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Based upon the foregoing, I conclude that your first question must be answered in the negative. A regional council of governments may not appoint and commission persons as law enforcement officers of the council with full police powers throughout the territory of the member subdivisions. I do not question the conclusion that a regional council of governments may provide its members with various services that assist them in reducing drug trafficking and related crimes. I find in this opinion only that such services may not include the appointment and commissioning by the council of its own multi-jurisdictional police force.

I find support for this conclusion in the fact that the provision of law enforcement services by persons appointed and commissioned as peace officers of a regional council of governments, with jurisdiction throughout the territory encompassed by the members of the council, would be inconsistent with the statutory scheme enacted by the General Assembly to govern the provision of police services throughout the state. For example, in R.C. 109.71-.79, the General Assembly has established a program for assuring that Ohio peace officers receive adequate training. R.C. 109.71 creates the Peace Officer Training Council. R.C. 109.77 requires, with certain exceptions, that a person receiving an appointment as a peace officer must have been awarded a certificate attesting to his satisfactory completion of an appropriate training program. R.C. 109.71(A) defines "peace officer"<sup>1</sup> as follows:

As used in sections 109.71 to 109.77 of the Revised Code:

(A) "Peace officer" means:

(1) A deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code,

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<sup>1</sup> Effective December 31, 1987, the definition of "peace officer" appearing in R.C. 109.71 will be amended by the deletion of references to "metropolitan housing authority" and "member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code." Am. S.B. 278, 116th Gen. A. (1986) (eff., in part, March 6, 1986).

or township constable, who is commissioned and employed as a peace officer by a political subdivision of this state or by a metropolitan housing authority, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of Ohio, ordinances of a municipal corporation, or regulations of a board of county commissioners or board of township trustees, or any such laws, ordinances, or regulations;

(2) A policeman who is employed by a railroad company and appointed and commissioned by the governor pursuant to sections 4973.17 to 4973.22 of the Revised Code;

(3) Employees of the department of taxation engaged in the enforcement of Chapter 5743. of the Revised Code, and designated by the tax commissioner for peace officer training for purposes of the delegation of investigation powers under section 5743.45 of the Revised Code;

(4) An undercover drug agent;

(5) Liquor control investigators in the enforcement division and the intelligence division of the department of liquor control engaged in the enforcement of Chapter 4301. of the Revised Code;

(6) An employee of the department of natural resources who is a park officer designated pursuant to section 1541.10, a forest officer designated pursuant to section 1503.29, a game protector designated pursuant to section 1531.13, or a state watercraft officer designated pursuant to section 1547.521 of the Revised Code;

(7) An employee of a park district who is designated pursuant to section 511.232 or 1545.13 of the Revised Code.

(8) An employee of a conservancy district who is designated pursuant to section 6101.75 of the Revised Code. (Emphasis added.)

Pursuant to R.C. 109.71(B), "undercover drug agent" has the meaning set forth in R.C. 109.79(B)(2). R.C. 109.79 states, in part:

(B) As used in this section:

....

(2) "Undercover drug agent" means any person who:

(a) is employed by a county, township, or municipal corporation for the purposes set forth in division (B)(2)(b) of this section but who is not an employee of a county sheriff's department, of a township constable, or of the police department of a municipal corporation or township;

(b) In the course of his employment by a county, township, or municipal corporation, investigates and gathers information pertaining to persons who are suspected of violating Chapter 2925. or 3719. of the Revised Code, and generally does not wear a uniform in the performance of his duties. (Emphasis added.)

No reference to a regional council of governments appears in R.C. 109.71-.79, and it appears that no individual appointed or commissioned by such a council would come within the definition of "peace officer" contained in R.C.109.71(A). Thus, if a regional council of governments were to appoint and commission its own law enforcement officers, those individuals would not be subject to the training requirements of R.C.

109.71-.79. Such a result would be inconsistent with the statutory scheme established by R.C. 109.71-.79. While the existing scheme does not require that all law enforcement officers receive training, see, e.g., 1985 Op. Att'y Gen. No. 85-060 (special constables appointed under R.C. 1907.201 and 1907.211 are not "peace officers" under R.C. 109.71(A)(1) and, therefore, need not receive certification from the Ohio Peace Officer Training Council); 1984 Op. Att'y Gen. No. 84-020; 1984 Op. Att'y Gen. No. 84-008, it does cover all deputy sheriffs and municipal police officers. It would appear to thwart this scheme to permit counties and municipalities to secure police protection through a regional council of governments without meeting the training requirements established under R.C. 109.71-.79, since compliance with those training requirements would be necessary if law enforcement officers were appointed directly by the appropriate officers of the counties or municipalities.

An arrangement that would permit a regional council of governments to appoint and commission its own law enforcement officers with jurisdiction throughout the member subdivisions would, similarly, appear to be inconsistent with the civil service scheme established under R.C. Chapter 124. Under R.C. Chapter 124, positions of employment "in the service of the state and the counties, cities, city health districts, general health districts, and city school districts thereof" are included within the civil service, R.C. 124.01(A), and are subject to the provisions of R.C. Chapter 124 and applicable rules, R.C. 124.06. See generally R.C. 124.34 (concerning tenure of office of persons in the classified service). See also R.C. 124.01(C) (including the competitive classified civil service of civil service townships within the classified service for purposes of R.C. Chapter 124). Specific provisions govern police departments that are subject to civil service laws. See R.C. 124.41 ("[n]o person shall be eligible to receive an original appointment to a police department, as a policeman or policewoman, subject to the civil service laws of this state" unless he has met certain qualifications); R.C. 124.44 (providing that vacancies in positions above the rank of patrolman in a police department shall be filled by promotion pursuant to competitive promotional examinations); R.C. 124.50.

