

December 16, 2005

The Honorable T. Shawn Hervey
Harrison County Prosecuting Attorney
P.O. Box 248
111 W. Warren Street
Cadiz, Ohio 43907

SYLLABUS:

2005-045

A county court bailiff is a law enforcement officer for purposes of R.C.
311.01(B)(8)(b).



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OPINION NO. 2005-045

The Honorable T. Shawn Hervey
Harrison County Prosecuting Attorney
P.O. Box 248
111 W. Warren Street
Cadiz, Ohio 43907

Dear Prosecutor Hervey:

You have requested an opinion whether a county court bailiff is a law enforcement officer for purposes of R.C. 311.01(B)(8)(b). After reviewing the definition of law enforcement officer set forth in R.C. 2901.01(A)(11) and the powers and duties of a county court bailiff, we conclude that a county court bailiff is a law enforcement officer for purposes of R.C. 311.01(B)(8)(b).

The Law Enforcement Experience Requirement of R.C. 311.01(B)(8) May Be Satisfied When a Person Is a Law Enforcement Officer

R.C. 311.01(B), which sets forth the qualifications a person must have in order to serve as a county sheriff, states that, except as provided therein,¹ a person is not eligible to be a candidate for, and may not be elected or appointed to, the office of county sheriff, unless the person satisfies all the requirements set forth in R.C. 311.01(B)(1)-(9).² Included among these

¹ R.C. 311.01(C) states:

Persons who meet the requirements of [R.C. 311.01(B)], except the requirement of division (B)(2) ... may take all actions otherwise necessary to comply with [R.C. 311.01(B)]. If, on the applicable qualification date, no person has met all the requirements of [R.C. 311.01(B)], then persons who have complied with and meet the requirements of [R.C. 311.01(B)], except the requirement of division (B)(2) ... shall be considered qualified candidates under [R.C. 311.01(B)].

² The qualifications set forth in R.C. 311.01(B) relate to a person's citizenship, places of residence, status as an elector, education, criminal record, law enforcement experience, and supervisory experience.

requirements is a legislative mandate in R.C. 311.01(B)(8) that a person have experience performing duties related to the enforcement of statutes, ordinances, or codes. *See generally Cicchino v. Luse*, Case No. C-2-99-1174, 2000 U.S. Dist. LEXIS 10314, at *25-26 (S.D. Ohio Feb. 1, 2000) (“Ohio has an important, if not compelling, interest in assuring that its top law enforcement officers possess the minimum qualifications necessary to enforce and uphold the laws of the state of Ohio”). In order to satisfy this requirement a person must meet at least one of the following conditions:

(a) Has obtained or held, within the four-year period ending immediately prior to the qualification date, a valid basic peace officer certificate of training issued by the Ohio peace officer training commission or has been issued a certificate of training pursuant to [R.C. 5503.05], and, within the four-year period ending immediately prior to the qualification date, has been employed as an appointee pursuant to [R.C. 5503.01] or as a full-time peace officer as defined in [R.C. 109.71] performing duties related to the enforcement of statutes, ordinances, or codes;

(b) Has obtained or held, within the three-year period ending immediately prior to the qualification date, a valid basic peace officer certificate of training issued by the Ohio peace officer training commission and has been employed for at least the last three years prior to the qualification date as a *full-time law enforcement officer, as defined in [R.C. 2901.01(A)(11)], performing duties related to the enforcement of statutes, ordinances, or codes.* (Emphasis added.)

R.C. 311.01(B)(8). Thus, one of the ways in which a person, who has obtained or held the requisite basic peace officer certificate of training, may satisfy the law enforcement experience requirement of R.C. 311.01(B)(8) is to have “been employed for at least the last three years prior to the qualification date as a full-time law enforcement officer, as defined in [R.C. 2901.01(A)(11)], performing duties related to the enforcement of statutes, ordinances, or codes.” R.C. 311.01(B)(8)(b).

