

OPINION NO. 98-033**Syllabus:**

1. Neither a county coroner nor deputy coroner is a “[l]aw enforcement officer,” as defined by R.C. 2901.01(A)(11) and Ohio R. Crim. P. 2(J), for purposes of the Revised Code and the Ohio Rules of Criminal Procedure, respectively.
2. An individual who holds a special deputy sheriff’s commission that allows the individual to act as a volunteer, part-time, SWAT team tactical emergency medical technician is subjected to impermissible conflicts of interest when he serves also in the position of county coroner or deputy coroner.
3. No provision in the Revised Code requires an individual commissioned as a special deputy sheriff to relinquish his commission if he serves as a county coroner or deputy coroner. However, such individual may have a quo warranto action instituted against him pursuant to R.C. 2733.01 if it is determined that the individual unlawfully holds or exercises the special deputy sheriff’s commission by reason of the conflicts of interest inherent in serving as county coroner or deputy coroner and special deputy sheriff.

4. Pursuant to 2 Ohio Admin. Code 109:2-1-12, a deputy sheriff who is elected or appointed county coroner may retain his peace officer basic training certificate when he surrenders his commission as a special deputy sheriff.

To: David E. Bowers, Allen County Prosecuting Attorney, Lima, Ohio
By: Betty D. Montgomery, Attorney General, August 31, 1998

You have requested an opinion concerning the law enforcement status of a county coroner and his deputies, and the propriety of a county coroner or deputy coroner serving as a volunteer, part-time, swat team tactical emergency medical technician (EMT) for the county sheriff. Specifically, you ask:

1. Are the county coroner and his deputies law enforcement officers?
2. Is an individual who holds a special deputy sheriff's commission that allows the individual to act as a volunteer, part-time, swat team tactical EMT subject to an impermissible conflict of interest when he serves also in the position of county coroner or deputy coroner?
3. If an individual who holds a special deputy sheriff's commission that allows the individual to act as a volunteer, part-time, swat team tactical EMT is subject to an impermissible conflict of interest when he serves also in the position of county coroner or deputy coroner, may the individual retain the special deputy sheriff's commission?
4. May an individual retain his peace officer basic training certificate when he is elected or appointed to the office of county coroner and relinquishes his commission as a special deputy sheriff?

Whether county coroners and deputy coroners are law enforcement officers is an issue that was addressed in part in 1996 Op. Att'y Gen. No. 96-027, which concerned the use of flashing red lights and sirens on motor vehicles driven by the county coroner and deputy coroners.¹ In determining that county coroners and deputy coroners are not law enforcement officers for purposes of the Revised Code, 1996 Op. Att'y Gen. No. 96-027 examined R.C. 2901.01(K), now R.C. 2901.01(A)(11), and concluded that the definition of "[l]aw enforcement officer" set forth therein for use throughout the Revised Code does not include county coroners and deputy coroners. *See also* 1980 Op. Att'y Gen. No. 80-091 at 2-356 ("in carrying out his duties of determining cause, mode, and manner of death, a coroner is not a 'law enforcement officer' for purposes of R.C. 2901.01(K)"). In this regard, the opinion stated:

The county coroner, deputy coroners, and the director of the county emergency management agency are not specifically listed in R.C.

¹ R.C. 4513.17(D) permits public safety vehicles as defined in R.C. 4511.01 to be equipped with flashing red lights. Pursuant to R.C. 4511.01(E)(2), "[p]ublic safety vehicle" means any "[m]otor vehicles used by public *law enforcement officers* or other persons sworn to enforce the criminal and traffic laws of the state." (Emphasis added.) For purposes of R.C. 4511.01(E), the term "law enforcement officer" is defined in R.C. 2901.01(A)(11), formerly R.C. 2901.01(K).

2901.01(K). In addition, none of these officials is imposed, by statute, with a duty to conserve the peace or to enforce all or certain laws and the authority to arrest violators. Finally, neither the county coroner, deputy coroners, nor the director of the county emergency management agency is sworn to enforce the criminal and traffic laws of the state. Accordingly, I find that the county coroner, deputy coroners, and the director of the county emergency management agency are not, as a general matter, law enforcement officers or other persons sworn to enforce the criminal and traffic laws of the state.

