

OPINION NO. 87-057**Syllabus:**

1. Pursuant to R.C. 1711.35, a county agricultural society may make application to a judge of a county court or a judge of a municipal court having jurisdiction, to appoint a suitable number of special constables to assist in keeping the peace during the time when such society is holding its annual fair.
2. A person who is appointed as a special constable pursuant to R.C. 1711.35 to assist in keeping the peace during the time when a county agricultural society is holding its annual fair, is not a "peace officer" as defined by R.C. 109.71(A).
3. A person who is appointed as a special constable pursuant to R.C. 1711.35 to assist in keeping the peace during the time when a county agricultural society is holding its annual fair, is a "peace officer" as defined by R.C. 2935.01(B).
4. Special constables appointed pursuant to R.C. 1711.35 are authorized to suppress riots, disturbances, and breaches of the peace. Upon view they may arrest any person guilty of a

violation of any law of the state, and pursue and arrest any person fleeing from justice in any part of the state. They may apprehend any person in the act of committing an offense; on reasonable information, supported by affidavit, they may procure process for the arrest of any person charged with a breach of the peace and forthwith bring him before a competent authority; and they may enforce all laws for the preservation of order.

To: Steven D. Maurer, Director, Ohio Department of Agriculture, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, August 20, 1987

I have before me your request for my opinion concerning the authority of an agricultural society which is organized under R.C. Chapter 1711. Specifically, you ask:

May an agricultural society organized under Section 1711.01 of the Revised Code establish a police force charged with the responsibility of enforcing Ohio laws on fairgrounds operated by the agricultural society and, if so, do such officers enjoy the arrest and detention powers of "peace officers" as defined in the Revised Code?

Your question actually presents three distinct issues: first, whether an agricultural society may establish a police force; second, whether such officers are "peace officers" as that term is defined by the relevant provisions of the Revised Code; and third, whether such officers may arrest or detain persons who have committed an offense.

A county agricultural society is an organization formed "to promote and encourage the development of the agricultural resources of the state." Board of Commissioners v. Brown, 1 N.P. (n.s.) 357, 14 Ohio Dec. 241 (1903). Pursuant to R.C. 1711.13, a county agricultural society which has been organized in accordance with the provisions of R.C. 1711.01,¹ is a

¹ R.C. 1711.01 concerns the funding of the county agricultural society, and provides that:

When thirty or more persons who are residents of the same county organize themselves into a county agricultural society which adopts a constitution and bylaws, selects officers, and otherwise conducts its affairs in conformity to law, and to the rules of the department of agriculture, and when such society has held an annual exhibition in accordance with sections 1711.04 and 1711.05 of the Revised Code and made proper report to the department, then, upon presentation to the county auditor of a certificate from the director of agriculture that the laws of the state and the rules of the department have been complied with, the auditor of each county in which such a society is organized shall annually draw an order on the county treasurer of such county in favor of the president of such society for the sum of eight hundred dollars, and the treasurer shall pay it. The total amount of such order shall not exceed the amount paid in regular class premiums.

"bod[y] corporate and politic." While such societies have been variously described in other contexts as "voluntary associations," Dunn v. Agricultural Society, 46 Ohio St. 93, 18 N.E. 496 (1888); "public institutions," State ex rel. Leaverton v. Kerns, 104 Ohio St. 550, 136 N.E. 217 (1922); and "public organizations," Bazell v. Cincinnati, 13 Ohio St. 2d 63, 233 N.E.2d 864, cert. denied sub nom., Fosdick v. Hamilton County, 391 U.S. 601 (1968), county agricultural societies are in essence private corporations not organized for profit. See State ex rel. Leaverton v. Kerns, 104 Ohio St. 550, 136 N.E. 217 (1922); Licking County Agricultural Association v. Board of Commissioners, 48 Ohio App. 528, 194 N.E. 606 (Ct. App. Licking County 1934); Board of Commissioners v. Brown, 1 N.P. (n.s.) 357, 14 Ohio Dec. 241 (1903); 1951 Op. Att'y Gen. No. 597, p. 357; 1933 Op. Att'y Gen. No. 42, p. 29. In spite of their organization as private corporations, county agricultural societies have been given statutory authority to perform certain limited public functions. These functions are specifically set out in R.C. Chapter 1711.

