

1667.

APPROVAL, NOTES OF SUGAR CREEK TOWNSHIP RURAL SCHOOL.
DISTRICT, ALLEN COUNTY, OHIO—\$2,142.00.

COLUMBUS, OHIO, October 1, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1668.

SECRET SERVICE OFFICER—APPOINTED UNDER SECTION 2915-1,
GENERAL CODE, HAS NO POLICE POWERS—MAY NOT CARRY
OUT DUTIES OF DEPUTY SHERIFF.

SYLLABUS:

A secret service officer appointed by virtue of section 2915-1, General Code, does not have police powers nor may he carry out the duties of a deputy sheriff.

COLUMBUS, OHIO, October 3, 1933.

HON. JOHN W. BOLIN, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Section 2915-1 of the General Code of Ohio provides:

‘That the Prosecuting Attorney may appoint a Secret Service Officer, whose duty it shall be to aid him in the collection and discovery of evidence to be used in the trial of criminal cases and matters of a criminal nature, etc.’

I would like your opinion as to whether or not when such Secret Service Officer is appointed and the appointment approved by the Common Pleas Court said Secret Service Officer has police powers, that is, does he have the right to make arrests and serve warrants and to carry out the duties of a county police officer when working out of the Prosecuting Attorney’s office.

I would appreciate very much your opinion as to this matter as it becomes a very grave question when the Secret Service Officer is assisting and carrying out the instructions of the Prosecuting Attorney.”

Section 2915-1, General Code, referred to in your letter, reads as follows:

“The prosecuting attorney may appoint a secret service officer whose duty it shall be to aid him in the collection and discovery of evidence to be used in the trial of criminal cases and matters of a criminal nature. Such appointment shall be made for such term as the prosecuting attorney may deem advisable, and subject to termination at any time by such prosecuting attorney. The compensation of said officer shall be fixed

by the judge of the court of common pleas of the county in which the appointment is made, or if there be more than one judge, by the judges of such court in such county in joint session, and shall not be less than one hundred and twenty-five dollars per month for the time actually occupied in such service nor more than one-half of the official salary of the prosecuting attorney for a year, payable monthly, out of the county fund, upon the warrant of the county auditor."

From a reading of the statute, it is clear that the principal duties of such secret service officer are to act as an investigator and to assist the prosecuting attorney in preparing the evidence in criminal cases as distinguished from the legal aspects of the case. There is no indication in this statute that he is to engage in the activities of a police officer or of a deputy sheriff. If the legislature had intended that he should so conduct himself, it would have said so in enumerating his duties.

To properly carry out the duties of a county police officer, it might be necessary to carry a concealed weapon. The right to carry a concealed weapon in this state exists solely by virtue of the provisions of section 12819, General Code. See Opinions of the Attorney General for 1929, Vol. I, page 767, at page 768; Opinions of the Attorney General for 1930, Vol. I, page 636, at page 637. Section 12819, General Code, reads as follows:

"Whoever carries a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person shall be fined not to exceed five hundred dollars, or imprisoned in the county jail or workhouse not less than thirty days nor more than six months, or imprisoned in the penitentiary not less than one year nor more than three years. Provided, however, that this act (G. C. 12819) shall not affect the right of sheriffs, regularly appointed police officers of incorporated cities and villages, regularly elected constables, and special officers as provided by sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed when on duty. Provided further, that it shall be lawful for deputy sheriffs and specially appointed police officers, except as are appointed or called into service by virtue of the authority of said sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed if they first give bond to the state of Ohio, to be approved by the clerk of the court of common pleas, in the sum of one thousand dollars, conditioned to save the public harmless by reason of any unlawful use of such weapons carried by them; and any person injured by such improper use may have recourse on said bond."

The only way a secret service officer could carry a concealed weapon by virtue of the above section, would be to hold that he is a specially appointed police officer and require that he give a bond pursuant to the provisions of that section. I do not think that a secret service officer is a specially appointed police officer within the meaning of that section.

