

OPINION NO. 68-112**Syllabus:**

A special deputy sheriff, who is employed on a salary basis for approximately two days per week, may not act as a professional bondsman in criminal cases, because of a possible conflict between his public duties and his private pecuniary interests.

To: Everett Burton, Scioto County Pros. Atty., Portsmouth, Ohio
By: William B. Saxbe, Attorney General, July 9, 1968

I have before me your request for my opinion on the following question:

"May a special deputy sheriff, who is employed on a salary basis for approximately two days per week, also act as a professional bondsman in criminal cases?"

Section 311.04, Revised Code, empowers the county sheriff to appoint such deputies as he may need to aid in the proper discharge of the functions of his office. The position of "special deputy sheriff" is nowhere defined in the Code as such, but it is established that the sheriff may appoint individuals to carry

out whatever duties he may see fit to assign them, for whatever length of time he deems such employment necessary, and such persons may be designated "special deputy sheriffs." State ex rel Geyer v. Griffin, 80 Ohio App. 447 (1946). The rights, powers and duties of a "special deputy" can be no greater than those of a regular deputy, but such rights, powers and duties can be reduced by the appointing sheriff. Opinion No. 65-177, Opinions of the Attorney General for 1965. The sheriff may delegate such of the duties of his office as he pleases to his deputies. Section 3.06, Revised Code.

The sheriff has certain statutorily defined powers and duties with regard to bail and recognizance.

Section 311.07, Revised Code, states, in part as follows:

"Each sheriff shall preserve the public peace and cause all persons guilty of any breach of the peace, within his knowledge or view, to enter into recognizance with sureties to keep the peace and to appear at the succeeding term of the Court of Common Pleas, and the sheriff shall commit such persons to jail in case they refuse to do so."

Section 2937.23, Revised Code, discusses the amount of bail and the persons by whom bail may be fixed in cases of felony and misdemeanor. The pertinent portion of Section 2937.23, relating to bail in cases of misdemeanor, reads as follows:

"* * * in cases of misdemeanor or ordinance offense it may be fixed by judge, magistrate or clerk of the court and may be in accordance with schedule previously fixed by judge or magistrate, or, in cases when the judge, magistrate or clerk of the court is not readily available, bail may be fixed by the sheriff, deputy sheriff, marshall, deputy marshall, police officer or jailer having custody of the person charged, shall be in accordance with a schedule previously fixed by the judge or magistrate, and shall be taken only in the county courthouse, or in the municipal or township building, or in the county or municipal jail. In all cases it shall be fixed with consideration of the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his appearance at the trial of the case." (Emphasis supplied)

Thus, under the provisions of Section 2937.23, Revised Code, sheriffs or deputy sheriffs charged with the execution of a warrant issued on an indictment for a misdemeanor during the vacation of the court from which the warrant issued, as well as during the term time of the court, if it is not in actual session, have the power to fix bail.

It is evident a situation could occur wherein a deputy's duty in fixing the amount of bail would be in conflict with his personal pecuniary interest in setting the maximum amount. In such a situation it is possible that it would be difficult for the deputy to properly weigh the defendant's past criminal record

and probability of appearance at trial, as opposed to the profit he would enjoy as surety on a bond.

There is no specific statutory prohibition which would prevent a sheriff or his deputies from engaging in private employment. It has been held by this office that a county officer may engage in other employment, either public or private, where its nature is such that no subordination of the public office to the other employment would result, and where the outside employment would not act as a check upon the public office, and where no contrariety or antagonism between employments would result which would interfere with the duties of the public officer. Opinion No. 6776, Opinions of the Attorney General for 1956. The agent of the county officer, of course, is subject to the same standards of conduct as his principal, the officer himself. Geyer v. Griffin, supra; Section 3.06, supra.

The possibility that the private employment of a public officer or employee might interfere with the proper discharge of his public duties must invalidate such dual employment.

It is therefore my opinion, and you are hereby advised, that a special deputy sheriff, who is employed on a salary basis for approximately two days per week, may not act as a professional bondsman in criminal cases, because of a possible conflict between his public duties and his private pecuniary interests.