

OPINION NO. 77-086

Syllabus:

1. R.C. 4973.17 does not authorize a city or a division of its government to apply to the governor for an appointment and commission of a policeman.
2. The governor may appoint and commission, pursuant to R.C. 4973.17, persons designated by a company owning or using a street railway, suburban or interurban railroad as a special policeman even if said company owns or uses less than five miles of track.

To: James A. Rhodes, Governor, State of Ohio, Columbus, Ohio
By: William J. Brown, Attorney General, December 9, 1977

I have before me your request for my opinion concerning the appointment of railroad policemen pursuant to R.C. 4973.17. Your inquiry, in pertinent part asks:

1. Does Section 4973.17 Revised Code authorize a city or a division of its government to apply for the appointment of policemen?
2. A specific provision of the statute provides that "not more than one such policeman shall be appointed for each five miles of a . . . interurban railroad." Can an eligible applicant have one policeman appointed if the applicant owns or uses less than five miles of railway?

In respect to your first question, R.C. 4973.17 states in pertinent part:

Upon the application of . . . a company owning or using a railroad, street railway, or suburban

or interurban railroad in this state, the governor may appoint and commission such persons as the . . . railroad company designates, or as many of such persons as he deems proper, to act as policemen for and on the premises of such . . . railroad, or elsewhere, when directly in the discharge of their duties . . .

Therefore, if a city may be said to have the authority pursuant to these provisions to apply for the appointment of such policemen, it must first be "a company owning or using a railroad." It is worthy of note that, for other purposes explained below, the Ohio Revised Code defines "railroad" in R.C. 4907.02 and "railroad company" in R.C. 5727.01 (E) (18). R.C. 4907.02 states, in pertinent part, that:

As used in Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and 4925. of the Revised Code, "railroad" includes any corporation, company, individual, or association of individuals, or its lessees, trustees, or receivers appointed by a court, which owns, operates, manages, or controls a railroad or part of a railroad as a common carrier in this state, or which owns, operates, manages, or controls any cars or other equipment used on such a railroad, or which owns, operates, manages, or controls any bridges, terminals, union depots, sidetracks, docks, wharves, or storage elevators used in connection with such a railroad, whether owned by such a railroad or otherwise, and means and includes express companies, water transportation companies, freight-line companies, sleeping car companies, and interurban railroad companies, and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state.

This definition, however, by its own terms, is expressly applicable only to the sections enumerated therein. Those sections concern powers, duties and other matters pertaining to the Public Utilities Commission. Special technical definitions were necessary to set forth with particularity the Commission's jurisdiction. Such technical definitions were not required elsewhere where the Revised Code speaks to "railroads" and the absence of such a definition for the purposes of R.C. 4973.17 leads to the conclusion that the plain meaning of such terms shall apply.

R.C. 5721.01 (E) (18) states that:

As used in sections 5727.01 to 5727.62, inclusive, of the Revised Code:

(E) Any person, firm, partnership, voluntary associations, company or corporation, whether organized or incorporated . . .

(18) Is a railroad company when engaged in the business of operating a railroad either wholly or partially within this state on rights of way acquired and held exclusively by such company or otherwise, . . .
(Emphasis added)

R.C. 5727.06 through 5727.62 concern the taxation of public utilities. Again, a specialized, technical definition of, inter alia, the term "railroad company" was required because of particular need for specificity and certainty in taxing statutes. Accordingly, the General Assembly provided such a definition only for the purpose of the scheme of taxation set forth in R.C. Chapter 5727. Therefore, the definition

of "railroad company" contained in R.C. 5727.01 (E) (18) would not apply to that term as used in R.C. 4973.13.

Since the Ohio Revised Code does not contain a definition of "railroad company" as that term is used in R.C. 4973.17, the rule of statutory construction set forth in R.C. 1.42 must be employed to ascertain its meaning. R.C. 1.42 mandates that:

Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

"Company" is defined in Webster's Third New International Dictionary as ". . . an association of persons for carrying on a commercial or industrial enterprise or business . . ." Black's Law Dictionary, (4th Ed.), defines "railroad company" as follows:

A company which is principally engaged in operating a railroad.

A city is not an entity formed for the purpose of carrying on a business enterprise. It cannot be said to be principally engaged in the operation of a railroad. Therefore, it is my opinion that a municipal corporation is not a "company owning or using a railroad", and it has no authority to apply for the appointment and commission of railroad policemen pursuant to R.C. 4973.17.

The manifest purpose of R.C. 4973.17 also compels this conclusion. It provides railroad companies with a mechanism for attaining additional police protection. Otherwise, railroad companies would be limited to only the protection afforded by local police. The General Assembly apparently decided that it was in the public interest to give to railroad companies this mechanism for obtaining additional protection. Unlike a private entity, a municipal corporation may provide police protection as it deems necessary. Art. XVIII, §3, Ohio Constitution reserves "home rule" powers to municipalities, allowing them to adopt such police regulations as are not in conflict with general laws. Further R.C. Chapter 737 grants additional authority to cities to establish and maintain police departments. Therefore, a municipal corporation would not need authority pursuant to R.C. 4973.17 to appoint railroad policemen. Rather, it can provide such protection simply by appointing such additional police officers as it deems necessary pursuant to its own authority.

Your second question concerns the effect of a provision of R.C. 4973.17 which states as follows:

. . . Not more than one such policeman shall be appointed for each five miles of a street railway, suburban or interurban railroad . . .

It is apparent from the phrase ". . . not more than . . ." that five miles of track is a limitation of the number of the police commissions that may be issued by the Governor on behalf of a street railway, suburban or interurban railroad. It does not serve as a minimum requirement to be met before any commissions can be issued. Accordingly, it is my opinion that an eligible applicant can have one policeman appointed if that applicant owns or uses less than five miles of railway.

Therefore, it is my opinion, and you are so advised, that:

1. R.C. 4973.17 does not authorize a city or a division of its government to apply to the

governor for an appointment and commission of a policeman.

2. The governor may appoint and commission, pursuant to R.C. 4973.17, persons designated by a company owning or using a street railway, suburban or interurban railroad as a special policeman even if said company owns or uses less than five miles of track.