

July 12, 2019

The Honorable Michael C. O'Malley
Cuyahoga County Prosecuting Attorney
The Justice Center
Courts Tower
1200 Ontario Street
Cleveland, Ohio 44113

SYLLABUS:

2019-023

1. No individual shall be employed by a public or private educational institution as a special police officer, a security guard, or in another similar security position in which the individual goes armed on duty unless the individual has received a certificate of having satisfactorily completed an approved basic peace officer training program, or the person has completed twenty years of active duty as a police officer. R.C. 109.78(D); and
2. Any person who is not employed, by a public or private educational institution, as a special police officer or security guard, or in a similar security position in which the individual goes armed on duty, may convey a deadly weapon into a school safety zone or possess a deadly weapon in that area on the basis of the written authorization of the board or governing body of the institution so long as the conveyance or possession is in compliance with the authorization afforded by the board or governing body. R.C. 2923.122(D)(1)(a).



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OPINION NO. 2019-023

The Honorable Michael C. O'Malley
Cuyahoga County Prosecuting Attorney
The Justice Center
Courts Tower
1200 Ontario Street
Cleveland, Ohio 44113

Dear Prosecuting Attorney O'Malley:

Recently we received your letter dated June 18, 2019. As part of that communication, you indicate that, in conjunction with your obligation to inquire into the commission of crimes within your county, an issue of criminal law has arisen which prompts you to seek our written legal opinion.

You indicate that the “[t]he Parma Municipal School District has hired an employee as the Supervisor of Safety and Security.” You advise us further that the superintendent of the district would like the “employee to legally possess and carry a firearm on school property when performing his duties.” It is our understanding that the employee to whom you refer has not received a certificate of basic police officer training from the Ohio Peace Officer Training Academy (OPOTA) or completed twenty years or more of active duty as a police officer. You have provided us, however, with a certificate and a course transcript indicating that, in 1994-1995, the individual completed a “Police Pre Service, ACT 120” program conducted by the Community College of Beaver County under the auspices of the Pennsylvania Department of Criminal Justice.

As you note, R.C. 109.78(D) provides that:

(D) No public or private educational institution or superintendent of the State Highway Patrol shall employ a person as a special police officer, security guard, or other position in which such person goes armed while on duty, who has not received a certificate of having satisfactorily completed an approved basic police officer training program, unless the person has completed twenty years of active duty as a police officer.

R.C. 109.78(D).¹ You ask specifically if the “Police Pre-Service ACT 120 Certificate” referred to above satisfies the requirement under R.C. 109.78(D) of completion of “an approved basic police training program.”

The Ohio Peace Officer Training Commission (the “Commission”) is created under R.C. 109.71. The Commission is empowered to recommend rules to the Attorney General which, among other things, establish the “requirements of minimum basic training that peace officers . . . shall complete” R.C. 109.73. The Attorney General “in accordance with Chapter 119. of the Revised Code, has discretion to adopt and promulgate rules and regulations recommended by the” Commission. R.C. 109.74. OAC 109:2-1-12 relates to certification before service and re-entry requirements, and makes reference to “[c]redit for prior equivalent training or education” including “training or education certified by another state” Ohio Admin. Code 109:2-1-12(B)(1). In order to seek credit for basic peace officer training and certification secured by an applicant in a state other than Ohio, an applicant must complete and submit to the Commission a “Request for Prior Equivalent Training Analysis[.]”² The completed form must be accompanied by supporting information including, not only a certificate and course summary of the program previously completed, but also a syllabus of each course included as part of the prior training process. In addition, the applicant must provide information as to any prior service as a police officer. If it is the desire of the employee here at issue, or the school district to pursue the prior evaluation of training process, an appropriate request with supporting material should be so submitted.

¹ The principle of *ejusdem generis* is a “canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed.” 2009 Op. Att’y Gen. No. 2009-040, at 2-297 (quoting *Black’s Law Dictionary* 594 (9th ed. 2009)). Put another way, “where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be construed as restricted by the particular designation, and as including only . . . persons of the same class, or nature as those specifically enumerated” *Glidden Co. v. Glander*, 151 Ohio St. 344, 350, 86 N.E. 2d 1 (1949) (quoting 37 Oh.Jur. *Rule of Ejusdem Generis* § 450 (1934)). Accordingly, “such terms as ‘other’ . . . or ‘others’ . . . when preceded by a specific enumeration are commonly given a restricted meaning, and limited to articles of the same nature as those previously described.” *Id.* As such, application of the canon suggests that in R.C. 109.78(D) the phrase “other positions in which such person goes armed while on duty” harkens back to the previous enumeration of “special police officer” and “security guard,” and is limited to individuals appointed to similar security positions.