Law Enforcement Officer Defined for Purposes of R.C. 311.01(B)(8)(b)

For purposes of R.C. 311.01(B)(8)(b), the definition of law enforcement officer set forth in R.C. 2901.01(A)(11) applies. *Id.* R.C. 2901.01(A)(11) defines a law enforcement officer as follows:

“Law enforcement officer” means any of the following:

(a) A sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under [R.C. 3735.31], or state highway patrol trooper;

(b) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to

conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority;

(c) A mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation;

(d) A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission;

(e) A person lawfully called pursuant to [R.C. 311.07] to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;

(f) A person appointed by a mayor pursuant to [R.C. 737.01] as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;

(g) A member of the organized militia of this state or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;

(h) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;

(i) A veterans' home police officer appointed under [R.C. 5907.02];

(j) A member of a police force employed by a regional transit authority under [R.C. 306.35(Y)];

(k) A special police officer employed by a port authority under [R.C. 4582.04] or [R.C. 4582.28];

(l) The house sergeant at arms if the house sergeant at arms has arrest authority pursuant to [R.C. 101.311(E)(1)] and an assistant house sergeant at arms;

(m) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended.

Unlike certain other public officers and employees, county court bailiffs are not specifically listed in R.C. 2901.01(A)(11) as law enforcement officers. *Cf.* R.C. 109.79(B)(1) (as used in R.C. 109.79, the term, "[l]aw enforcement officers," includes "any bailiff or deputy bailiff of a court of record"³). However, the definition of law enforcement officer set forth in R.C. 2901.01(A)(11) does include an officer, agent, or employee of the state or any of its

³ R.C. 1907.01 declares that "[c]ounty courts are courts of record for all purposes of law."

agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority. R.C. 2901.01(A)(11)(b). Accordingly, a county court bailiff is a law enforcement officer, as defined in R.C. 2901.01(A)(11)(b), if the bailiff (1) is an officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions; (2) has a statutory duty to conserve the peace or to enforce all or certain laws; and (3) has the authority to arrest violators pursuant to that statutory duty and authority. *Cf. State v. Sanders*, 2002-Ohio-2656, 2002 Ohio App. LEXIS 2770, at ¶19 (Mahoning County May 20, 2002) (“a municipal court bailiff will qualify as a ‘law enforcement officer’ with respect to Crim. R. 41(C)⁴ if both of the following requirements are met: 1) if a bailiff is an officer, agent, or employee of the state or any of its agencies; and 2) if a bailiff has the statutory authority to arrest violators” (footnoted added)).

**A County Court Bailiff Is a Law Enforcement Officer for Purposes of R.C.
311.01(B)(8)(b)**

Let us now review the powers and duties of a county court bailiff to determine whether a county court bailiff satisfies the criteria set forth in R.C. 2901.01(A)(11)(b). A county court bailiff is appointed by a county court judge. R.C. 1907.53(A)(1). The compensation of the bailiff is prescribed by the judge and “payable in semimonthly installments from the treasury of the county or other authorized fund.” *Id.* A county court bailiff thus is an employee of the county, and, as such, is an “officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions” for purposes of R.C. 2901.01(A)(11)(b). *See* R.C. 124.11(A)(10) (bailiffs of all courts of records, including county courts, *see* note three, *supra*, are in the unclassified service); R.C. 1907.53(D) (“[b]ailiffs and deputy bailiffs are in the unclassified civil service”); *cf. State v. Sanders*, 2002-Ohio-2656, 2002 Ohio App. LEXIS 2770, at ¶20 (“[m]unicipal court bailiffs are clearly officers, agents, or employees of the state or its agencies”); 1986 Op. Att’y Gen. No. 86-003 at 2-13 (same); 1984 Op. Att’y Gen. No. 84-008 at 2-24 (criminal bailiffs appointed by a court of common pleas are employees of the county). *See*

