940) (a private individual has no duty to make an arrest), *aff'd*, 66 Ohio App. 495, 35 N.E.2d 164 (Hamilton County 1941), *aff'd*, 140 Ohio St. 25, 42 N.E.2d 158 (1942).

Provisions within the Ohio Revised Code, however, do impose upon various public officials a duty to enforce the statutes, ordinances, or codes of Ohio, or any of its political subdivisions. *See, e.g.*, R.C. 311.07(A) ("[e]ach sheriff shall preserve the public peace and cause all persons guilty of any breach of the peace, within his knowledge or view, to enter into recognizance with sureties to keep the peace and to appear at the succeeding term of the court of common pleas"); R.C. 509.05 (township constables "shall apprehend and bring to justice felons and disturbers of the peace, suppress riots, and keep and preserve the peace within the county"); R.C. 737.11 ("[t]he police force of a municipal corporation shall preserve the peace, protect persons and property, and obey and enforce all ordinances of the legislative authority of the municipal corporation, all criminal laws of the state and the United States"); R.C. 737.19(C) (the village marshal "shall arrest all disorderly persons in the village and pursue and arrest any person fleeing from justice in any part of the state. He shall arrest any person in the act of committing any offense against the laws of the state or the ordinances of the village, and forthwith bring such person before the mayor or other competent authority for examination or trial"); R.C. 2935.03(A) (requiring certain peace officers to "arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the political subdivision, metropolitan housing authority housing project, college, university, or Ohio veterans' home in which the peace officer is appointed, employed, or elected, a law of this state, an ordinance of a municipal corporation, or a resolution of a township"); R.C. 5503.02(A) (requiring the troopers of the State Highway Patrol to enforce various laws related to the operation and use of motor vehicles).

Thus, the General Assembly has conferred upon certain public officials the duty to enforce statutes, ordinances, and codes. Accordingly, resolution of your specific question requires an examination of the positions of member of the legislative authority of a village, public school teacher, and trustee of a non-profit corporation in order to determine whether the General Assembly has conferred upon these positions, and the individuals who hold those positions, duties related to the enforcement of statutes, ordinances, or codes. *See, e.g.*, 1988 Op. Att'y Gen. No. 88-048 at 2-222 and 2-223 (insofar as R.C. 2301.31 and 9 Ohio Admin. Code 5120:1-1-12 impose upon county probation officers duties related to the enforcement of statutes, ordinances, and codes, experience as a county probation officer qualifies as law enforcement experience under R.C. 311.01(B)(9)). A determination that the General Assembly has not conferred duties of that character upon those positions should, in turn, lead to the conclusion that an individual who has held the position in question has not thereby had law enforcement experience as understood by R.C. 311.01(B)(9).

**II. Experience As A Member Of The Legislative Authority Of A Village, Public School Teacher, Or Trustee Of A Non-profit Corporation Does Not Qualify As Law Enforcement Experience Under R.C. 311.01(B)(9)**

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employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, the authority to arrest violators is conferred, when the officer, agent, or employee is acting within the limits of statutory authority. The definition of "law enforcement officer" contained in this rule shall not be construed to limit, modify, or expand any statutory definition, to the extent the statutory definition applies to matters not covered by the Rules of Criminal Procedure.

R. Crim. P. 2(J); *see also* R.C. 2901.01(K) (defining "law enforcement officer" for purposes of the Ohio Revised Code).

#### A. The Position Of Member Of The Legislative Authority Of A Village

The responsibilities of the legislative authority of a village are set forth in R.C. Chapter 731 and related provisions. The members of the legislative authority of a village are delegated various powers and duties related to the administration of the village. *See, e.g.*, R.C. 731.14 (power to contract on behalf of the village); R.C. 731.17 (power to pass ordinances and resolutions); R.C. 731.47 (management and control of the village finances and property, except as otherwise provided); R.C. 735.27 (management of the public institutions either owned, maintained, or established by the village); R.C. 737.04 (power to contract to obtain police protection or to obtain additional police protection). The members of the legislative authority of a village are vested with and exercise the legislative power of the village. R.C. 731.09. The members of the legislative authority of a village, however, do not have statutory responsibility to enforce statutes, ordinances, or codes.<sup>2</sup>

