

OPINION NO. 86-017**Syllabus:**

1. A special constable who is appointed by a county court judge under R.C. 1907.201 and 1907.211 upon the written application of freeholders of the county in which the judge resides is authorized only to guard and protect the property of the freeholders that is designated in general terms in the application.
2. Pursuant to R.C. 1907.201, such a special constable may exercise the same authority as other constables so far as may be necessary to guard and protect the designated property of such freeholders. If, in order to guard and protect such property, it is necessary for the special constable to direct traffic on a public highway, the special constable may do so, to the same extent that another constable could direct such traffic.
3. Such a special constable is prohibited by R.C. 311.281 from wearing the badge, the standard uniform, or any distinctive part of the standard uniform prescribed for county sheriffs and their deputies by the County Sheriffs' Standard Car-Marking and Uniform Commission. A determination as to which parts of the standard

uniform are distinctive is a question of fact. A determination as to whether a violation of R.C. 311.281 occurs may depend upon the circumstances involved or the manner in which the items are worn.

To: Gary L. Van Brocklin, Mahoning County Prosecuting Attorney, Youngstown, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 21, 1986

You have requested an opinion on the following questions concerning special constables:

1. Is the authority of a special constable, appointed by a county court judge under R.C. 1907.201 and 1907.211, limited to guarding and protecting property owned by the freeholders who request his appointment?
2. If so, what specific powers does a special constable have in guarding and protecting such property, and how are the terms "guarding" and "protecting" defined for this purpose? For example, can the constable's powers include directing traffic on a public highway?
3. Is a special constable in violation of R.C. 311.281 (which prohibits any person from wearing the standard uniform prescribed for county sheriffs and their deputies, or any distinctive part of such uniform) if he wears any distinctive part of a deputy sheriff's uniform and, if so, what are considered "distinctive parts" of such a uniform? For example, would wearing a complete deputy sheriff's uniform, except the arm patch and badge, constitute wearing a "distinctive part" of a deputy sheriff's uniform?

R.C. 1907.201 provides, as follows, for the appointment of special constables by a county court judge:

Upon the written application of the director of administrative services or of three freeholders of the county in which a county court judge resides, such judge may appoint one or more electors of the county special constables who shall guard and protect the property of this state, or the property of such freeholders, and the property of this state under lease to such freeholders, designated in general terms in such application, from all unlawful acts, and so far as necessary for that purpose, a constable so appointed has the same authority and is subject to the same obligations as other constables. (Emphasis added.)

R.C. 1907.211 provides that such an appointment shall continue in force for one year, unless revoked by the judge prior to that time, and states further: "A constable appointed under this section and section 1907.201 of the Revised Code, shall be paid in full for his services by the freeholders for whose benefit he was appointed, and shall receive no compensation except from such freeholders."

Your questions relate to instances in which a county court judge receives an application from freeholders of the county in which he resides, requesting the appointment of one or more special constables to guard and protect their property. I am, in this opinion, considering only special constables who have been appointed in response to such applications.

Your first question asks about the extent of the authority of such special constables. R.C. 1907.201 states expressly that such special constables "shall guard and protect...the property of such freeholders...designated in general terms in such application, from all unlawful acts, and so far as necessary for that purpose, a constable so appointed has the same authority and is subject to the same obligations as other constables." By the terms of this provision, a special constable who is appointed upon the written application of freeholders is authorized only to guard and protect the property of the freeholders that is designated in general terms in the application. This limitation upon the authority of a special constable was recognized in prior opinions of this office. See, e.g., 1985 Op. Att'y Gen. No. 85-060 at 2-221 ("R.C. 1907.201 authorizes a county court judge to appoint one or more special constables to guard and protect particular property"); 1974 Op. Att'y Gen. No. 74-041 at 2-178 ("[t]he duties of special constables are limited by [R.C. 1907.201] to guarding and protecting specific property"). See generally 1966 Op. Att'y Gen. No. 66-171. The conclusion that the authority of such a special constable is limited to guarding and protecting property of the freeholders who requested his appointment is consistent with the fact that, pursuant to R.C. 1907.211, such a constable is "paid in full for his services by the freeholders for whose benefit he was appointed." See generally Op. No. 85-060; Op. No. 66-171.