⁴ The term law enforcement officer is defined for purposes of Ohio R. Crim. P. 41 in Ohio R. Crim. P. 2(J), which provides as follows:

“Law enforcement officer” means a sheriff, deputy sheriff, constable, municipal police officer, marshal, deputy marshal, or state highway patrolman, and also means any officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, the authority to arrest violators is conferred, when the officer, agent, or employee is acting within the limits of statutory authority. The definition of “law enforcement officer” contained in this rule shall not be construed to limit, modify, or expand any statutory definition, to the extent the statutory definition applies to matters not covered by the Rules of Criminal Procedure.

generally 2005 Op. Att’y Gen. No. 2005-015 at 2-149 (a county is a political subdivision of the state); 1987 Op. Att’y Gen. No. 87-063 at 2-386 (because an employee of a court of common pleas is appointed by the court and compensated by the county, the employee renders his service to the county). *See generally also State ex rel. Cherrington v. Hutsinpillar*, 112 Ohio St. 468, 471, 147 N.E. 647 (1925) (“[a] court is an instrumentality and an incident to sovereignty and is the repository of its judicial power. It is the agency of the state by means of which justice is administered, and is that entity in the government to which the public administration of justice is delegated and committed”).

The duties of a county court bailiff also primarily relate to conserving the peace. R.C. 1907.53(C)(1) states that, “[a] bailiff and an ex officio bailiff *shall perform for the county court services similar to those performed by the sheriff for the court of common pleas* and shall perform any other duties that are required by rule of court.” (Emphasis added.)

Pursuant to R.C. 311.07(A), a county sheriff “shall attend upon the court of common pleas” during its sessions and, “[u]nder the direction and control of the board of county commissioners, such sheriff shall have charge of the court house.” In addition, R.C. 2301.15 indicates that the county sheriff is responsible for providing security for the court of common pleas. This statute requires the criminal bailiff of a court of common pleas to act for, and under the direction of, the county sheriff in matters related to the provision of security services to the court of common pleas:

The criminal bailiff *shall act for the sheriff* in criminal cases and matters of a criminal nature in the court of common pleas and the probate court of the county. *Under the direction of the sheriff*, he shall be present during trials of criminal cases in those courts and during such trials *perform all the duties as are performed by the sheriff*. The criminal bailiff shall conduct prisoners to and from the jail of the county and for that purpose shall have access to the jail and to the courtroom, whenever ordered by such courts, and have care and charge of such prisoners when so doing. *Under the direction of the sheriff*, the criminal bailiff shall convey to state correctional institutions all persons sentenced thereto. (Emphasis added.)

A county sheriff thus is responsible for providing security for the court of common pleas, 2001 Op. Att’y Gen. No. 2001-006 at 2-40; 1984 Op. Att’y Gen. No. 84-008 at 2-22 and 2-23, and transporting prisoners between the court of common pleas and jail, 2004 Op. Att’y Gen. No. 2004-024 at 2-217; 1987 Op. Att’y Gen. No. 87-091 at 2-601; 1962 Op. Att’y Gen. No. 3420, p. 925, at 926. Because a county court bailiff is required to “perform for the county court services similar to those performed by the sheriff for the court of common pleas[.]” R.C. 1907.53(C)(1), a county court bailiff is statutorily responsible for providing security for the county court and transporting prisoners between the county court and jail. *Cf.* 2004 Op. Att’y Gen. No. 2004-024 at 2-217 and 2-218 (“insofar as the county sheriff and criminal bailiff are required to transport persons between the county jail and the court of common pleas, *see* R.C. 2301.15, and municipal court bailiffs and deputy bailiffs perform for the municipal court ‘services similar to those

performed by the sheriff for the court of common pleas,' R.C. 1901.32(A)(6), the duties of municipal court bailiffs and deputy bailiffs must be construed to include the transportation of persons between the municipal court and municipal jail" (footnote omitted); 1987 Op. Att'y Gen. No. 87-091 at 2-601 (same); 1962 Op. Att'y Gen. No. 3420, p. 925, at 927 (same).

