

OPINION NO. 81-102**Syllabus:**

An individual who served as a state highway patrolman on January 1, 1966, did not hold "peace officer" status as defined by R.C. 109.71(A). Therefore, such an individual must complete the course of training prescribed by the Ohio Peace Officer Training Council pursuant to R.C. 109.71 through R.C. 109.77 in order to receive an appointment as a "peace officer."

To: John A. Pfefferle, Erie County Pros. Atty., Sandusky, Ohio
By: William J. Brown, Attorney General, December 22, 1981

I have before me your request for my opinion which asks "whether an individual who was a state highway patrolman on and before January 1, 1966 and who has continuously served as a law enforcement officer since that time, as a deputy sheriff and as a village police officer, must complete the course of training prescribed by the Ohio Peace [Officer] Training Council in order to be certified."

I begin, as a matter of background, by noting that R.C. 109.71 creates in the Office of the Attorney General the Ohio Peace Officer Training Council. Ohio Peace Officer Training Council provisions relating to minimum standards for peace officer training are contained in R.C. 109.71 through R.C. 109.77. R.C. 109.77 states, in part:

(A) Notwithstanding any general, special, or local law or charter to the contrary, no person shall, after January 1, 1966, receive an original appointment on a permanent basis as a peace officer of any county, township, or municipal corporation, or as a state university law enforcement officer unless the person has previously been awarded a certificate by the executive director of the Ohio peace officer training council, attesting to his satisfactory completion of an approved state, county, or municipal police basic training program; and every person who is appointed on a temporary basis or for a probationary term or on other than a permanent basis as a peace officer of any county, township, or municipal corporation, shall forfeit his position as such unless he previously has satisfactorily completed, or within the time prescribed by rules promulgated by the attorney general pursuant to section 109.74 of the Revised Code, satisfactorily completes a state, county, or municipal peace officer basic training school program for temporary or probationary officers and is awarded a certificate by such director attesting thereto. No peace officer shall have his employment terminated and then be reinstated with intent to circumvent this section. (Emphasis added.)

See 1 Ohio Admin. Code 109:2-1-11.¹

¹Ohio Admin. Code 109:2-1-11 states:

(A) No person shall, after the effective date of the Ohio Peace Officer Training Act, receive an original appointment on a permanent basis as a peace officer unless such person has previously been awarded a certificate by the Executive Director attesting to his satisfactory completion of the basic course. Nor shall any person appointed as a peace officer be permitted to carry a weapon in connection with his regular duties until such time as said peace officer shall have successfully completed 46 hours of course instruction, of which

26 hours shall be in the instruction of firearms, 12 hours in the laws of arrest and 8 hours in the lawful methods of search and seizure.

Every person who is appointed as a peace officer after the effective date of the Ohio Peace Officer Training Act, on other than a permanent basis shall forfeit his position as such unless he has received, within one year from the time of his appointment, a certificate from the Executive Director attesting to his satisfactory completion of the basic course. The Executive Director may extend this time upon written application from the officer and the appointing authority of such officer which explains the circumstances which make the extension necessary. Failure to pass the final examination is not an acceptable circumstance to justify an extension.

(B) Peace officers, certified by the Ohio Peace Officer Training Council after January 1, 1966, or those who possessed the status as a peace officer on January 1, 1966, who terminate their employment as a peace officer, will have their training eligibility reviewed upon reappointment as a peace officer by the Executive Director of the Council.

All peace officers who were exempted from the basic training course, by virtue of possessing peace officer status on January 1, 1966, shall take the mandatory basic training course for certification upon re-entry. This requirement may be waived only upon presentation of documented proof of training equal to or exceeding the minimum basic requirement. No credit shall be given toward certification based only upon experience.

All persons who have previously been certified by the Ohio Peace Officer Training Council and have had their employment as a peace officer terminated for less than three years may maintain their eligibility for reappointment as a peace officer without additional training, provided that no mandatory specialized training has been instituted during the time he was not employed as a peace officer.

All persons who have not been employed as a peace officer for three years or more shall, upon re-entry into employment as a peace officer, attend a refresher course of 40 hours as prescribed upon the equivalency of training prior to his termination. Further, said person shall take any mandatory specialized training that was instituted during the time he was not employed as a peace officer.

Every person who has been re-appointed as a peace officer shall forfeit his position as such unless he has received, within one year from the date of his reappointment, a certificate from the Executive Director attesting to his satisfactory completion of the above training requirements.

