

OPINION NO. 66-179**Syllabus:**

1. When contracts exist between two or more municipalities for police assistance, the police and firemen's disability and pension fund provides complete coverage, as to pensions or disability payments, for a police officer working in either subdivision.

2. When contracts do not exist between two or more municipalities for police assistance, the police and firemen's disability and pension fund provides complete coverage, as to pensions or disability payments, for a police officer working outside his employing subdivision, provided such work is part of such officer's official duties. If such police officer incurs disability not caused by performance of his official duties, or not caused by his own negligence, and such officer has completed five or more years of active service in the police department, he shall receive such disability benefits as are fixed by the board of the police and firemen's disability and pension fund.

3. Any police officer, or officers, called upon to help suppress a riot would be performing an official duty and would be eligible for pension or disability payments under the terms and provisions of the police and firemen's disability and pension fund. In the unlikely event that it was found reasonable and necessary so to call upon an entire police agency, all police officers responding would be under such coverage.

4. A privately employed policeman has the same powers and jurisdiction as given other police officers by state law. This would include the authority to arrest one who commits a misdemeanor in his presence. Such private policemen are not employed by the licensing subdivision.

5. A private policeman who is appointed on other than a permanent basis must receive, within one year from the time of his appointment, a certificate of his satisfactory completion of the basic course of peace officer training. Such time limit may be extended by the Director, or such time limit may be lessened by the appointing subdivision, in accordance with the provisions of Rule No. P.C. 1-11, of the peace officers training council.

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio
By: William B. Saxbe, Attorney General, December 19, 1966

Your request for my opinion reads in part as follows:

"In view of recent developments in the police field with particular emphasis on mob and riot control, your assistance is requested in obtaining an official opinion from which to establish increased Police-Community protection.

"Of necessity most police organizations are not adequately staffed to cope with major disaster or civil situations. While assistance can be obtained from the State in the form of National Guard troops, under certain conditions, this extreme is often felt to be excessive and is not quickly available.

"From time to time area departments have called upon other police organizations for assistance; however, to my knowledge no contracts exist between area Law Enforcement Agencies for mutual aid. Section 737.04 of the Ohio Revised Code apparently authorizes such contracts and provides pension and disability protection to officers working outside their sub-divisions if 'The rules of the Board of Trustees of the Policeman's Pension or Indemnity Fund provide therefor'. This situation becomes entwined with three aspects.

"1. What protection (pension-disability) exists for officers rendering such assistance without prior contracts?

"2. Provided such a contract exists does the newly created State Police and Firemen's Disability and Pension Fund extend coverage?

"3. Can authorized persons under Ohio Revised Code Section 3761.14 call upon entire police agencies to assist in riot suppression or only upon individuals and does coverage accordingly ensue?

"Your opinion and guidance in this matter will be of great assistance to area agencies in properly planning for such situations.

"A second problem exists which also necessitates a legal opinion and carries significant impact. The recently enacted Peace Officer's Training Bill requires 120 hours of basic prescribed training for all officers who

"1. are employed by a township, a county, or municipal corporation,

"2. is responsible for enforcement of general criminal laws of the state,

"3. are empowered to carry firearms.

"Locally by means of the attached Ordinance (Title Two-Part 15 C.O.) The City of Kettering requires all Special Police and Private Detectives to maintain a license while performing their duties within the city. This Ordinance was patterned after a similar Ordinance in the City of Dayton.

"While Section 737.05 O.R.C. provides for a commission for private policemen the question remains as to their authority and subsequent compliance with the state minimum training law. Therefore, are such commissioned persons 'employed' by the licensing sub-division and are they responsible for the enforcement of general laws of the state (power of arrest for misdemeanor offenses committed in their presence without a warrant)?"

Section 737.04, Revised Code, reads in pertinent part as follows:

"Any municipal corporation may, in order to obtain police protection or to obtain additional police protection, enter into contracts * * * with one or more municipal corporations, * * * Such contracts shall first be authorized by the respective legislative authorities.