Court decisions and prior Attorney General opinions have concluded that the provision of security for a court of record and the transportation of prisoners between the court and jail are duties that relate to conserving the peace. *See State v. Glenn*, 28 Ohio St. 3d 451, 454, 504 N.E.2d 701 (1986) (a special deputy sheriff who is transporting a prisoner is "[a]cting to preserve the peace of his community"), *cert. denied*, 482 U.S. 931 (1987); *Cleveland Police Patrolmen's Ass'n v. City of Cleveland*, 118 Ohio App. 3d 584, 588, 693 N.E.2d 864 (Cuyahoga County 1997) ("the function of transporting prisoners on the public highways among the general public is primarily a law enforcement duty with its attendant problems and concerns ... all of which are directly related to preserving the peace, protecting life and property, and enforcing the law"), *appeal not allowed*, 79 Ohio St. 3d 1449, 680 N.E.2d 1022 (1997); 1989 Op. Att'y Gen. No. 89-071 (syllabus, paragraph two) ("[d]uties such as the transportation of prisoners and routine patrol in squad cars are duties intended to preserve peace, protect life and property, and enforce laws"); 1984 Op. Att'y Gen. No. 84-008 at 2-24 ("the anticipated duties of [a criminal bailiff appointed by the court of common pleas] clearly relate to the preservation of the peace. As mentioned previously, the duties of court security personnel will include maintaining order at courtroom events, ejecting unruly persons from the courthouse, patrolling the halls and stairways of the courthouse and generally enforcing the peace of the courtroom"); *see also* 2000 Op. Att'y Gen. No. 2000-024 at 2-165 ("a county sheriff's duty to transport prisoners under a warrant issued by a court or the Governor is not a purely ministerial duty. To the contrary, a county sheriff who performs this function is performing a law enforcement duty that requires the exercise of judgment and discretion in order to safeguard the public and protect the civil rights of the public and prisoners"). *But cf. Dektas v. Leis*, 64 Ohio App. 3d 450, 581 N.E.2d 1150 (Hamilton County 1989) (deputy sheriffs who serve as corrections officers do not perform duties primarily related to preserving the peace, protecting lives and property, and enforcing laws). A county court bailiff thus has a statutory duty to conserve the peace.

Finally, the statutory duties of a county court bailiff include the authority to arrest violators.⁵ As explained previously, a county court bailiff performs for the county court the same services that the county sheriff performs for the court of common pleas. R.C. 1907.53(C)(1).

⁵ The language in R.C. 2901.01(A)(11)(b) pertaining to the authority to arrest violators "refers to a grant of authority to make arrests other than those arrests which every person is permitted to make under R.C. 2935.04-.041." 1998 Op. Att'y Gen. No. 98-018 at 2-98 n.11; *accord* 1987 Op. Att'y Gen. No. 87-015 at 2-94 n.1.

R.C. 311.07(A) requires, except as provided in R.C. 311.07(C), a county sheriff to “execute *all warrants*, writs, and other process directed to the sheriff by any proper and lawful authority of this state.” (Emphasis added.) *See also* R.C. 311.08(A) (“[t]he sheriff shall, except as provided in division (B) of this section, execute every summons, order, or other process directed to him by a proper and lawful authority of this state”). Pursuant to Ohio R. Crim. P. 4, a court may issue arrest warrants to law enforcement officers, including county sheriffs.⁶ 1986 Op. Att’y Gen. No. 86-003 at 2-13; *see also* R.C. 2935.10 (a court may issue arrest warrants to county sheriffs). A county sheriff thus has the authority to arrest persons when arrest warrants have been issued by a court to the sheriff.⁷