Pursuant to R.C. 733.23, "[t]he executive power of villages shall be vested in a mayor, clerk, treasurer, marshal, street commissioner, and such other officers and departments thereof as are created by law." Further, the mayor of the village "shall see that all ordinances, bylaws, and resolutions of the legislative authority are faithfully obeyed and enforced." R.C. 733.30. In discharging this duty, the mayor of the village is authorized to appoint deputy marshals, policemen, night watchmen, and special policemen. R.C. 737.16; *see also* R.C. 737.18 (setting forth the general powers of the police officers of the village); R.C. 737.19(C) (setting forth the powers of the marshal of the village). Accordingly, the mayor of a village and the marshal, deputy marshals, policemen, night watchmen, and special policemen appointed by the mayor are required to enforce, within the territory of the village, the laws of the state and the ordinances of the village. Insofar as the mayor of the village and the marshal, deputy marshals, policemen, night watchmen, and special policemen appointed by the mayor are required by statute to enforce, within the territory of the village, the laws of the state and the ordinances of the village, and members of the legislative authority of a village are not so required, the members of a legislative authority of a village do not have duties related to the enforcement of statutes, ordinances, or codes. Hence, experience as a member of the legislative authority of a village does not qualify as law enforcement experience for purposes of R.C. 311.01(B)(9).

#### B. The Position Of Public School Teacher

A public school teacher is a contractual employee of the board of education. R.C. 3319.07; R.C. 3319.08; *see also State ex rel. Scarl v. Small*, 103 Ohio App. 214, 217, 145 N.E.2d 200, 202 (Portage County 1956). The specific duties of a public school teacher are set forth in the teacher's employment contract. *See* R.C. 3319.08 (the employment contract between the board of education and a teacher shall set forth the teacher's duties and provide for the salary and compensation). The primary duty of all public school teachers, however, is the inculcation of knowledge to students. *See generally* R.C. 3313.061 ("[a] board of education may provide educational television courses and programs for any class or classes in the school district"); R.C. 3313.48 ("[t]he board of education of each city, exempted village, local, and joint vocational school district shall provide for the free education of the youth of school age within the district under its jurisdiction"); R.C. 3313.53 (the board of education of any city, exempted village, or local school district may establish and maintain special instruction departments); R.C. 3313.56 ("[t]he board of education of any city, exempted village, or local school district may establish and

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<sup>2</sup> For purposes of this opinion, it is assumed that the members of the legislative authority of the village have not imposed upon themselves a duty to enforce the laws of this state or the ordinances of the village either through the legislative authority's exercise of powers of local self-government under Ohio Const. art. XVIII, §3, or by the adoption of a charter pursuant to Ohio Const. art. XVIII, §7, which is approved by the village electorate.

maintain part-time schools or classes for the further education of children who are employed on age and schooling certificates"); R.C. 3329.09 ("[e]ach city, exempted village, and local board of education shall make all necessary provisions and arrangements to place the [schoolbooks] purchased within easy reach of and accessible to all the pupils in their district"). In addition, it is generally recognized that teachers have such implied duties as are necessary to the discharge of their primary duty of educating. See generally *Boyer v. Jablonski*, 70 Ohio App. 2d 141, 146, 435 N.E.2d 436, 439 (Cuyahoga County 1980) ("[a] teacher's duty to maintain proper classroom decorum arises from the fact that students are unlikely to learn in an undisciplined setting").

An examination of the statutes relating to the education of students discloses no provision that confers upon public school teachers a duty to enforce statutes, ordinances, or codes.<sup>3</sup> Public school teachers, thus, do not have duties related to the enforcement of statutes, ordinances, or codes. Therefore, experience as a public school teacher does not qualify as law enforcement experience for purposes of R.C. 311.01(B)(9).

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<sup>3</sup> Supplemental information provided with your letter of request suggests that a public school teacher is delegated, pursuant to R.C. 2151.421 and R.C. 3321.12, duties related to the enforcement of statutes. R.C. 2151.421(A)(1) provides that no school teacher, *inter alia*,

who is acting in his official or professional capacity and knows or suspects that a child under eighteen years of age or a physically or mentally handicapped child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, shall fail to immediately report or cause reports to be made of that knowledge or suspicion to the children services board, the county department of human services exercising the children services function, or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred.

Similarly, R.C. 3321.12 requires a public school teacher to

report to the treasurer of the board of education of the city, exempted village, or local school district in which the school is situated, the names, ages, and places of residence of all pupils below eighteen years of age in attendance at their schools together with such other facts as said treasurer requires to facilitate the carrying out of the laws relating to compulsory education and the employment of minors.

These sections impose, however, only the limited duty to provide information. The actual enforcement of the laws relating to cases of child abuse and reported cases of child neglect, and laws relating to compulsory education and the employment of minors, is delegated to other public officials. See R.C. 2151.421(F) (the county department of human services or children services board shall investigate reports of known or suspected child abuse or child neglect); R.C. 3321.17 ("[t]he attendance officer and assistants provided for by [R.C. 3321.14 or R.C. 3321.15] shall be vested with police powers, may serve warrants, and may enter workshops, factories, stores, and all other places where children are employed and do whatever is necessary in the way of investigation or otherwise to enforce the laws relating to compulsory education and the employment of minors"). I do not believe that the duty to provide information pursuant to the terms of R.C. 2151.421 and R.C. 3321.12, as it may apply to a public school teacher, should be characterized as a duty related to the enforcement of statutes, ordinances, or codes for purposes of R.C. 311.01(B)(9).