Your second question relates to the powers which a special constable has in guarding and protecting the designated property of the freeholders for whose benefit he was appointed. R.C. 1907.201 does not list specific powers, but states generally that, "so far as necessary for [the] purpose [of guarding and protecting such property from all unlawful acts], a constable...appointed [under R.C. 1907.201] has the same authority and is subject to the same obligations as other constables." The words "guard" and "protect" are not defined by statute for purposes of R.C. 1907.201. They are, therefore, to be given their ordinary meanings. See R.C. 1.42; Wachendorf v. Shaver, 149 Ohio St. 231, 78 N.E.2d 370 (1948). Webster's New World Dictionary 620, 1142 (2d college ed. 1978) defines "guard" as meaning "to keep safe from harm; watch over and protect; defend; shield," and defines "protect" as meaning "to shield from injury, danger, or loss; guard; defend." Pursuant to R.C. 1907.201, then, so far as may be necessary to shield the designated property of the freeholders from harm or danger, a special constable has the same authority as other constables. See Op. No. 74-041.

R.C. 509.01 provides for the designation of police constables by a board of township trustees. The powers of such township constables are set forth generally in R.C. Chapter 509. R.C. 509.05 states:

In addition to the county sheriff, constables shall be ministerial officers of the county court in all cases in their respective townships, and in criminal cases, they shall be such officers within the

county. They shall apprehend and bring to justice felons and disturbers of the peace, suppress riots, and keep and preserve the peace within the county. They may execute all writs and process, in criminal cases, throughout the county in which they reside, and in which they were elected or appointed. If a person charged with the commission of a crime or offense flees from justice, any constable of the county wherein such crime or offense was committed shall pursue and arrest such fugitive in any other county of the state and convey him before the county court of the county where such crime or offense was committed.

Such constables shall serve and execute all warrants, writs, precepts, executions, and other process directed and delivered to them, and shall do all things pertaining to the office of constable.

The authority of a constable in serving any process, either civil or criminal, and in doing his duties generally shall extend throughout the county in which he is appointed, and in executing and serving process issued by a judge of the county court, he may exercise the same authority and powers over goods and chattels, and the persons of parties, as is granted to a sheriff or coroner, under like process issued from courts of record. (Emphasis added.)

R.C. 509.10 provides further:

Each constable shall apprehend, on view or warrant, and bring to justice, all felons, disturbers, and violators of the criminal laws of this state, and shall suppress all riots, affrays, and unlawful assemblies which come to his knowledge, and shall generally keep the peace in his township.

R.C. 2935.03(C) authorizes a constable, "within the limits of the township in which the constable is appointed or elected, [to] arrest and detain until a warrant can be obtained a person found by him committing, within the limits of the township, a misdemeanor, either in violation of a law of this state or an ordinance of a village." R.C. 2935.03(D) sets forth instances in which pursuit, arrest and detention may take place outside the limits of the township.¹ See generally R.C. 2935.01

¹ I note that there are limitations upon the authority of constables to enforce traffic provisions. R.C. 4513.39 states:

(A) The state highway patrol and sheriffs or their deputies shall exercise, to the exclusion of all other peace officers except within municipal corporations and except as specified in division (B) of this section, the power to make arrests for violations on all state highways, of sections 4503.11, 4503.21, 4511.14 to 4511.16, 4511.20 to 4511.23, 4511.26 to 4511.40, 4511.42 to 4511.48, 4511.58, 4511.59, 4511.62 to 4511.71, 4513.03 to 4513.13, 4513.15 to 4513.22, 4513.24 to 4513.34, 4549.01, 4549.08 to 4549.12, and 4549.62 of the Revised Code.

(B) A member of the police force of a township police district created under section

(including a township constable as a peace officer); State v. Fields, 62 Ohio Misc. 14, 405 N.E.2d 740 (Belmont County Ct. 1979) (finding that a township constable could exercise powers of arrest within the township and other duties within the county); 1971 Op. Att'y Gen. No. 71-076 at 2-257 ("[t]he territorial jurisdiction of a township police constable...generally includes the entire county in which the township is located").

