

OPINION NO. 66-171**Syllabus:**

1. The appointment of special constables for providing additional police protection for private firms, corporations, or sponsors of public affairs may be done pursuant to Section 1907.201, Revised Code, and these appointed constables do not come under the jurisdiction of a township board of trustees.

2. For purposes of workmen's compensation and other employment benefits, the freeholders for whose benefit the constable was appointed shall be considered as his "employer".

To: Geo. C. Steinemann, Erie County Pros. Atty., Sandusky, Ohio
By: William B. Saxbe, Attorney General, October 24, 1966

Your request for my opinion reads as follows:

"Perkins Township presently has a force of two full time constables appointed by the Board of Trustees.

"The question has been presented as to whether the Trustees can appoint part time constables for the purpose, mainly, of additional police protection for private firms, corporations or sponsors of public affairs or promotions?

"If the answer is 'yes' to the above question, may the constables retain the remuneration therefor paid by such private firms, etc. for such services?

"If, as we believe, the constables are not allowed to retain such compensation (see discussion 49 OJ 2d, Sheriff and Marshals, etc. Par. 27,

Note 16, Page 57), may or shall such remuneration be paid into the general fund of the township, and can the township legally accept payment for such services?

"Would such services, whether paid for or not by these private firms, etc., be in effect a preferential service not, therefore, afforded to the remainder of the township or its residents also in need of as much police protection as can be afforded?

"In situations where request has been made for special or additional police protection by private individuals, firms or corporations, or by sponsors of public affairs, is not this type of service better afforded under the provisions of Section 1907.201 ORC? If so, do the 'special constables' come under the jurisdiction of the Board of Trustees in any manner; or by virtue of the appointment by the county judge does the county become, in effect, the 'employer' for purposes of workmen's compensation and other benefits or obligations, or does the private firm, etc. become the 'employer' by virtue of the payment of compensation for services rendered?

"If unnecessary to proceed under Section 1907.201 ORC providing for 'special constables' but rather under Section 509.01 et seq., does the Board of Trustees have the authority to appoint part time constables without designated hours on a volunteer basis or at \$1.00 per year or a like nominal sum, primarily to serve such private firms, corporations or sponsors of public affairs?"

I think your question is properly resolved by adhering to the procedure prescribed in Section 1907.201, Revised Code, as opposed to that in Section 509.01, et seq., Revised Code. Section 509.01, et seq., does not specifically provide for this type of constable. Section 1907.201, Revised Code, which became law January 1, 1958, seems to have been enacted expressly for the purpose you have stated. It provides as follows:

"Upon the written application of the director of public works or of three freeholders of the county in which a county court judge resides, such judge may appoint one or more electors of the county special constables who shall guard and protect the property of this state, or the property of such freeholders, and the property of this state under lease to such freeholders, designated in general terms in such application, from all unlawful acts, and so far as necessary for that purpose, a constable so appointed has the same authority and is subject to the same obligations as other constables." (Emphasis added)

Thus, there is little doubt that you would proceed under this statute in appointing special constables for your expressed purposes since the substance of the statute is correlative with that of your request, and since there is no similar provision in Section 509.01, et seq.

It would also seem that the township Board of Trustees would have no jurisdiction over these constables. They are appointed by a county judge and possible revocation of this appointment is subject to this judge's discretion under Section 1907.211, Revised Code. Thus the county judge is the appointing body and the special constable is responsible to him.

While the county may be nominally termed the "employer" of these special constables in a general sense, I believe that for purposes of workmen's compensation and certain other employment benefits or obligations the private firm or petitioning group of freeholders is the "employer" as defined by case and statutory law. Section 1907.211, Revised Code, states:

"The judge of a county court appointing a constable as provided in section 1907.201 of the Revised Code, shall make a memorandum of such appointment upon his docket, and such appointment shall continue in force for one year, unless such judge revoked such appointment sooner. A constable appointed under this section and section 1907.201 of the Revised Code, shall be paid in full for his services by the freeholders for whose benefit he was appointed, and shall receive no compensation except from such freeholders." (Emphasis added)

It is certainly implicit in the above-cited statutes that the petitioning group of freeholders involved would exercise certain control over the constable such as determining his hours, defining his work area, and fixing his remuneration, and thus be consistent with the Ohio concept of an "employer" as one who controls the manner or means of performance, Behner v. Industrial Commission, 154 Ohio St. 433, 96 N.E. 2d 403 (1951). For purposes of compensation and other pecuniary benefits the freeholders who petitioned for the constables are the "employer".

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

1. The appointment of special constables for providing additional police protection for private firms, corporations, or sponsors of public affairs may be done pursuant to Section 1907.201, Revised Code, and these appointed constables do not come under the jurisdiction of a township board of trustees.

2. For purposes of workmen's compensation and other employment benefits, the freeholders for whose benefit the constable was appointed shall be considered as his "employer".