### C. The Position Of Trustee Of A Non-profit Corporation

R.C. Chapter 1702 authorizes the creation of, and sets forth provisions concerning the operation of, non-profit corporations in Ohio. A non-profit corporation may be formed for any purpose or purposes for which natural persons lawfully may associate themselves. R.C. 1702.03. In carrying out the purposes stated in its articles of incorporation, a non-profit corporation may, *inter alia*, sue or be sued; adopt and alter a corporate seal; take property by gift, devise, or bequest; make donations for the public welfare, for religious, charitable, scientific, literary, or educational purposes; purchase, lease, invest in, hold, use, encumber, sell, exchange, transfer, and dispose of property; make contracts; and borrow money, and issue, sell, and pledge its notes, bonds, and other evidences of indebtedness, and secure any of its obligations by mortgage, pledge, or deed of trust, of all or any of its property, and guarantee or secure obligations of any person. R.C. 1702.12.

Pursuant to R.C. 1702.30(A), "[e]xcept where the law, the articles, or the regulations require that action be otherwise authorized or taken, all of the authority of a [non-profit] corporation shall be exercised by or under the direction of its trustees." A trustee, while discharging his duties as a trustee, is obligated to perform his duties "in good faith, in a manner he reasonably believes to be in or not opposed to the best interests of the corporation, and with the care that an ordinarily prudent person in a like position would use under similar circumstances." R.C. 1702.30(B). The trustees of a non-profit corporation, thus, are empowered, in general, to exercise the corporate powers of the non-profit corporation.

A review of the provisions of R.C. Chapter 1702 relating to the creation and operation of non-profit corporations reveals that the General Assembly has not delegated to the trustees of non-profit corporations duties related to the enforcement of statutes, ordinances, or codes. Moreover, no provision therein empowers a non-profit corporation to confer duties related to the enforcement of statutes, ordinances, or codes upon the officers, employees, agents, or other officials of the corporation. Since law enforcement officers exercise a part of the sovereignty of the state, see *New York, Chicago & St. Louis R.R. Co. v. Fieback*, 87 Ohio St. 254, 264-65, 100 N.E. 889, 891 (1912); *Neapolitan v. United States Steel Corp.*, 77 Ohio Law Abs. 376, 149 N.E.2d 589 (Ct. App. Mahoning County 1956); see also 1991 Op. Att'y Gen. No. 91-037 at 2-201 and 2-202, authority to delegate duties related to the enforcement of statutes, ordinances, or codes must be expressly set forth in a statute, ordinance, or charter provision. Cf., e.g., R.C. 311.04 (authorizing a county sheriff to appoint deputies to enforce the laws of this state); R.C. 737.16 (authorizing the mayor of a village to appoint deputy marshals, policemen, night watchmen, and special policemen to enforce the laws of this state). Because no provision within R.C. Chapter 1702 authorizes a non-profit corporation to delegate duties related to the enforcement of statutes, ordinances, or codes, a non-profit corporation may not delegate to its trustees or other officials duties of that nature.

Trustees of a non-profit corporation, thus, do not have duties related to the enforcement of statutes, ordinances, or codes. Experience as a trustee of a non-profit corporation, accordingly, does not qualify as law enforcement experience for purposes of R.C. 311.01(B)(9).

### III. College Or Other Post-Secondary Education Does Not Qualify As Law Enforcement Experience Under R.C. 311.01(B)(9)

The second portion of your question asks whether college or post-secondary education qualifies as law enforcement experience for purposes of R.C. 311.01(B)(9). R.C. 311.01(B)(9), as quoted above, provides that a candidate for county sheriff must have both law enforcement experience and supervisory experience. The satisfactory completion of at least two years of post-secondary education or the equivalent in semester or quarter hours in a college or university authorized to confer degrees by the Ohio Board of Regents or the comparable agency of another state in which the college or university is located may serve in lieu of two years of supervisory experience.

The language of R.C. 311.01(B)(9) is unambiguous and unequivocal. R.C. 311.01(B)(9) explicitly states that college and other post-secondary education may be used in place of supervisory experience. It does not state that college and other post-secondary education may be used in place of law enforcement experience. The plain language of R.C. 311.01(B)(9), thus, evidences a legislative intention that college and other post-secondary education may not be used in place of law enforcement experience. *See generally Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five) ([w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted").

#### IV. Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that:

- i. Experience as a member of the legislative authority of a village, public school teacher, or trustee of a non-profit corporation does not qualify as law enforcement experience for purposes of R.C. 311.01(B)(9).
2. College or other post-secondary education does not qualify as law enforcement experience for purposes of R.C. 311.01(B)(9).