1996 Op. Att'y Gen. No. 96-027 at 2-100; *see* 1980 Op. Att'y Gen. No. 80-091 at 2-356 and 2-357.

Since the issuance of 1996 Op. Att'y Gen. No. 96-027, amendments to R.C. 2901.01 have not included a county coroner or deputy coroner within the definition of "law enforcement officer" set forth therein, or changed the duties and authority an individual must discharge and possess in order to come within that definition.² *See* 1995-1996 Ohio Laws, Part VI, 11118, 11123 (Sub. S.B. 277, eff., in part, Mar. 31, 1997); 1995-1996 Ohio Laws, Part VI, 10416, 10420 (Am. Sub. S.B. 239, eff. Sept. 6, 1996); 1995-1996 Ohio Laws, Part III,

² R.C. 2901.01(A)(11) as currently written defines the term "[l]aw enforcement officer," as used in the Revised Code, 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 division (D) of section 3735.31 of the Revised Code, 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 section 311.07 of the Revised Code 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 section 737.01 of the Revised Code 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;

4965, 4998 (Am. Sub. H.B. 445, eff. Sept. 3, 1996); 1995-1996 Ohio Laws, Part VI, 10752, 10846 (Am. Sub. S.B. 269, eff., in part, July 1, 1996); 1995-1996 Ohio Laws, Part IV, 7136, 7246 (Am. Sub. S.B. 2, eff., in part, July 1, 1996). The current language of R.C. 2901.01(A)(11) thus remains similar in all material respects to that which was interpreted in 1996 Op. Att'y Gen. No. 96-027, and the reasoning and determinations set forth in that opinion remain persuasive and authoritative. Therefore, neither a county coroner nor deputy coroner is a "[l]aw enforcement officer," as defined by R.C. 2901.01(A)(11), for purposes of the Revised Code.

We must next consider whether such officials are law enforcement officers for purposes of the Ohio Rules of Criminal Procedure. The term "[l]aw enforcement officer," as used in the Ohio Rules of Criminal Procedure, means a

sheriff, deputy sheriff, constable, municipal police officer, marshal, deputy marshal, or state highway patrolman, and also ... 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.

Ohio R. Crim. P. 2(J).

Ohio R. Crim. P. 2(J) does not list a county coroner or deputy coroner as a "[l]aw enforcement officer" for purposes of the Ohio Rules of Criminal Procedure. Moreover, as noted above, no provision within the Revised Code authorizes a county coroner or his deputies to conserve the peace and enforce all or certain laws and arrest violators.³ Without

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

(i) An Ohio veterans' home police officer appointed under section 5907.02 of the Revised Code;

(j) A member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code.

³ 1996 Op. Att'y Gen. No. 96-027 at 2-100 n.2 noted that, "[p]ursuant to R.C. 2941.44, a county coroner 'may arrest a convict escaping from a state correctional institution and forthwith convey him to the institution and deliver him to the warden of the institution.'" The opinion concluded, however, that such authority on behalf of the county coroner does not qualify the county coroner as a law enforcement officer. In reaching this conclusion the opinion relied on 1980 Op. Att'y Gen. No. 80-091, which stated:

When a coroner is faced with the situation of arresting an escaped convict, he perhaps comes within the definition of a law enforcement officer given in R.C. 2901.01(K)(2), since he has the duty to conserve the peace and the authority to arrest. Such a coroner would, however, be a law enforcement officer only "within the limits of such statutory authority." ... Except when a coroner acts pursuant to such

such authority, county coroners and deputy coroners are not included within the definition of "[l]aw enforcement officer" set forth in Ohio R. Crim. P. 2(J). See generally *State v. Martins Ferry Eagles*, 62 Ohio Misc. 3, 6, 404 N.E.2d 177, 179 (Belmont County Court 1979) ("[a] secret service officer appointed by the prosecuting attorney does not have statutory authority to arrest and thus is not a law enforcement officer under Crim. R. 2 for the purpose of receiving and executing a search warrant under Crim. R. 41"); 1987 Op. Att'y Gen. No. 87-015 at 2-94 and 2-95 (since no provision authorizes investigators for the Department of Agriculture to make arrests, such investigators are not law enforcement officers under R.C. 2901.01(K)(2), now R.C. 2901.01(A)(11)). Therefore, neither a county coroner nor deputy coroner is a "[l]aw enforcement officer," as defined by R.C. 2901.01(A)(11) and Ohio R. Crim. P. 2(J), for purposes of the Revised Code and the Ohio Rules of Criminal Procedure, respectively. Accord 1996 Op. Att'y Gen. No. 96-027 at 2-100; 1980 Op. Att'y Gen. No. 80-091 at 2-356.