Pursuant to R.C. 1907.201, a special constable may perform any of the functions of other constables, when the performance of such functions is necessary to protect the designated property of the freeholders who requested appointment of the special constable. See generally Op. No. 74-041 (concluding, based upon Op. No. 71-076, that a special constable has jurisdiction throughout the state when pursuing a fugitive from the law). A determination as to what action is necessary to protect particular property will, of course, depend upon the circumstances involved in a particular situation.

You have asked specifically whether a special constable has the power to direct traffic on a public highway. Pursuant to R.C. 4511.07, township constables have general authority to direct traffic on public highways. R.C. 4511.07 states, in part:

Sections 4511.01 to 4511.78, 4511.99, and 4513.01 to 4513.37 of the Revised Code do not prevent local authorities from carrying out the following activities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power:

...
 (B) Regulating traffic by means of police officers or traffic control devices;

505.48 of the Revised Code, and a township constable appointed pursuant to section 509.01 of the Revised Code, who has received a certificate from the Ohio peace officer training council under section 109.75 of the Revised Code, shall exercise the power to make arrests for violations of those sections listed in division (A) of this section on those portions of all state highways, except those highways included as part of the interstate system, as defined in section 5516.01 of the Revised Code, which are located within:

(1) The township police district, in the case of a member of a township police district police force;

(2) The unincorporated territory of the township in the case of a township constable.
 (Emphasis added.)

See generally 1942 Op. Att'y Gen. No. 5212, p. 394. A special constable appointed pursuant to R.C. 1907.201 and 1907.211 is not required to receive a certificate from the Ohio Peace Officer Training Council. See 1985 Op. Att'y Gen. No. 85-060. It appears that a constable who has no such certificate has no authority to make arrests pursuant to R.C. 4513.39(B).

This provision has been found to authorize a board of township trustees to carry out the activities listed therein. See Slicker v. Trustees of Boardman Township, 25 Ohio Op. 2d 75, 187 N.E.2d 392 (App. Mahoning County 1961), appeal dismissed, 173 Ohio St. 119, 180 N.E.2d 10 (1962); 1981 Op. Att'y Gen. No. 81-008; 1979 Op. Att'y Gen. No. 79-058. See also R.C. 4511.01(Z), (AA); R.C. 4511.02. It follows that township police constables may direct traffic on streets and highways which are within their jurisdiction. See generally note 1, supra.

Pursuant to R.C. 1907.201, a special constable may exercise the same authority as other constables to direct traffic on public highways, subject to the limitation that the authority may be exercised only "so far as necessary" for the purpose of guarding and protecting the designated property of the freeholders who requested appointment of the constable. Thus, if a special constable is appointed under R.C. 1907.201 upon the written application of freeholders to guard and protect designated property of the freeholders, and if, in order to guard and protect that property, the special constable finds it necessary to direct traffic on a public highway, the special constable may direct such traffic, to the same extent that another constable could direct such traffic.

I am aware that questions may arise concerning the authority of a special constable to act in particular circumstances. It is impossible for me to consider all possible circumstances in this opinion. I note, however, that the county court judge who appoints a special constable has a general responsibility for exercising ordinary care in his selection and instruction, see Op. No. 85-060, and may be able to provide guidance if specific questions arise. See generally Op. No. 66-171.

Your third question relates to R.C. 311.281, which states, in part: "No person, except a county sheriff or his deputies, shall wear the badge or the standard uniform or any distinctive part thereof prescribed for county sheriffs and their deputies by the county sheriffs' standard car-marking and uniform commission." R.C. 311.25-.27 provide for the establishment and organization of the County Sheriffs' Standard Car-Marking and Uniform Commission. R.C. 311.28 states that such Commission "shall prescribe a uniform of standard design and color for the use of all county sheriffs" and that "[o]n and after January 1, 1961, the standard uniform shall be worn by the county sheriffs and their deputies...while in the performance of their duties." Rules governing the standard uniform appear in 2 Ohio Admin. Code Chapter 311-1. Your initial concern is whether R.C. 311.281 prohibits a special constable from wearing any distinctive part of a standard deputy sheriff's uniform.

