

OPINION NO. 69-151

Syllabus:

Personnel of the Ohio Youth Commission may be considered specially appointed police officers under Section 2923.01, Revised Code, and permitted to carry firearms when discharging their duties under newly enacted Section 5139.191, Revised Code.

To: Daniel W. Johnson, Director, Ohio Youth Commission, Columbus, Ohio
By: Paul W. Brown, Attorney General, November 20, 1969

I am in receipt of your request for my opinion in which you specifically inquire whether the Ohio Youth Commission may issue firearms to Commission personnel under newly enacted Section 5139.191, Revised Code, when such personnel are utilized in the apprehension of escapees from institutions under the jurisdiction of the Youth Commission.

Section 5139.191, Revised Code, provides as follows:

"Any sheriff, deputy sheriff, constable, officer of state or local police, or employee of the youth commission shall apprehend any child who has escaped from an institution under the jurisdiction of the youth commission and return him. The written request of the superintendent of the institution from which the child has escaped shall be sufficient cause to authorize the apprehension and return of the child to the institution. Such request shall state the name and description of the child, that the child is under the jurisdiction of the youth commission, and that the superintendent has personal knowledge that the child has escaped. A child so apprehended may be confined in the detention home of the county in which he is apprehended until removed to the proper institution."

Ohio law enforcement personnel are permitted by the state to carry firearms in the performance of their duties under Section 2923.01, Revised Code, the concealed weapons statute.

Said section provides as follows:

"No person shall carry a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person. This section does not affect the right of sheriffs, regularly appointed police officers of municipal corporations, regularly elected constables, and special officers as provided by sections 311.07, 737.10, 1717.06, 1721.-14, and 2917.32 of the Revised Code, to go armed when on duty. Deputy sheriffs and specially appointed police officers, except as are appointed or called into service under said sections may go armed if they first give bond to this state, 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. Persons injured by such improper use may have recourse on said bond.

"Whoever violates this section shall be fined not more than five hundred dollars, or imprisoned in the county jail or workhouse not more than one year or both.

"Whoever violates this section, having previously been convicted of or pleaded guilty to the commission of carrying a concealed weapon or of any felony contained in sections 2901.01 to 2901.06, inclusive, 2901.08 to 2901.13, inclusive, 2901.19 to 2901.34, inclusive, 2905.01, 2905.02, 2905.031 ~~/2905.03.1/~~, 2905.041 ~~/2905.04.1/~~, 2907.02 to 2907.21, inclusive, and section 3719.20 of the Revised Code, shall be imprisoned not less than three nor more than ten years."

I am aware that this Section has been amended by Amended House Bill No. 288 and that the amended act is effective November 25, 1969. However, the changes in the act in no way affect the decision or reasoning of this opinion.

Manifestly, Ohio Youth Commission employees are not included in the first provision of Section 2923.01, supra. Therefore, any exception of Youth Commission employees from the proscription of Section 2923.01, supra, must arise by force of the second proviso contained therein which permits "deputy sheriffs and specially appointed police officers" to be armed if they first give bond to the state.

My predecessors in office have been called upon on a number of occasions to determine what constitutes a "specially appointed police officer" under the concealed weapons statute.

In Opinion No. 471, Opinions of the Attorney General for 1913, it was held that railway policemen appointed by the governor were "special police officers" under the second proviso of the concealed weapons statute because they possessed and exercised the powers of municipal policemen while discharging their duties. This Opinion was reaffirmed by Opinion No. 723, Opinions of the Attorney General for 1915, and Opinion No. 4444, Opinions of the Attorney General for 1935.

Likewise it has been held that a probation officer of the juvenile court, deputy game warden, dog warden, and game protectors are specially appointed police officers within the meaning of the concealed weapons statute and may be permitted to carry firearms in the discharge of their official duties. Opinion No. 496, Opinions of the Attorney General for 1913; Opinion No. 884, Opinions of the Attorney General for 1915; Opinion No. 1008, Opinions of the Attorney General for 1933; and Opinion No. 2074, Opinions of the Attorney General for 1950.

My predecessors in office observed in these opinions that the individuals involved were charged with the duty to enforce the laws of Ohio pertaining to their departments, and in order to do so, each was specifically authorized by the General Assembly to exercise certain police functions and duties by statute.

Given these facts, my predecessors reasoned that the General Assembly having assigned various police functions to these individuals, intended that one called upon to discharge these functions be accorded the same exceptions granted police officers under Section 2923.01, supra. By the use of such reasoning, these individuals were determined to be "specially appointed police officers" under Section 2923.01, supra, and accordingly permitted to carry firearms when acting within the scope of their statutory duties.

This same rationale was utilized in Opinion No. 66-184, Opinions of the Attorney General for 1966, which found a probation officer of the court of common pleas authorized to carry firearms in situations when they were accorded by statute the duty, along with other law enforcement officers, to arrest parole violators.

Shifting to your specific inquiry, newly enacted Section 5139.191, supra, directs any sheriff, deputy sheriff, constable, state or local police officer or employee of the Youth Commission to apprehend any escapee from an institution under the jurisdiction of the Youth Commission.

Manifestly, the General Assembly has seen fit to direct Youth Commission employees to perform certain police functions concurrently with regular law enforcement personnel.

Combining the reasoning of the previously cited Opinions of the Attorney General and my conclusion that the legislature intended that state employees engaged in hazardous police work, concurrently with regular police officials, be suitably prepared to perform their statutory duties effectively and safely, I find that Ohio Youth Commission personnel so designated by the Youth Commission may be considered as specially appointed police officers under Section 2923.01, supra, and entitled to carry firearms when discharging their duties under Section 5139.191, supra.

Accordingly, it is my opinion and you are hereby advised that personnel of the Ohio Youth Commission may be considered specially appointed police officers under Section 2923.01, Revised Code, and permitted to carry firearms when discharging their duties under newly enacted Section 5139.191, Revised Code.