Insofar as a county court bailiff performs for the county court the same services that the county sheriff performs for the court of common pleas, it follows that a county court bailiff is also authorized to arrest persons when arrest warrants have been issued by the county court to the bailiff. *Cf.* 1986 Op. Att’y Gen. No. 86-003 at 2-14 (“[p]ursuant to R.C. 1901.23 and R.C. 1901.32(E) [now R.C. 1901.32(A)(6)]⁸, a municipal court bailiff is authorized to execute arrest warrants by arresting the persons named therein”). *See generally State v. Sanders*, 2002-Ohio-2656, 2002 Ohio App. LEXIS 2770, at ¶21 (“pursuant to R.C. § 1901.23, municipal court bailiffs have been given the statutory authority to execute arrest warrants”). *See generally also* 2004 Op. Att’y Gen. No. 2004-024 at 2-217 and 2-218 (because the county sheriff and criminal bailiff are required to transport persons between the county jail and the court of common pleas, *see* R.C. 2301.15, and municipal court bailiffs and deputy bailiffs perform for the municipal court the same services that the sheriff performs for the court of common pleas, R.C. 1901.32(A)(6), the duties of municipal court bailiffs and deputy bailiffs include the transportation of persons between the municipal court and municipal jail); 1987 Op. Att’y Gen. No. 87-091 at 2-601 (same); 1962 Op. Att’y Gen. No. 3420, p. 925, at 927 (same).

In light of the foregoing, it is clear that a county court bailiff is an employee of a political subdivision of the state who has a statutory duty to conserve the peace and the authority to arrest violators by virtue of his position. A county court bailiff, therefore, satisfies the criteria set forth in R.C. 2901.01(A)(11)(b), and is a law enforcement officer for purposes of R.C. 311.01(B)(8)(b). *Cf. State v. Sanders*, 2002-Ohio-2656, 2002 Ohio App. LEXIS 2770, at ¶23 (“a

⁶ For purposes of the Ohio Rules of Criminal Procedure, the county sheriff is a law enforcement officer. Ohio R. Crim. P. 2(J); *see note four, supra*.

⁷ In addition to the authority to arrest persons pursuant to a warrant, a county sheriff may arrest persons without a warrant. *See, e.g.,* R.C. 2935.03(A)(1) (authorizing a county sheriff to arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the county in which the sheriff is elected or appointed, a law of this state).

⁸ R.C. 1901.32(A)(6) provides, in part, that, “[t]he bailiff and deputy bailiff [of a municipal court] shall perform for the court services similar to those performed by the sheriff for the court of common pleas and shall perform any other duties that are requested by rule of court.”

municipal court bailiff meets both prongs of the definition of ‘law enforcement officer’ described in Crim. R. 2(J)’); 1986 Op. Att’y Gen. No. 86-003 at 2-14 (“a municipal court bailiff is a ‘law enforcement officer’ for purposes of the Criminal Rules”).

**A County Court Bailiff or Other Law Enforcement Officer Must Satisfy All
the Criteria of R.C. 311.01(B)(8)(b)**

Even though a county court bailiff is a law enforcement officer, as defined in R.C. 2901.01(A)(11), for purposes of R.C. 311.01(B)(8)(b), such bailiff does not meet the terms of the condition set forth in R.C. 311.01(B)(8)(b) unless he meets the other criteria set forth in that division. This includes, *inter alia*, determining whether a county court bailiff has (1) obtained or held, within the three-year period ending immediately prior to the qualification date, a valid basic peace officer certificate of training issued by the Ohio Peace Officer Training Commission; (2) been employed for at least the last three years prior to the qualification date as a full-time law enforcement officer; and (3) been employed for at least the last three years prior to the qualification date in a law enforcement position that performs duties related to the enforcement of statutes, ordinances, or codes.