R.C. 311.281, by its terms, provides that "[n]o person, except a county sheriff or his deputies, shall wear the badge or the standard uniform or any distinctive part thereof..." R.C. 311.99(B) provides that "[w]hoever violates [R.C. 311.281] shall be fined one hundred dollars for a first offense; for a subsequent offense occurring ninety days or more after the first offense, he shall be fined twenty-five dollars for each day the violation occurs." Use of the general words "person" and "[w]hoever" indicates that the prohibition of R.C. 311.281 applies to everyone except a county sheriff and his deputies. See R.C. 1.02 ("[a]s used in the Revised Code, unless the context otherwise requires: (A) 'Whoever' includes all persons, natural and artificial; partners; principals, agents, and

employees; and all officials, public or private..."); R.C. 1.59 ("[a]s used in any statute, unless another definition is provided in such statute or a related statute:...(C) 'Person' includes an individual, corporation, business trust, estate, trust, partnership, and association...").² I conclude, therefore, that a special constable is prohibited by R.C. 311.281 from wearing the badge, the standard uniform, or any distinctive part of the standard uniform prescribed for county sheriffs and their deputies by the County Sheriffs' Standard Car-Marking and Uniform Commission.³

You have asked which parts of a deputy sheriff's uniform are considered to be "distinctive parts" under R.C. 311.281, and you have posed the specific question as to whether wearing a complete deputy sheriff's uniform, except the arm patch and badge, would constitute wearing a "distinctive part" of a deputy sheriff's uniform. The standard uniform for a county sheriff or deputy sheriff is described in considerable detail in 2 Ohio Admin. Code Chapter 311-1. See, e.g., 2 Ohio Admin. Code 311-1-02 (specifying the types of trousers which may be worn in terms of fabric blend, color, and weight, and with regard to cut, style, waistband, pockets, and black stripes along the sides); 2 Ohio Admin. Code 311-1-04(A)-(D) (describing hats and helmets with regard to style, brim, braid, color, material, crease, and height, and requiring all hats to have a badge eyelet). The badges, patches, and pins prescribed by 2 Ohio Admin. Code 311-1-12(D)-(F) and 2 Ohio Admin. Code 311-1-13(C) are clearly distinctive markings of sheriffs and deputy sheriffs. Most parts of the prescribed uniform, such as the trousers and hats, see 2 Ohio Admin. Code 311-1-02 and 311-1-04(A)-(D), must meet detailed standards, and, thus, may be expected to differ in appearance from clothes that are ordinarily available, although they may be similar to items worn by other uniformed officials. See, e.g., 2 Ohio Admin. Code 311-1-03 (shirts); 2 Ohio Admin. Code 311-1-06 (blouse); 2 Ohio Admin. Code 311-1-07 (reefer); 2 Ohio Admin. Code 311-1-10 (coveralls and baseball cap); 2 Ohio Admin. Code 311-1-11 (female uniform). Cf. 6 Ohio Admin. Code 4501:2-5-01 (prescribing distinctive uniform of the State Highway Patrol). Certain items, as, for example, "plain-toe, black oxford"

² I am aware that it has been stated, in other contexts, that the definition of "[p]erson" appearing in R.C. 1.59(C) does not include public officers. See, e.g., 1981 Op. Att'y Gen. No. 81-092; 1979 Op. Att'y Gen. No. 79-062; 1979 Op. Att'y Gen. No. 79-055. I believe, however, that those situations are distinguishable from the one here under consideration and that, in the instant case, the word "person," as used in R.C. 311.281, must be construed to include all individuals other than a county sheriff or deputy sheriff, regardless of what public positions such individuals may hold, unless particular public officials are exempted by statute. See generally 1981 Op. Att'y Gen. No. 81-055 at 2-221 ("[a] county employee is clearly an individual, and as such, fits neatly within the meaning of 'person,' for purposes of provisions requiring the licensing of persons who engage in the practice of dealing in or fitting hearing aids).

³ I note that a provision prohibiting the impersonation of a peace officer or private policeman appears in R.C. 2921.51(B). R.C. 2921.51(A)(1) defines "[p]eace officer"

shoes, 2 Ohio Admin. Code 311-1-08(A), and "[b]lack socks," 2 Ohio Admin. Code 311-1-08(B), would not appear to be readily identifiable as part of a sheriff or deputy sheriff's uniform, or even as part of any uniform. The uniform raincoat and vest appear to be of types that are common for many outdoor workers. See 2 Ohio Admin. Code 311-1-09.