"* * * * *"

"Police department members acting outside the subdivision in which they are employed, pursuant to such contracts, shall be entitled to, if the board of trustees of the policemen's pension or indemnity fund provide therefor, participate in any pension or indemnity fund established by their employer to the same extent as while acting within the employing subdivision. * * *"

Previous to November 5, 1965, when Chapter 742, Revised Code, became effective the police and firemen's fund was provided for in Chapter 741, Revised Code. Section 741.32, Revised Code, at that time, provided in part as follows:

"In each municipal corporation having a police department supported in whole or in part at public expense, and employing two or more full-time regular members, there shall be established and maintained a police relief and pension fund.

"* * * * *"

The enactment of Chapter 742, *supra*, combined the several municipal funds into one, state-wide fund.

Section 742.37, Revised Code, provides in pertinent part as follows:

"The board of trustees of the police and firemen's disability and pension fund shall adopt rules and regulations for the management of such funds and for the disbursement of benefits and pensions as set forth in this section.

* * * * *

"(C) Members of the fund who have not elected to receive benefits and pensions from a police relief and pension fund or a firemen's relief and pension fund in accordance with the rules and regulations of such fund in force on April 1, 1947, shall receive pensions and benefits in accordance with the following provisions.

"(1) A member of the fund who has completed twenty-five years of active service in the police or fire department of a municipal corporation * * * and has attained fifty-two years of age may, at his election, retire * * * shall receive an annual pension, * * *

"(2) A member of the fund who is permanently and totally disabled as the result of the performance of his official duties as a member of a police * * * department of a municipal corporation * * * shall be paid annual disability benefits until death, * * *

"(3) A member of the fund who is partially disabled as the result of the performance of his official duties as a member of a police * * * department of a municipal corporation * * * and such disability prevents him from performing those duties and impairs his earning capacity, shall be paid monthly disability benefits in an amount to be fixed by the board. * * *

* * * * *

"(5) A member of the fund who has completed five or more years of active service in the police * * * department of a municipal corporation * * * and has incurred disability not caused or induced by the actual performance of his official duties as a member of such department, or by his own negligence, and such disability prevents him from performing his official duties as a member of

the department, and impairs his earning capacity, shall receive monthly benefits in an amount to be fixed by the board. * * *"
(Emphasis-added)

In answering your first and second questions with regard to pension protection, it is noted that the existence of a contract authorized by Section 737.04, supra, is irrelevant. Section 737.04, supra, requires only that an applicant complete so many years of service in the police department and attain a certain age in order to be eligible for a pension. There is no requirement that such service be confined to a particular location.

The prerequisites necessary for a police officer to receive disability payments are found in Section 742.37, supra, Subsection (C), Subdivisions (2), (3), and (5). It is in regard to disability payments that a contract provided for in Section 737.04, supra, has relevance; for, the first two conditions above (742.37 (C), (2) and (3)) require that the disability incurred by the applicant be the result of an injury sustained in the performance of "official duties."

In Opinion No. 50, Opinions of the Attorney General for 1959, my predecessor states that "official duty" as used in reference to a police officer, means duty performed having some direct connection with the duties, responsibilities, and authority of the police department with which the claimant was affiliated. The syllabus of Opinion No. 50, supra, at page 24 states in pertinent part as follows:

"3. If a member of a municipal police department is injured while in the discharge of his official duty as a member of the department, in or outside the municipality, * * * he is eligible for disability benefits * * *.

"5. If a member of a municipal police department, while on official duty outside the corporate limits of the municipality of which he is a member of the police department is injured during his attempt to enforce any state law, whether or not directly connected with his municipality, his injury is incurred in the performance of his official duty."