For example, a person appointed and employed as a county court bailiff under R.C. 1907.53(A)(1) is not, by virtue of that appointment, required to have a valid basic peace officer certificate of training issued by the Ohio Peace Officer Training Commission.⁹ If a county court

⁹ R.C. 109.77(B)(1) provides that no person shall receive an original appointment on a permanent basis as any of the following unless the person previously has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission attesting to the person’s satisfactory completion of an approved state, county, municipal, or Department of Natural Resources peace officer basic training program:

- (a) A peace officer of any county, township, municipal corporation, regional transit authority, or metropolitan housing authority;
- (b) A natural resources law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, or state watercraft officer of the department of natural resources;
- (c) An employee of a park district under [R.C. 511.232] or [R.C. 1545.13];
- (d) An employee of a conservancy district who is designated pursuant to [R.C. 6101.75];
- (e) A state university law enforcement officer;
- (f) A special police officer employed by the department of mental health pursuant to [R.C. 5119.14] or the department of mental retardation and developmental disabilities pursuant to [R.C. 5123.13];
- (g) An enforcement agent of the department of public safety whom the director of public safety designates under [R.C. 5502.14];

bailiff has not obtained or held, within the three-year period ending immediately prior to the qualification date, a valid basic peace officer certificate of training issued by the Ohio Peace Officer Training Commission, the bailiff does not satisfy the criteria of R.C. 311.01(B)(8)(b), and, as such, may not serve as a county sheriff.

In addition, a county court bailiff must have performed for at least the last three years prior to the qualification date duties related to the enforcement of statutes, ordinances, or codes. When a county court bailiff is appointed his duties are assigned by a county court judge. *See* R.C. 1907.53(A)(1). *See generally* 1983 Op. Att’y Gen. No. 83-023 (syllabus, paragraph four (“[t]he welfare director has the responsibility of assigning duties to department of welfare employees”)); 1968 Op. Att’y Gen. No. 68-112 at 2-160 and 2-161 (“it is established that the sheriff may appoint individuals to carry out whatever duties he may see fit to assign them”). This means that a county court bailiff may be assigned clerical or administrative duties, rather than duties related to the enforcement of statutes, ordinances, or codes, which, as indicated above, include transporting prisoners and arresting people. *See generally Dektas v. Leis*, 64 Ohio App. 3d 450, 581 N.E.2d 1150 (the duties of a particular deputy sheriff may not be related primarily to preserving the peace, protecting lives and property, and enforcing laws); 1989 Op. Att’y Gen. No. 89-071 (same).

Under R.C. 311.01(B)(8)(b), a person must not only be a law enforcement officer, as defined in R.C. 2901.01(A)(11), but a law enforcement officer who performs duties related to the

(h) A special police officer employed by a port authority under [R.C. 4582.04] or [R.C. 4582.28];

(i) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended.

For purposes of this statute, a county court bailiff is not a peace officer. *See* R.C. 109.71(A)(1)-(20) (the term “[p]eace officer,” as used in R.C. 109.71-.77 does not include county court bailiffs). *See generally* 2004 Op. Att’y Gen. No. 2004-028 at 2-250 n.9 (“the terms ‘law enforcement officer’ and ‘peace officer’ are not synonymous”); 1984 Op. Att’y Gen. No. 84-008 at 2-25 (same).

Because county court bailiffs are neither listed in R.C. 109.77(B)(1) nor peace officers for purposes of this division, R.C. 109.77(B)(1) does not apply to county court bailiffs. Accordingly, a county court bailiff is not required to have a valid basic peace officer certificate of training issued by the Ohio Peace Officer Training Commission.

enforcement of statutes, ordinances, or codes. If a county court bailiff has not been employed for at least the last three years prior to the qualification date in a position that performs duties related to the enforcement of statutes, ordinances, or codes, the bailiff does not meet the criteria of R.C. 311.01(B)(8)(b) and may not serve in the office of county sheriff. *See generally Dektas v. Leis*, 64 Ohio App. 3d 450, 581 N.E.2d 1150 (if a deputy sheriff does not perform duties primarily related to preserving the peace, protecting lives and property, and enforcing laws, the deputy sheriff is not a peace officer, as defined in R.C. 109.71(A), required to obtain a basic peace officer certificate of training issued by the Ohio Peace Officer Training Commission); 1989 Op. Att’y Gen. No. 89-071 (same).