(C) Every political subdivision in the State of Ohio which employs a peace officer, shall, within five days after such employment, forward a "Notice of Employment" to the Ohio Peace Officer Training Council.

Further, within five days after termination of employment of a peace officer, said political subdivision of the State of Ohio shall send to the Council a "Notice of Termination." Said notice shall state the reason for the termination of employment.

Said forms shall be furnished by the Council.

(D) This regulation shall not be construed to preclude a township, county, or municipal corporation from establishing time limits for satisfactory completion of the basic course, re-entry requirements, and notice of employment and termination

As one of my predecessors stated in 1966 Op. Att'y Gen. No. 66-137 at 2-275 to 2-276:

Inherent in [R.C. 109.77] is the idea that any peace officer appointed prior to January 1, 1966, may continue in his capacity without having been certified by the executive director of the Ohio Peace [Officer] Training Council; however, any peace officer being appointed . . . after January 1, 1966, must be certified prior to such appointment.

R.C. 109.71(A) defines a "peace officer" for purposes of R.C. 109.71 through R.C. 109.77 as:

(1) A deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is commissioned and employed as a peace officer by a political subdivision of this state, 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.

(B) "Undercover drug agent" has the same meaning as in division (B)(2) of section 109.79 of the Revised Code.

¹ Ohio Admin. Code. 109:2-1-02(E) adopts a definition similar to that contained in R.C. 109.71(A)(1) for purposes of the rules of the Peace Officer Training Council. Rule 109:2-1-02(E)² states:

of less than the maximum limits prescribed by the Council. If a township, county, or municipal corporation has adopted time limits of less than the maximum limits prescribed above, such time limits shall be controlling.

I note that the Peace Officer Training Council has proposed changes in rule 109:2-1-11 which at 109:2-1-11(E) will allow credit for prior equivalent training received through the State Highway Patrol. The proposed rule states:

(E) Credit for prior equivalent training:

(1) An individual who has successfully completed prior equivalent training other than under the auspices of the Ohio Peace Office Training Council and who is appointed as a peace officer in Ohio may request credit for that portion of the basic training course described in this rule which is equal to that previously completed. Training which will be accepted would include, but is not limited, to that training certified by another state, another government agency, military service, or the state highway patrol.

²I note that the Peace Office Training Council has proposed changes to rule 109:2-1-02(E) which fully correspond to each of the sections contained in R.C. 109.71(A).

The term "peace officer" means a member of a police force or other organization, employed or commissioned by a township, a county, or municipal corporation, who is responsible for the enforcement of general criminal laws of the state, and empowered to carry firearms, but shall not include any person serving as such solely by virtue of his occupying other office or position, nor shall such term include a sheriff, or any person having an equivalent title who is appointed or employed by a county to exercise equivalent supervisory authority.

The question for my analysis is, therefore, whether a person who was appointed as a state highway patrolman on or before January 1, 1966, meets the definition of a "peace officer" as contained in R.C. 109.71(A) and rule 109:2-1-02(E).

State highway patrolmen are appointed pursuant to R.C. 5503.01. R.C. 5503.01 states, in part:

There is hereby created in the department of highway safety a division of state highway patrol which shall be administered by a superintendent of the state highway patrol.

The superintendent shall be appointed by the director of highway safety, and shall serve at his pleasure. The superintendent shall give bond for the faithful performance of his duties in such amount and with such security as the director approves.

The superintendent, with the approval of the director, may appoint such number of highway patrolmen and radiomen as are necessary to carry out sections 5503.01 to 5503.06 of the Revised Code, but patrolmen shall not be less than eight hundred eighty. Radiomen shall not exceed eighty in number. At the time of appointment, patrolmen shall not be less than twenty-one years of age, nor have reached thirty-five years of age, and shall have been legal residents of Ohio for at least one year, except that the residence requirement may be waived by the superintendent. No person can be disqualified as over age prior to the time he reaches thirty-five years of age. (Emphasis added.)