The syllabus in Opinion No. 50, supra, is explained further at pages 26 and 27, as follows:

"This line of authority appears to give broad powers to any police officer. However, it offends common sense to assume that every police officer of every Ohio municipality has unlimited police jurisdiction throughout the state. A 'rookie' patrolman of a small city, for example, who wanted more experience and 'action', surely could not take a day off and begin operations in Cleveland, Cincinnati, or Columbus, and be

'on official duty' while making arrests in those cities. However, if a municipal police officer is sent to a neighboring city on business of the department - say to return a wanted fugitive from justice - and enroute sees a crime being committed and in attempting to arrest the offender is injured, there would be no question that he was on official business. As a peace officer charged with the duty of enforcing all state laws he was clearly within his jurisdiction in arresting the offender even though outside the territorial limits of his immediate jurisdiction."

(Emphasis added)

Thus, in the situation presented by your first question where no contract exists between municipalities for police protection, a police officer outside of the territorial boundaries of the department of which he is a member and not on business connected with that department, who attempts to assist in enforcing the law in a neighboring municipality, is not performing his "official duty." Therefore, he would not be eligible for disability payments under Section 742.37, supra, Subsection (C), Subdivision (2) or (3). If he had been a police officer for five (5) years, he may still qualify for disability payments under Subdivision (5), supra.

If, however, the police officer was acting pursuant to a contract between the municipality in which he was employed and the municipality in which he was injured, he would be performing his "official duty" and would be completely protected and eligible for any disability payments provided for in Section 742.37, supra.

The third question in part one of your request refers to Section 3761.14, Revised Code, which reads in pertinent part as follows:

"Whenever three or more persons are unlawfully or riotously assembled, all judges, sheriffs, and other ministerial officers, forthwith * * * shall make proclamation * * * commanding them, * * * to disperse and depart * * * and, if such persons do not then forthwith disperse and depart, such officers shall call upon all persons near, and, if necessary, throughout the county, to aid and assist in dispersing and taking into custody all such persons. No persons, who are called upon by such officer, shall refuse to render immediate assistance."

Theoretically, a sheriff, or other authorized officer, could call upon an entire police force to form a "posse" and help suppress a riot if such request were reasonable and necessary. As a practical matter, it seems doubtful if a police chief, safety director, or mayor would permit his entire police force to be so used, leaving his municipality completely unprotected. However, if such unlikely event should occur, the police officers involved would be "covered" for the purpose of disability

payments, as their participation would be part of their "official duty."

The question you have asked in the second part of your request pertains to the qualifications and authority of a special policeman appointed in accordance with the provisions of Section 737.05, Revised Code, and Title II of Part 15, Codified Ordinances of the City of Kettering, Ohio. Section 737.05, Revised Code, provides as follows:

"The police department of each city shall be composed of a chief of police and such other officers, patrolmen, and employees as the legislative authority thereof provides by ordinance.

"The director of public safety of each city shall have the exclusive management and control of all other officers, surgeons, secretaries, clerks, and employees in the police department as provided by ordinances or resolution of such legislative authority. He may commission private policemen, who may not be in the classified list of the department, under such rules and regulations as the legislative authority prescribes."

(Emphasis added)

The private police officer referred to in the last paragraph of Section 737.05, supra, derives his authority from the ordinances of the appointing municipality and from the laws of the state.

In Neapolitan v. United States Steel Corporation, 77 Ohio Law Abs., 376 (1956), the Ohio Court of Appeals for the Seventh District, states at pages 380 and 381 as follows:

" * * * * *"

"Thus it is clear that a special policeman appointed under the provisions of the Youngstown City Charter has the same powers and jurisdiction as given him by state law, since the charter could not prescribe powers and jurisdiction in conflict therewith.

"Even though privately employed such officers derive their authority directly from the sovereign. * * *

" * * * * *"

"It is clear that the two officers in question plant protection officers of defendant corporation, holding private police authority under a certificate issued by the Chief of Police were duly commissioned police officers and had the powers and jurisdiction as such, despite the fact that they were privately paid and employed.

" * * * * *"

(Emphasis added)

The court found, supra, that such plant protection officers were not limited in jurisdiction to the confines of defendant's plant, that their jurisdiction was within the city of Youngstown by reason of the appointment by the City department head under the provisions of the City Charter.