Whether a county court bailiff or other law enforcement officer has the requisite peace officer training certificate, performs duties related to the enforcement of statutes, ordinances, or codes, or meets the other criteria of R.C. 311.01(B)(8)(b) are questions of fact that must be resolved on a case-by-case basis by a county board of elections. *See* 2001 Op. Att’y Gen. No. 2001-026 at 2-143 and 2-144; 1988 Op. Att’y Gen. No. 88-048 at 2-223. *See generally* R.C. 311.01(F)(2) (“[e]ach board of elections shall certify whether or not a candidate for the office of sheriff who has filed a declaration of candidacy, a statement of candidacy, or a declaration of intent to be a write-in candidate meets the qualifications specified in divisions (B) and (C) of this section”); *Cicchino v. Luse*, Case No. C-2-99-1174, 2000 U.S. Dist. LEXIS 10314, at *29 (“[s]ection 3501.01 places the responsibility of determining whether an individual is qualified to become a candidate for sheriff in the hands of the board of elections, not an administrative judge”). As explained in 2001 Op. Att’y Gen. No. 2001-026 at 2-143 and 2-144:

In light of the language of R.C. 311.01(F)(2), it is clear that a county board of elections is responsible for determining whether a person satisfies the qualifications specified in R.C. 311.01(B) for the office of county sheriff. *See State ex rel. Wolfe v. Delaware Cty. Bd. of Elections*, 88 Ohio St. 3d 182, 724 N.E.2d 771 (2000); *State ex rel. Snider v. Stapelton*, 65 Ohio St. 3d 40, 600 N.E.2d 240 (1992); *State ex rel. Shumate v. Portage Cty. Bd. of Elections*, 64 Ohio St. 3d 12, 591 N.E.2d 1194 (1992). *See generally State ex rel. Williams v. Board of Elections of Trumbull Cty.*, 175 Ohio St. 253, 254, 193 N.E.2d 392, 393 (1963) (“a board of elections is authorized and required in a protest proceeding to determine whether the candidate is eligible under the statutes for the office which he seeks”). Whether a person meets the qualifications established by statute involves questions of fact that must be resolved on a case-by-case basis by a county board of elections. *See, e.g., State ex rel. Wolfe v. Delaware Cty. Bd. of Elections. See generally State ex rel. Kelly v. Cuyahoga Cty. Bd. of Elections*, 70 Ohio St. 3d 413, 414, 639 N.E.2d 78, 79 (1994) (“[b]oards of elections are obligated to weigh evidence of a candidate’s qualifications, and courts should not substitute their judgment for that of the board”); *State ex rel. Williams v. Board of Elections of Trumbull Cty.* (whether a candidate for the office of municipal court judge has satisfied the qualification that he be “admitted to the practice of law,” as required by R.C. 1901.06, is a question of fact for a board of elections). Accordingly, pursuant to R.C. 311.01(F)(2), a county board of elections is

responsible for determining whether, on particular facts, a person possesses the qualifications specified in R.C. 311.01(B) for the office of county sheriff.

Hence, a county board of elections is responsible for determining whether, on particular facts, a county court bailiff or other law enforcement officer satisfies all the criteria set forth in R.C. 311.01(B)(8)(b). This includes determining whether a county court bailiff or other law enforcement officer has the requisite peace officer training certificate, performs duties related to the enforcement of statutes, ordinances, or codes, and meets the other criteria of R.C. 311.01(B)(8)(b).

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that a county court bailiff is a law enforcement officer for purposes of R.C. 311.01(B)(8)(b).

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Petro", written in a cursive style.

JIM PETRO
Attorney General