R.C. 5503.01 (State Highway Patrol is a division of the Department of Highway Safety) makes clear that a state highway patrolman, appointed by the Superintendent of the State Highway Patrol, with the approval of the Director of Highway Safety, is an employee of a department of the state. See R.C. 121.02(K) (creates the Department of Highway Safety); R.C. 121.03(A)(3) (the Director of Highway Safety is an administrative department head appointed by the governor); R.C. 5502.01 (duties of the Department of Highway Safety). It follows, therefore, that a state highway patrolman, because he is appointed by the Ohio Department of Highway Safety in conjunction with the Superintendent of the State Highway Patrol, is not commissioned and employed by a township, county, or municipal corporation or any other political subdivision of the state, see R.C. 5503.01, as is required to come within the provisions of R.C. 109.71(A)(1) (a "peace officer" is one who is commissioned and employed by a political subdivision of the state) and rule 109:2-1-02(E) ("[a 'peace officer' is a] member of a police force. . . employed or commissioned by a township, a county, or municipal corporation"). See 1972 Op. Att'y Gen. No. 72-035 at 2-136 ("a political subdivision of the State is a limited geographical area wherein a public agency is authorized to exercise some governmental function, as contrasted to an instrumentality of the State, which is a public agency with state-wide authority" (emphasis added)); 1977 Op. Att'y Gen. No. 77-009. See generally 1970 Op. Att'y Gen. No. 70-073; 1967 Op. Att'y Gen. No. 67-123; 1966 Op. Att'y Gen. No. 66-137 (construes what constitutes a "peace officer" under former R.C. 109.71 and rule PC-1-02(E) of the Peace Officer Training Council).

It is also clear from the express language of R.C. 5503.01 ("[t]he superintendent [of the State Highway Patrol], with the approval of the director [of

Highway Safety], may appoint such number of highway patrolmen") that a state highway patrolman does not meet the definition of "peace officer" as contained in R.C. 109.71(A)(2) ("A policeman who is employed by a railroad company"); R.C. 109.71(A)(3) ("Employees of the department of taxation engaged in the enforcement of Chapter 5743. of the Revised Code"); or R.C. 109.71(A)(4) ("An undercover drug agent").

Your letter cites several sources which suggest that a state highway patrolman is a peace officer. I do not question that a state highway patrolman is a peace officer for certain purposes: e.g., R.C. 2935.01(B) ("[p]eace officer". . .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"); R.C. 5503.01 ("[t]he superintendent [of the State Highway Patrol] and patrolmen shall be vested with the authority of peace officers for the purpose of enforcing the laws of the state which it is the duty of the patrol to enforce. . ."); 1961 Op. Att'y Gen. No. 2214, p. 261 (state highway patrolmen making arrests for offenses noted in R.C. Chapter 5503 is a peace officer for purposes of R.C. 2935). I do not, however, find such authorities applicable in this instance, since a statutory definition specifically governing the matter at issue appears in R.C. 109.71(A). R.C. 1.42 specifically states that "[w]ords and phrases that have acquired a technical or particular meaning. . .by legislative definition. . .shall be construed accordingly." (Emphasis added.) Thus, where, as in R.C. 109.71(A), a statutory definition is provided, there is no reason to look elsewhere to ascertain the meaning of the words in question. See 1979 Op. Att'y Gen. No. 79-084 (the legislature fixes a particular construction to a word by definition). See also Larkins v. Routson, 115 Ohio St. 639, 155 N.E. 227 (1927).

From a reading of R.C. 109.71(A) and related statutes, I conclude that a state highway patrolman is not a "peace officer" for purposes of the mandatory training provisions of R.C. 109.71 through R.C. 109.77. Therefore, the individual in question, who was appointed as a state highway patrolman before January 1, 1966, and served as a state highway patrolman on that date, was not a "peace officer" for the purpose of the exemption contained within R.C. 109.77(A) ("no person shall, after January 1, 1966, receive an original appointment. . .as a peace officer. . .unless the person has previously been awarded a certificate") and rule 109:2-1-11.

Since I have concluded that a person who served as a state highway patrolman on January 1, 1966, did not hold "peace officer" status as defined by R.C. 109.71(A), it follows, therefore, that he must complete a course of training and obtain certification from the executive director of the Peace Officer Training Council pursuant to R.C. 109.77 and rule 109:2-1-11 in order to hold a position as a peace officer. If he attempts to hold such a position without certification, he is subject to the forfeiture provisions contained in R.C. 109.77 and rule 109:2-1-11.

It is, therefore, my opinion, and you are accordingly advised, that an individual who served as a state highway patrolman on January 1, 1966, did not hold "peace officer" status as defined by R.C. 109.71(A). Therefore, such an individual must complete the course of training prescribed by the Ohio Peace Officer Training Council pursuant to R.C. 109.71 through 109.77 in order to receive an appointment as a "peace officer."