

I am therefore of the opinion that:

1. A county board of education is without power to anticipate the expiration of the term of an assistant county superintendent of schools which will take place after the time when the life of the board of education has ended, and appoint or employ a successor to the said assistant county superintendent of schools.

2. In the event an assistant county superintendent of schools should resign during the term for which he is elected he is ineligible for reappointment for a term extending beyond the time of the reorganization of the county board of education following the next general election of members of such board.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1937.

SPECIAL CONSTABLE—CANNOT BE APPOINTED UNDER SECTION 3331, G. C. FOR PURPOSE OF ENFORCING GENERAL PROVISIONS OF SECTION 614-92, G. C.—DUTIES OF SPECIAL CONSTABLE DEFINED—AUTHORITY OF JUSTICE OF PEACE TO APPOINT.

SYLLABUS:

1. *A special constable cannot be appointed under section 3331, General Code, for the general purpose of enforcing the provisions of section 614-92, General Code, since the appointment of a special constable under section 3331, General Code, is limited to the particular occasion for which the special constable is appointed. (Opinions of the Attorney General for 1931, page 1162, followed and approved.)*

2. *A justice of the peace is not authorized under paragraph 4 of section 3331, General Code, to appoint a special constable to enforce the provisions of section 614-92, General Code, where the inability of the duly elected constable of the township to perform the duties of his office is not due to the pressure of official business.*

3. *A special constable appointed by a justice of the peace by virtue of section 3331, General Code, must be a resident and elector of the township for which the justice of the peace who appointed him was elected.*

COLUMBUS, OHIO, November 29, 1933.

HON. ERNEST L. WOLFF, *Prosecuting Attorney, Norwalk, Ohio.*

DEAR SIR:—This will acknowledge your letter which reads in part:

“The question has arisen in this county as to the discretion and authority of a Justice of the Peace to appoint a special constable under paragraph 4 of Section 3331, General Code, for the purpose of apprehending violators of Section 614-92, General Code, and prosecuting such violators under Section 614-100, General Code.

The question at issue is, can a Justice of the Peace appoint a special constable to handle such violations as a class, the appointment being a continuing one, and being made once for all; or, must there be a special appointment for each separate violation, or misdemeanor? It is understood that there

is a regularly elected constable in the township, who is not otherwise engaged with 'pressure of official business', but who does not arrest and prosecute for misdemeanors under Section 614-92, General Code, presumably on account of lack of familiarity with and knowledge of the Public Utilities Commission Code.

Also, do you say that it is necessary that a special constable be a resident and an elector of the township that is under the jurisdiction of the Justice who appoints him?"

Sections 614-92, 614-100 and 3331, General Code, referred to in your letter, read as follows:

Sec. 614-92.

"Except as otherwise expressly provided, it shall be unlawful for any motor transportation company as defined in this act (G. C. §§ 614-2, 614-84 to 614-102 and 6292) to operate in this state on any route, other than the route provided for in the certificate granted by the commission; or to fail or refuse to operate on the whole of the route, in the manner and at the time specified in the certificate; except in case of emergency due to the act of God or unavoidable accident or casualty or the route becoming impassable, or in case it becomes necessary to make temporary detours; and it shall be unlawful for any such motor transportation company to neglect or refuse to comply with and obey any and all regulations and orders of the commission and other statutory laws and regulations of the state of Ohio governing and applying to such motor vehicles, provided, however, that nothing in this act shall prohibit a motor transportation company as defined hereunder and not operating between fixed termini from making casual trips over routes established hereunder."

Sec. 614-100.

"Every motor transportation company and every officer, agent or employee thereof, and every other corporation, company, association, joint stock association, person, firm or co-partnership who violates or fails to comply with or who procures, aids or abets the violation of any provision of sections 614-84 to 614-102, inclusive, of the General Code, or who fails to obey, observe or comply with any order, decision, rule or regulation, or any part or provisions thereof, of the public utilities commission, or who procures, aids or abets any motor transportation company in its failure to obey, observe or comply with such order, decision, rule or regulation, or any part or provision thereof, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than twenty-five dollars and not exceeding one thousand dollars."

Sec. 3331.

"A justice of the peace may appoint a constable or constables for a special purpose, either in civil or criminal cases, when such appointment becomes necessary in the following cases:

1. When there is no constable in the township:
2. In case of disability of one of the regular constables in the township:
3. When the constable therein is a party to the suit:
4. When, from the pressure of official business, the constables therein are not able to perform the duties required by the office.

The justice making the appointment, shall make a memorandum thereof on his docket, and require the person appointed to take an oath, as in other cases."

The first question presented by your inquiry has been considered by this office on several occasions. The authority of a justice of the peace to appoint a special constable by virtue of the fourth paragraph of section 3331, General Code, was considered in the Opinions of the Attorney General for 1927, page 32, wherein it was held in the first paragraph of the syllabus that:

"The powers and authority of a special constable appointed in a civil or criminal case by a justice of the peace for a special purpose by virtue of paragraph 4, Section 3331 of the General Code, are limited to the case and for the purpose for which such constable is appointed, and he is not, by such appointment, clothed generally with the powers or authority of a regularly elected or appointed, qualified and acting constable."