The term "distinctive part" is not defined by statute or rule. It is, therefore, to be given its ordinary meaning. See R.C. 1.42; Wachendorf v. Shaver. Webster's New World Dictionary 409 (2d college ed. 1978) defines "distinctive" to mean "making distinct; distinguishing from others; characteristic." The evident intent of R.C. 311.281 is to prohibit the wearing of such parts of a sheriff's or deputy sheriff's uniform as help to identify the wearer as a sheriff or deputy sheriff. See Webster's New World Dictionary 239 (2d college ed. 1978) ("characteristic suggests the indication of a quality that is peculiar to, and helps identify, something or someone...distinctive [refers] to, or [suggests] the possession of, a quality or qualities that distinguish something from others of its class or kind..."). It appears that, as a general rule, those items of a sheriff's or deputy sheriff's uniform which are peculiar to that uniform may be considered to be distinctive parts of the uniform which define the characteristic appearance of a sheriff or his deputy. See generally State v. Thobe, 91 Ohio L. Abs. 92, 191 N.E.2d 182 (App. Darke County 1961). Whether a particular part of a deputy sheriff's uniform is a distinctive part is, however, ultimately a question of fact which cannot be determined by means of this opinion. Further, whether a violation of R.C. 311.281 occurs may depend upon the circumstances involved or the manner in which a particular item is worn. See generally R.C. 2901.04(A) ("[s]ections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused"); R.C.

to include a sheriff or deputy sheriff, and R.C. 2921.51(A)(3) defines "[i]mpersonate" as meaning:

to act the part of, assume the identity of, wear the uniform or any part of the uniform of, or display the identification of a particular person or of a member of a class of persons with purpose to make another person believe that the actor is that particular person or is a member of that class of persons. (Emphasis added.)

R.C. 2921.51(B) thus prohibits the wearing of any part of the uniform of a sheriff or deputy sheriff with the purpose of making another believe that the wearer is a sheriff or deputy sheriff. R.C. 2921.51(F) provides that it is an affirmative defense to a charge under R.C. 2921.51(B) that the impersonation was for a lawful purpose. See also R.C. 2921.51(C), (D), (E).

R.C. 2913.44 prohibits any person from impersonating a law enforcement officer, or an inspector, investigator, or agent of a governmental agency, where the person acts "with purpose to defraud or knowing that he is facilitating a fraud, or with purpose to induce another to purchase property or services." Like R.C. 2921.51, R.C. 2913.44 contains specific provisions concerning the state of mind of an alleged violator.

2901.21(B) ("[w]hen the section defining an offense...plainly indicates a purpose to impose strict criminal liability...then culpability is not required.... When the section neither specifies culpability nor plainly indicates a purpose to impose strict liability, recklessness is sufficient culpability to commit the offense"); note 3, supra.

I note that another provision governing the wearing of a distinctive uniform appears in R.C. 4549.15, as follows:

Every member of the state highway patrol and every other peace officer, while such officer is on duty for the exclusive or main purpose of enforcing motor vehicle or traffic laws of this state, provided the offense is punishable as a misdemeanor, shall wear a distinctive uniform. The superintendent of the patrol shall specify what constitutes such a distinctive uniform for the state highway patrol.

Under R.C. 4549.16 and R. Evid. 601(C), an arresting officer is incompetent to testify as a witness in any prosecution against the arrested person on a misdemeanor charge for a violation of a motor vehicle or traffic law of this state if the officer was on duty exclusively or for the main purpose of enforcing motor vehicle or traffic laws and was not wearing a distinctive uniform in accordance with R.C. 4549.15. See also R.C. 4549.13-.14 and R. Evid. 601(C) (containing similar provisions requiring peace officers who are on duty for the exclusive or main purpose of enforcing the motor vehicle or traffic laws of this state to use only motor vehicles which are distinctively marked). The need for the use of a distinctive uniform in such cases was discussed by the Franklin County Court of Appeals, as follows:

According to the Supreme Court, it was the intent of the General Assembly, in part, when it adopted the statutes, to curb speed traps and to provide uniformity in traffic control and regulation in an effort to make driving safer in all areas of the state. Dayton v. Adams (1967), 9 Ohio St. 2d 89, 90 [38 O.O.2d 223]. One of the safety concerns addressed by the General Assembly in enacting the statutes was the hazard to members of the public that inevitably would result should a police officer, not clearly identified as such, confront a driver and attempt to require him to follow the officer's instructions. It requires little imagination to contemplate the unfortunate consequences should a frightened motorist believe that he was being forced off the road by a stranger. The General Assembly sought to avoid such mischief by requiring police officers on traffic duty to be identified clearly.

