

**OPINION NO. 66-152****Syllabus:**

Regular policemen or patrolmen employed by a municipal corporation are subject to Section 2919.08, Revised Code, which forbids officers and employees to be interested in any contract for the purchase of property, supplies or fire insurance for the use of the municipal corporation with which they are connected.

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**To: James V. Barbuto, Summit County Pros. Atty., Akron, Ohio**  
**By: William B. Saxbe, Attorney General, September 8, 1966**

Your request for my opinion reads as follows:

"Would Section 2919.08 of the Ohio Revised Code prohibit a corporation which is controlled by regular City police patrolmen, appointed by the Civil Service Commission of the municipality, and the municipality which employs them as such, from entering into contracts:

"1. For the sale of property and

supplies to the City for the use of the Fire Department?

"2. For the sale of property and supplies to the City for the use of the Police Department?

"Would it make any difference that:

"1. Neither these policemen nor any of their superiors in the Police Department has any authority to enter into any contracts on behalf of the City?

"2. The corporation which these policemen control is the only reasonable source of supply for such supplies in the immediate area of the municipality, and to go elsewhere for such supplies would result in increased cost to the City?"

Section 2919.08, Revised Code, to which your letter refers reads as follows:

"No person, holding an office of trust or profit by election or appointment, or as agent, servant or employee of such officer or of a board of such officers, shall be interested in a contract for the purchase of property, supplies, or fire insurance for the use of the county, township, municipal corporation, board of education, or a public institution with which he is connected.

"Whoever violates this section shall be imprisoned not less than one nor more than ten years."

The above statute forbidding officers and employees to be interested in any contract for the purchase of property, supplies or fire insurance with the political subdivision with which he is connected has frequently been applied and enforced.

The theory upon which such contracts are forbidden appears to be that the possession of an office or position with a public body opens the way for fraud or favoritism or gives such officer or employee an unfair opportunity to secure such contract.

A city policeman is generally regarded as an officer of the municipality. This official status is given him on the ground that his principal duty is the preservation of the public, peace, which is always a matter of public concern. See, Wright v. Lorain, 70 Ohio App., 337, 25 O.O. 89; State ex rel. Spaller v. Painesville, 13 C.C. (N.S.) 577, 32 C.C. 123, aff'd., 85 Ohio St. 483, 98 N.E. 1134.

In addition, the Court of Appeals of Summit County in

State, ex rel. Randel v. Scott, Auditor, 95 Ohio App., 197, 199, 53 O.O. 132, 133, stated:

"We therefore determine that, since the Civil Service Code defines the term 'employee', a police officer is an 'employee' within the meaning of this act, even though a police officer is a public officer."

Also pertinent is Opinion No. 2983, Opinions of the Attorney General for 1948, which held that municipal firemen are subject to the provisions of Sections 12910 and 12911 of the General Code (now Sections 2919.08 and 2919.09, Revised Code). The then Attorney General at page 149 of the opinion said that:

"There is no question but that regular firemen are employees of the municipalities by whom they are appointed, and are amenable to the laws in question prohibiting employees generally, from having an interest in certain contracts."

There can be little doubt that Section 2919.08, Revised Code, prohibits police officers as employees or as public officers, from being concerned, directly or indirectly, in any contract for work to be done, or material or fire insurance to be furnished, for the public body they represent.

An examination of Section 2919.08, supra, clearly shows that it makes no difference that the officer or employee lacks the authority to enter into contracts on behalf of the public body they represent. And there is no statutory authority which would render Section 2919.08, supra, inapplicable for the reason that the corporation in question is the only source for supplying the public body and to go elsewhere for such supplies would result in increased cost.

We should keep in mind, however, that the section above referred to does not apply to a person whose only interest in such contract is as a shareholder owning five per cent or less of the stock not exceeding \$500.00 in value of a corporation of which he is not a director or officer. See, Section 2919.11, Revised Code.

Accordingly and in specific answer to your inquiry, it is my opinion:

Regular policemen or patrolmen employed by a municipal corporation are subject to Section 2919.08, Revised Code, which forbids officers and employees to be interested in any contract for the purchase of property, supplies or fire insurance for the use of the municipal corporation with which they are connected.