The first issue which your question presents is whether a county agricultural society has the authority to establish a police force. Statutory authority for the appointment of "special constables" to assist in keeping the peace during the societies annual exhibitions is provided for by R.C. 1711.35:

On the application of a state, county, township, or independent agricultural society, of an industrial association, or of any other association or meeting of citizens for the purpose of promoting social or literary intercourse, a judge of a county court or judge of a municipal court having jurisdiction may appoint a suitable number of special constables to assist in keeping the peace during the time when such society or assembly is holding its annual fair or meeting. He shall make an entry in his docket of the number and names of all persons so appointed.

It is a well-established tenet of statutory interpretation that plain and unambiguous language leaves no occasion to resort to the rules of statutory construction. State ex rel. Stanton v. Zangerle, 117 Ohio St. 436, 159 N.E. 823 (1927); Swetland v. Miles, 101 Ohio St. 501, 130 N.E. 22 (1920). The terms of R.C. 1711.35 expressly provide for the appointment of special constables by a judge of a county court or a judge of a municipal court in the jurisdiction to assist in keeping the peace during the society's annual fair upon application by the county agricultural society. Thus, I conclude that pursuant to R.C. 1711.35, a county agricultural society may apply to a judge of a county court or a judge of a municipal court having jurisdiction, to appoint a suitable number of special constables to assist in keeping the peace during the time when such society is holding its annual fair.

The second issue which your question presents concerns whether such persons are "peace officers" under the relevant provisions of the Revised Code. There are two relevant statutory provisions which define a "peace officer." R.C. 109.71(A) defines this phrase for purposes of determining which persons qualify for peace officer training provided for under R.C. 109.79. Whether certain persons qualify as peace officers under R.C. 109.71(A) is dependent upon whether their duties

fall within those specified by the definition. See 1987 Op. Att'y Gen. No. 87-015. R.C. 109.71(A) defines a "peace officer" as:

(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, 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;

(9) A police officer who is employed by a hospital that employs and maintains its own proprietary police department or security department, and who is appointed and commissioned by the governor pursuant to sections 4973.17 to 4973.22 of the Revised Code.

As noted above, in order to qualify as a peace officer to receive peace officer training under R.C. 109.79, a person must hold one of the positions specified by R.C. 109.71(A). The special constables appointed by a judge of a county court or by a judge of a municipal court under R.C. 1711.35 are not listed among the enumerated positions. Therefore, I conclude that such persons are not "peace officers" as that term is defined by R.C. 109.71(A).

R.C. 2935.01(B) also defines the term "peace officer." The definition of the term in R.C. 2935.01(B) is provided for the purpose of determining which persons may cause the arrest or

prosecution of a person charged with committing an offense in the state under R.C. 2935.09.² R.C. 2935.01(B) provides that:

"Peace officer" includes a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to section 737.04 of the Revised Code, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, state university law enforcement officer appointed under section 3345.04 of the Revised Code, a police constable of any township, and, for the purpose of arrests within those areas, and for the purposes of Chapter 5503. of the Revised Code, and the filing of and service of process relating to those offenses witnessed or investigated by them, includes the superintendent and patrolmen of the state highway patrol.