² Ohio Attorney General, *SF410bas - Request for Prior Equivalent Training Analysis*, <https://www.ohioattorneygeneral.gov/Law-Enforcement/Ohio-Peace-Officer-Training-Academy/OPOTC-Resources> (last visited July 10, 2019).

Further, as part of your letter, you make reference to R.C. 2923.122(A) which imposes a general prohibition against the knowing conveyance or attempt to convey a deadly weapon into a school safety zone. An exception to this prohibition, however, is set out in R.C. 2923.122(D)(1)(a) which excludes “any other person” from this prohibition, “who has written authorization from the board of education or governing body of a school to convey deadly weapons . . . in a school safety zone or to possess a deadly weapon . . . in a school safety zone and who conveys or possesses the deadly weapon . . . in accordance with that authorization[.]” R.C. 2923.122(D)(1)(a).

It is appropriate, therefore, for us to conduct an analysis and comparison of the two sections here at issue, to wit: R.C. 109.78(D) and R.C. 2923.122(D)(1)(a). It is a well-settled precept of statutory interpretation that statutory provisions are to be construed together, and that the Revised Code is to be read as an interrelated body of law. *See State ex rel. Herman v. Klopffleisch*, 72 Ohio St. 3d 581, 585, 651 N.E. 2d 995 (1995). As such, each of the two sections here at issue must be read in conjunction with the other so that each may be afforded appropriate effect.

Further, in cases in which the General Assembly has utilized particular language in one statutory provision, and different language in another, it is presumed that different effects and applications were intended. *See Metro. Sec. Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 66, 110 N.E. 627 (1915). In the instant situation, R.C. 109.78(D) requires that any individual who is employed “as a special police officer, security guard, or other position in which such person goes armed while on duty” must have received the appropriate OPOTA-sanctioned training and certification. Statutory sections are to be read *in pari materia*. *Bobb v. Marchant*, 14 Ohio St. 3d 1, 3, 469 N.E. 2d 847 (1984); *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 466, 132 N.E. 2d 191 (1956); *National Distillers Corp. v. Evatt*, 143 Ohio St. 99, 54 N.E. 2d 146 (1944) (syllabus, paragraph two). Application of this principle to the language of R.C. 109.78 gives rise to the conclusion that the requirements of that enactment are to be applicable to individuals employed by an educational institution as security guards, special police officers, or in other similar security positions. As such, a person employed by a school and acting in a security capacity may not bear a deadly weapon on the school premises unless the individual has completed an approved basic peace officer training program, and been certified in that regard, or has had twenty years of active duty service as a police officer as required by the section.

The exception of R.C. 2923.122(D)(1)(a) which is relevant to your inquiry, however, does not contain language limiting its application to security personnel. Instead, it indicates that it applies to “any other person who has written authorization from the board of education or governing body of a school” to convey a firearm into the school’s safety zone, or to possess a firearm within that area. R.C. 2923.122(D)(1)(a). On that basis, it is our opinion and you are hereby advised that:

1. No individual shall be employed by a public or private educational institution as a special police officer, a security guard, or in another similar security position in

which the individual goes armed on duty unless the individual has received a certificate of having satisfactorily completed an approved basic peace officer training program, or the person has completed twenty years of active duty as a police officer. R.C. 109.78(D); and

2. Any person who is not employed, by a public or private educational institution, as a special police officer or security guard, or in a similar security position in which the individual goes armed on duty, may convey a deadly weapon into a school safety zone or possess a deadly weapon in that area on the basis of the written authorization of the board or governing body of the institution so long as the conveyance or possession is in compliance with the authorization afforded by the board or governing body. R.C. 2923.122(D)(1)(a).

Application of the statutory provisions outlined above to a factual circumstance turns on whether the individual involved is employed, by a public or private educational institution, as a special police officer or a security guard, or in a similar security position in which the individual goes armed while on duty. The question of whether the employee may be armed while on duty is the salient point raised by your inquiry. The nature of the position, however, is subject to interpretation based not only on its title, but, more tellingly, on the duties and responsibilities assigned thereto. Such determinations in particular situations may be based upon countless factual permutations, and are not appropriate matters for determination as part of the opinion-rendering function of the Attorney General. 1988 Op. Att'y Gen. No. 88-008, at 2-27; 1986 Op. Att'y Gen. 86-039, at 2-198; 1983 Op. Att'y Gen. 83-087, at 2-342; and 1983 Op. Att'y Gen. No. 83-057, at 2-232.

Respectfully,



DAVE YOST
Ohio Attorney General