City of Columbus v. Murchison, 21 Ohio App. 3d 75, 76, ___ N.E.2d ___, ___ (Franklin County 1984), motion to certify overruled (March 13, 1985).

Whether the provisions governing the wearing of a distinctive uniform for purposes of traffic law enforcement are applicable to a special constable appointed under R.C. 1907.201 and 1907.211 depends upon the facts involved in a specific situation and, in particular, upon whether the constable is found to be on duty for the exclusive or main purpose of enforcing motor vehicle or traffic laws of this state. See City of Columbus v. Murchison; City of Columbus v. Stump, 41

Ohio App. 2d 81, 322 N.E.2d 348 (Franklin County 1974) (the "main purpose" requirement applies to the whole period of duty of the officer concerned, and not to the duty at the moment of arrest); State v. Thobe (a village chief of police who was charged with the whole spectrum of law enforcement of the village was not on duty exclusively or for the main purpose of enforcing the motor vehicle or traffic laws of the state); Village of Brookville v. Louthan, 3 Ohio Misc. 2d 1, 2, 441 N.E.2d 308, 310 (Montgomery County Ct. 1982), dismissed subsequent to journalization of opinion ("whether a police officer is on duty for the exclusive or main purpose of enforcing motor vehicle or traffic laws is to be determined by the duty in which the officer is engaged at the time and place he makes an arrest for violation of such laws"); 1963 Op. Att'y Gen. No. 259, p. 318. See generally State v. Maxwell, 60 Ohio Misc. 1, 395 N.E.2d 531 (Miamisburg Mun. Ct. 1978) (an off-duty patrolman who is out of uniform and in his private vehicle may make an arrest for a traffic offense only as a private citizen under R.C. 2935.09).

It may be argued that R.C. 4549.15 and R.C. 4549.16 are not applicable to a special constable of the sort here under consideration because such a constable is appointed for the purpose of guarding and protecting the property of the freeholders who requested his appointment, is authorized to direct traffic only to the extent that such direction is necessary for the purpose of guarding and protecting such property, and has limited authority to enforce motor vehicle or traffic laws. See note 1, supra. But see City of Columbus v. Stump, 41 Ohio App. 2d at 85-89, 322 N.E.2d at 351-53 (Whiteside, J., dissenting) (a determination as to the main purpose for which an officer is on duty depends upon the duty in which he is engaged when he makes an arrest); Village of Brookville v. Louthan (following dissent of J. Whiteside in City of Columbus v. Stump). Even if it should be determined, however, that a special constable is required by R.C. 4549.15 to wear a distinctive uniform in a particular instance, it appears that R.C. 311.281 would prohibit him from wearing any distinctive part of the uniform of a sheriff or deputy sheriff. See also note 3, supra.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. A special constable who is appointed by a county court judge under R.C. 1907.201 and 1907.211 upon the written application of freeholders of the county in which the judge resides is authorized only to guard and protect the property of the freeholders that is designated in general terms in the application.
2. Pursuant to R.C. 1907.201, such a special constable may exercise the same authority as other constables so far as may be necessary to guard and protect the designated property of such freeholders. If, in order to guard and protect such property, it is necessary for the special constable to direct traffic on a public highway, the special constable may do so, to the same extent that another constable could direct such traffic.
3. Such a special constable is prohibited by R.C. 311.281 from wearing the badge, the standard

uniform, or any distinctive part of the standard uniform prescribed for county sheriffs and their deputies by the County Sheriffs' Standard Car-Marking and Uniform Commission. A determination as to which parts of the standard uniform are distinctive is a question of fact. A determination as to whether a violation of R.C. 311.281 occurs may depend upon the circumstances involved or the manner in which the items are worn.