Initially, the language of this statute would appear to preclude persons who have been appointed as special constables under R.C. 1711.35 from being classified as peace officers because such persons are not among the enumerated positions. However, this definition has been broadly interpreted by the Ohio Supreme Court. In State v. Colvin, 19 Ohio St. 2d 86, 249 N.E.2d 784 (1969), the Court stated that "[t]he use of the word 'includes' in the definition of police officer evidences an intent that the General Assembly did not mean to exclude other constituted officers who may be granted enforcement powers by the General Assembly." Id. at 92, 249 N.E.2d at 788. Thus, the Court determined that where persons have been authorized to enforce statutory provisions, such persons are peace officers under R.C. 2935.01(B). See also 1970 Ohio Att'y Gen. No. 70-108 (investigators for the Ohio Civil Rights Commission are peace officers under R.C. 2935.01(B)). In the instant case, special constables appointed under R.C. 1711.35 are expressly granted by that statute the power to enforce statutory provisions including, as I will discuss in the following paragraphs, "...all laws for the preservation of order." Thus, I conclude that special constables appointed pursuant to R.C. 1711.35 are peace officers as that term is defined by R.C. 2935.01(B).

² R.C. 2935.09 provides that:

In all cases provided by sections 2935.02 to 2935.08, inclusive, of the Revised Code, in order to cause the arrest or prosecution of a person charged with committing an offense in this state, a peace officer, or a private citizen having knowledge of the facts, shall file with the judge or clerk of a court of record, or with a magistrate, an affidavit charging the offense committed, or shall file such affidavit with the prosecuting attorney or attorney charged by law with the prosecution of offenses in court or before such magistrate, for the purpose of having a complaint filed by such prosecuting attorney or other authorized attorney. (Emphasis added.)

It is not necessary, however, that special constables appointed pursuant to R.C. 1711.35 be classified as peace officers under R.C. 109.71(A) or R.C. 2935.01(B) to arrest or detain persons who have committed an offense. The portion of R.C. 1711.35 quoted above continues by providing that:

Constables so appointed have all the powers of constables to suppress riots, disturbances, and breaches of the peace. Upon view they may arrest any person guilty of a violation of any law of the state, and pursue and arrest any person fleeing from justice in any part of the state. They may apprehend any person in the act of committing an offense; on reasonable information, supported by affidavit, they may procure process for the arrest of any person charged with a breach of the peace and forthwith bring him before a competent authority; and they may enforce all laws for the preservation of order.

Pursuant to this provision, special constables are given limited authority to detain persons who have committed crimes, pursue persons fleeing from justice, and make arrests. Thus, I conclude that special constables appointed under R.C. 1711.35 have the authority to suppress riots, disturbances, and breaches of the peace. Further, they may, upon view, arrest any person guilty of a violation of any law of the state, and pursue and arrest any person fleeing from justice in any part of the state. They may apprehend any person in the act of committing an offense; on reasonable information, supported by affidavit, they may procure process for the arrest of any person charged with a breach of the peace and forthwith bring him before a competent authority; and they may enforce all laws for the preservation of order.

In conclusion, it is my opinion and you are hereby advised that:

1. Pursuant to R.C. 1711.35, a county agricultural society may make application to a judge of a county court or a judge of a municipal court having jurisdiction, to appoint a suitable number of special constables to assist in keeping the peace during the time when such society is holding its annual fair.
2. A person who is appointed as a special constable pursuant to R.C. 1711.35 to assist in keeping the peace during the time when a county agricultural society is holding its annual fair, is not a "peace officer" as defined by R.C. 109.71(A).
3. A person who is appointed as a special constable pursuant to R.C. 1711.35 to assist in keeping the peace during the time when a county agricultural society is holding its annual fair, is a "peace officer" as defined by R.C. 2935.01(B).
4. Special constables appointed pursuant to R.C. 1711.35 are authorized to suppress riots, disturbances, and breaches of the peace. Upon view they may arrest any person guilty of a violation of any law of the state, and pursue and arrest any person fleeing from justice in any part of the state. They may apprehend any person in the act of committing an offense; on reasonable information, supported by affidavit, they may procure process for the arrest of any person charged with a breach of the peace and forthwith bring

him before a competent authority; and they may enforce all laws for the preservation of order.