The question presented in your inquiry was passed upon by one of my predecessors in an exhaustive opinion to be found in the Annual Report of the Attorney General for 1913, Vol. II, page 1148. The syllabus of that opinion is as follows:

"Section 2915-1, General Code, providing for the appointment by a prosecuting attorney of a secret service officer, having been declared un-

constitutional on the ground that the appointing power is too indefinite for execution, the former statute, to wit: section 1541, General Code, as it existed prior to its amendment, providing for a secret service officer for the prosecuting attorney's office or office in the court of common pleas, is still in force. Such officer is not specifically made a peace officer or given police powers, and inasmuch as he is not given such powers, he may not, under settled rules of law, break into a public building in which gambling is reasonably believed to be going on."

It might be well to point out that the reason the court had declared old section 2915-1 unconstitutional was due to the fact that it provided that the salary of the secret service officer was to be fixed by the presiding judge of the common pleas court. At that time no such officer was known to the law and hence in the case of *State, ex rel. vs. Sayre*, 12 O. N. P. (N. S.) 13, the statute was declared unconstitutional. In the next session of the legislature, section 2915-1, General Code, as it exists at the present time, was enacted.

However, section 1541, General Code, upon which the 1913 opinion was based, is similar to the present section 2915-1, General Code. Section 1541, at the time of the rendition of the opinion, read in part as follows:

"The judge of the court of common pleas of a county, or the judge of such court in a county in joint session, if they deem it advisable, may appoint either or all of the following:

Third: A secret service officer for the prosecuting attorney's office, who shall aid the prosecuting attorney in the collection and discovery of testimony to be used in the trial of criminal cases and in matters of a criminal nature. Such appointment may be made for such term as the judge or judges deem advisable, subject to termination at any time for cause sufficient within the judgment of the judge or judges of the court. He shall receive such compensation, payable monthly from the county fund upon the warrant of the county auditor, as the judge or judges so appointing shall determine, not exceeding the rate of fifteen hundred dollars for each year."

I quote the following excerpts from that opinion:

"This section prescribes the duty of such secret service officer, who is commonly known as the county detective, and such duty is to 'aid the prosecuting attorney in the collection and discovery of testimony to be used in the trial of criminal cases and in matters of a criminal nature.'

Such officer is not specifically given power to make arrests or to execute criminal process."

"The duty of a county detective, as prescribed by section 1541, General Code, is to aid the prosecuting attorney in the collection and discovery of testimony. Nothing is said as to his power or duty to make arrests or to serve criminal process."

Without further extending this opinion, it is sufficient to say that I concur in the holding of that opinion and in the reasoning upon which it is based.

It is therefore my opinion, in specific answer to your question, that a secret

service officer appointed by virtue of section 2915-1, General Code, does not have police powers nor may he carry out the duties of a deputy sheriff.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1669.

APPROVAL, STATE GAME REFUGE ORDER TO OPERATE ON LAND
LOCATED IN GREENE COUNTY, OHIO.

COLUMBUS, OHIO, October 3, 1933.

HON. EARL H. HANEFELD, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination the following State Game Refuge Order designed to operate upon land which is subject to said lease, in duplicate, to wit:

Lease No. 2195 made by Antioch College of Greene County, Ohio, for 856 acres of land lying in Miami, Cedarville and Xenia townships, Greene County, Ohio.

Upon examination, I find the above documents to be executed in proper legal form, with the single exception that the first copy of the lease does not appear to be dated "August 29, 1933" like the second copy of the lease. Subject to this date being inserted, I have attached my signature to the lease and duplicate copy in approval of the same.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1670.

APPROVAL, LEASE TO CANAL LAND IN PIKE COUNTY, OHIO, FOR
THE RIGHT TO OCCUPY AND USE AS A SITE FOR AN ICE
HOUSE.

COLUMBUS, OHIO, October 3, 1933.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a canal land lease in triplicate, executed by you to one Carl H. Johnson of Waverly, Ohio. By this lease, which is one for a term of fifteen years and which provides for an annual rental of twenty-four dollars, there is leased and demised to the lessee therein named the right to occupy and use as a site for an ice house for the storage and sale of ice and for other business purposes a certain parcel of abandoned Ohio Canal