It appears that persons who are employed by a regional council of governments are not subject to the civil service provisions of R.C. Chapter 124. Cf. In re Ford, 3 Ohio App. 3d 416, 446 N.E.2d 214 (Franklin County 1982) (employment with a political subdivision not listed in R.C. 124.01 is not included within the definition of civil service); Op. No. 85-012 (syllabus, paragraph three) ("[a] regional organization for civil defense is not required by statute to comply with the civil service merit system established pursuant to R.C. Chapter 124; it may, however, voluntarily submit itself to compliance with the standards set forth in that system..."); 1965 Op. Att'y Gen. No. 65-47 (employees of a regional airport authority are not in the service of the state or the county and are not subject to state civil service provisions). An interpretation of R.C. Chapter 167 which permits law enforcement officers appointed by regional councils of government, rather than by the appropriate officials of various counties, cities, and similar bodies, to be removed from the civil service system appears, therefore, to be inconsistent with the statutory scheme established by the General Assembly, and I reject such an interpretation. See generally Ohio Const. art. XV, §10 ("[a]ppointments and promotions in the civil service of the state, the several counties, and cities, shall be made



124.34 and the rules and regulations thereunder are followed. Positions in the unclassified service require qualities that the General Assembly has deemed are not determinable by examination. Employees in the unclassified service do not receive the protections afforded employees in the classified service.

63 Ohio St. 2d at 9, 406 N.E.2d at 1359. In determining whether deputy sheriffs are in the classified or unclassified service, the court examined the provisions of R.C. 124.11(A) and concluded: "Deputies or assistants who are employed by and are directly responsible to an elected county official and who are in a fiduciary or administrative relationship with that official are in...positions [included within the unclassified service under R.C. 124.11(A)(9)]." 63 Ohio St. 2d at 10, 406 N.E.2d at 1359; see R.C. 124.11(A)(9). The court further stated that whether a deputy sheriff is in the classified or unclassified service is dependent upon the particular duties performed by the deputy.<sup>2</sup> Thus, unless the duties performed by the deputy sheriffs about whom you ask are the types of duties which create a fiduciary or administrative relationship between the sheriff and such deputies, the deputies are in the classified service and are subject to removal only in the manner set forth in R.C. 124.34. See In re Termination of Employment, 40 Ohio St. 2d 107, 321 N.E.2d 603 (1974) (syllabus, paragraph two) ("[d]eputy sheriffs are members of the unclassified civil service only when they are assigned to, and perform, duties such that they hold 'a fiduciary or administrative relationship' to the sheriff"); 1979 Op. Att'y Gen. No. 79-111. The scheme governing the appointment and removal of deputy sheriffs is specifically governed by statute, rather than by the county in which the deputy serves, and there is no statutory authority for a county or a regional council of governments to modify such scheme. I conclude, therefore, that, unless a particular deputy sheriff's position is, because of the nature of its duties, in the unclassified service pursuant to R.C. 124.11(A), the position is in the classified service for purposes of R.C. Chapter 124, and the deputy may be removed only for the reasons and in the manner specified in R.C. 124.34.

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<sup>2</sup> Yarosh must be contrasted with State ex rel. Geyer v. Griffin, 80 Ohio App. 447, 76 N.E.2d 294 (Allen County 1946). In Griffin, the court stated that a sheriff has "absolute discretion to determine what deputies shall be employed, the length of their employment, and the duties of his office to be performed by them..." 80 Ohio App. at 458, 76 N.E.2d at 300. This case has been used in support of the conclusion that the county sheriff may appoint "special deputies." See 1981 Op. Att'y Gen. No. 81-009; 1977 Op. Att'y Gen. No. 77-027; 1968 Op. Att'y Gen. No. 68-112; 1967 Op. Att'y Gen. No. 67-123 (modified by 1984 Op. Att'y Gen. No. 84-008); 1965 Op. Att'y Gen. No. 65-177. While it is true that a sheriff may limit the authority of a deputy as he sees fit--thus the term "special deputy," see, e.g., 1984 Op. Att'y Gen. No. 84-008 (approved, in part, by 1985 Op. Att'y Gen. No. 85-060)--Yarosh clearly holds that deputies who are not in a fiduciary or administrative relationship to their appointing sheriff are in the classified service. Accord, 1979 Op. Att'y Gen. No. 79-111. See generally 1982 Op. Att'y Gen. No. 82-085.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. A regional council of governments may not appoint and commission persons as law enforcement officers of the council with full police powers throughout the territory of the member subdivisions.
2. Unless the duties of a deputy sheriff qualify the position of that deputy as a position in the unclassified service pursuant to R.C. 124.11(A), the position is in the classified service for purposes of R.C. Chapter 124, and the deputy may be removed only for the reasons and in the manner specified in R.C. 124.34.