Therefore, a special or private policeman appointed as authorized by Section 737.05, supra, and in accordance with local legislative authority, possesses the same power and authority conferred upon other police officers by the State of Ohio.

You inquire if such private police are required to take the training provided for in Sections 109.71 to 109.77, inclusive, Revised Code. Section 109.77, Revised Code, provides as follows:

"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 unless such 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 regulations 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 for temporary or probationary officers and is awarded a certificate by such director attesting thereto."

All permanent full-time regular police officers are in the classified service and must be appointed from an eligible list prepared in accordance with the provisions of the civil service laws. Promotions, demotions, suspensions, sick leave, and other pertinent factors concerning permanent municipal police officers are all governed by appropriate provisions of the civil service laws applicable to the classified service. "Special police" or "private policemen" are specifically forbidden by statute (Section 737.05, supra) from being in, or becoming a part of the "classified" service. Likewise, auxiliary police are forbidden by statutory provisions (Section 737.051, Revised Code) from being in, or becoming a part of the "classified" service. Special police, private policemen, and auxiliary police are appointed by an individual municipal officer, without regard to any eligibility list. They are prohibited from participating in the police and firemen's disability and pension fund (Section 742.01, Revised Code). All of

which clearly indicates a legislative intent that "special police", "private policemen", and "auxiliary police" are within the categories specified in Section 109.77, supra, as, "on a temporary basis * * * or on other than a permanent basis." This conclusion is reflected in the actual practice of many municipal corporations, which appoint such private policemen on a six months, or annual, basis, and require renewals of such appointments at the appropriate intervals.

The Rules and Regulations of the Ohio Peace Officers Training Council provide, in Rule No. P.C. 1-11, in pertinent part:

"Time Limits for Completion of Basic Course.

"* * * * *"

"Every person who is appointed as a peace officer after the effective date of the Ohio Peace Officer Training Act September 6, 1965, 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.

"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 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."

(Emphasis added)

In Opinion No. 66-171, Opinions of the Attorney General for 1966, I held that special constables appointed at the request of freeholders under the provisions of Section 1907.201, Revised Code, were privately employed and were not to be considered as employees of the appointing subdivision. Private policemen appointed by a municipal corporation under the provisions of Section 737.05, supra, are in a category similar to the special constables concerned in Opinion No. 66-171, supra. Our courts have recognized this fact, and have held that such private policemen are duly commissioned police officers, with powers and jurisdiction as such, despite the fact that they are privately paid and employed. (Neapolitan v. U. S. Steel Corp., supra).

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

1. When contracts exist between two or more municipalities for police assistance, the police and firemen's disability and pension fund provides complete coverage, as to pensions or disability payments, for a police officer working in either subdivision.

2. When contracts do not exist between two or more municipalities for police assistance, the police and firemen's disability and pension fund provides complete coverage, as to pensions or disability payments, for a police officer working outside his employing subdivision, provided such work is part of such officer's official duties. If such police officer incurs disability not caused by performance of his official duties, or not caused by his own negligence, and such officer has completed five or more years of active service in the police department, he shall receive such disability benefits as are fixed by the board of the police and firemen's disability and pension fund.

3. Any police officer, or officers, called upon to help suppress a riot would be performing an official duty and would be eligible for pension or disability payments under the terms and provisions of the police and firemen's disability and pension fund. In the unlikely event that it was found reasonable and necessary so to call upon an entire police agency, all police officers responding would be under such coverage.

4. A privately employed policeman has the same powers and jurisdiction as given other police officers by state law. This would include the authority to arrest one who commits a misdemeanor in his presence. Such private policemen are not employed by the licensing subdivision.

5. A private policeman who is appointed on other than a permanent basis must receive, within one year from the time of his appointment, a certificate of his satisfactory completion of the basic course of peace officer training. Such time limit may be extended by the Director, or such time limit may be lessened by the appointing subdivision, in accordance with the provisions of Rule No. P.C. 1-11, of the peace officers training council.