The then Attorney General, in the course of his opinion, said that:

"A special constable can only be appointed under paragraph 4 of Section 3331 of the General Code in a civil or criminal case then pending. Created by special appointment and for a special purpose in a civil or criminal case, a memorandum whereof is on the docket of the justice, such appointee is a 'special constable' only while acting in pursuance thereof. He is not clothed with the powers of a constable, except for such 'special purpose'. *A distinct and separate appointment is essential for each special purpose wherein his services are necessary, either in a civil or criminal case and the justice of the peace must make a memorandum of each such special purpose on his docket.* Such special constables have no authority to serve warrants or to make arrests by virtue of their special appointment, except in the particular case in which they are appointed a 'special constable'. When the duties of his appointment have been performed his appointment as a 'special constable' automatically terminates."

To the same effect is an opinion in the Opinions of the Attorney General for 1930, page 214. The syllabus reads:

"Under the provisions of Section 3331, paragraph 4, a justice of the peace may appoint a special constable when the duly elected and qualified constables are unable to perform the duties of their office by reason of the pressure of official business, but cannot make such appointment when the regularly elected and qualified constables are unable to perform their duties because of the pressure of their private business."

My immediate predecessor likewise held in an opinion which may be found in the Opinions of the Attorney General for 1931, at page 1162, that:

"A special constable cannot be appointed for the general purpose of patrolling the public highways to enforce traffic laws. The duties of a special constable when appointed under section 3331 of the General Code are limited to the particular case in which he is appointed."

See also *Gould vs. State*, 21 O. App. 26, 28.

It is apparent from a reading of the aforesaid opinions that paragraph 4 of section 3331, General Code, authorizes a justice of the peace to appoint a special constable for a special purpose only when such appointment becomes necessary due to the duly elected or appointed constable of the township being unable to perform the duties required by the office because of the pressure of official business. Likewise, it was held in those opinions that although a special constable can be appointed by a justice of the peace under section 3331, General Code, such appointment can be for a special purpose only, and cannot be for general purposes. The phrase "special purpose," as used in section 3331, General Code, in reference to the appointment of a special constable by a justice of the peace, was construed as being limited to a particular occasion and purpose and not for a general purpose for an unlimited time. In other words, a special constable appointed by a justice of the peace can be appointed merely to act temporarily on a special occasion in place of the duly elected or appointed constable of the township, and then only in reference to a particular matter.

There is no provision in either section 614-92 or section 614-100, General Code, which affects or alters the conclusions reached in the opinions of this office quoted herein. In view of that fact and because of the fact that the contemplated appointment of a special constable is not due to the inability of the duly elected constable of the township to perform the duties required by that office because of the pressure of official business, your first question must be answered in the negative.

A question similar to the one raised by your second inquiry was before the Court of Common Pleas of Franklin County in the case of *Parkinson vs. Crawford*, 23 O. Dec. 77, wherein it was held that a special constable appointed by a justice of the peace must be an elector of the township in which the justice of the peace who appointed him resides and officiates. Kinkead, J., in the course of his opinion, at pages 82 and 83, said that:

"Second it is provided (Gen. Code 3331) that a justice of the peace may appoint constables for special purposes in certain cases. And at the request of a party, and on being satisfied that it is expedient, a justice may specially depute a discreet person of suitable age, not interested in the action, to serve process (Gen. Code 1732), and for the service, execution and return of such process, a person so deputed shall have the authority and be subject to the obligations of a constable.

In these cases where persons are appointed to fill a vacancy, or where the constable is appointed for a special purpose, when there is no constable in the township, or if the regular constable is disabled, or the constable is a party to the suit, or where the constables are unable to perform the duties required of the office, it is required that the persons appointed shall take oath as in other cases. (p. 82).

"The requirement of the statute that he shall have the authority and be subject to the obligations of a constable means to impose upon him the same responsibility, and the same requirements provided by the constitution and the laws of the state. These are that he shall be an elector of the township in which the justice who appointed him resides and officiates." (p. 83)

The court in that case held that a special constable appointed by a justice of the peace to serve an order of attachment, as provided by sections 1732 and 1733,

General Code, was an officer within the meaning of section 4 of article XV of the Constitution of Ohio, which reads:

“No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector; provided that women who are citizens may be appointed as members of boards of, or to positions in, those departments and institutions established by the state or any political subdivision thereof involving the interests or care of women or children or both.”

because he was clothed, by virtue of the provision of section 1732, General Code, with the “authority and subject to the obligations of a constable.” The test applied in that case would likewise apply to a special constable appointed by a justice of the peace by virtue of paragraph 4 of section 3331, General Code, since section 3332, General Code, provides that:

“After taking such oath, the person so appointed shall have the same authority, be subject to the same penalties, and entitled to the same fees, as other constables.”

It is apparent that by virtue of the provisions of section 3332, General Code, a special constable appointed by a justice of the peace under section 3331, General Code, for a particular purpose and occasion, is clothed during his appointment with the authority and obligations of a constable. That being the case, the rule of law announced in the case of *Parkinson vs. Crawford, supra*, is dispositive of your second question.

It is therefore my opinion that:

1. A special constable cannot be appointed under section 3331, General Code, for the general purpose of enforcing the provisions of section 614-92, General Code, since the appointment of a special constable under section 3331, General Code, is limited to the particular occasion for which the special constable is appointed. (Opinions of the Attorney General for 1931, page 1162, followed and approved.)

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Respectfully,

JOHN W. BRICKER,
Attorney General.