Your second question asks whether an individual who holds a special deputy sheriff's commission that allows the individual to act as a volunteer, part-time, swat team tactical EMT is subject to an impermissible conflict of interest when he serves also in the position of county coroner or deputy coroner. By way of background, a deputy sheriff appointed by the county sheriff pursuant to R.C. 311.04(B)(1) may be either a regular deputy sheriff or a special deputy sheriff. 1992 Op. Att'y Gen. No. 92-024 at 2-83; 1991 Op. Att'y Gen. No. 91-037 at 2-199. A special deputy sheriff serves on terms that are different from those on which a regular deputy sheriff serves. "For example, his duties may be limited, he may be employed only intermittently as needed, or he may serve without compensation." 1989 Op. Att'y Gen. No. 89-071 at 2-326; accord *State ex rel. Geyer v. Griffin*, 80 Ohio App. 447, 457, 76 N.E.2d 294, 300 (Allen County 1946); 1991 Op. Att'y Gen. No. 91-037 at 2-199; 1968 Op. Att'y Gen. No. 68-112 at 2-160 and 2-161. 1977 Op. Att'y Gen. No. 77-027 at 2-102 states that all requirements for regular deputy sheriffs apply to special deputy sheriffs:

The term "special" relates not to an individual's qualification as a deputy but to the nature of his assignment as a deputy and to the fact that his commission and powers may be limited consistent with such assignment. Once he meets the general requirements of a deputy the special deputy may be required by the sheriff to perform any or all of the duties required of regular deputies. In law, the special deputy thus appointed and approved is deemed a "deputy;" there is no distinction. Nor should there be any distinction made for purposes of R.C. 311.04 and R.C. 325.17. ... I must conclude that a special dep-

[a statute], he is not a law enforcement officer within the definition set forth in R.C. 2901.01(K).

Id. at 2-357.

Accordingly, the limited authority conferred upon a county coroner by R.C. 2941.44 to arrest convicts does not qualify county coroners or deputy coroners as law enforcement officers for purposes of the Revised Code or the Ohio Rules of Criminal Procedure. 1996 Op. Att'y Gen. No. 96-027 at 2-100 n.2; 1980 Op. Att'y Gen. No. 80-091 at 2-357. In addition, the requirement in R.C. 2901.01(A)(11) and Ohio R. Crim. P. 2(J) that an individual must be authorized to make arrests 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. 1987 Op. Att'y Gen. No. 87-015 at 2-94 n.1.

uty sheriff is a "deputy" within the purview of R.C. 311.04 and R.C. 325.17 [appointment of deputy sheriffs].

See 1989 Op. Att'y Gen. No. 89-071 at 2-327.

Because special deputy sheriffs are deputy sheriffs who are subject to the requirements that apply to regular deputy sheriffs, a special deputy sheriff commissioned to act as a volunteer, part-time, swat team tactical EMT is subject to the requirements that apply to a regular deputy sheriff. See 1989 Op. Att'y Gen. No. 89-071 at 2-327. Resolution of your second question, therefore, turns on an examination of the powers and duties of deputy sheriffs and the county coroner and his deputies to determine whether a deputy sheriff is subject to an impermissible conflict of interest if he should also serve in the position of county coroner or deputy coroner.⁴

A county sheriff is required to "preserve the public peace." R.C. 311.07(A), which sets forth the general powers and duties of the county sheriff, provides that "[e]ach sheriff shall preserve the public peace and cause all persons guilty of any breach of the peace, within the sheriff's knowledge or view, to enter into recognizance with sureties to keep the peace and to appear at the succeeding term of the court of common pleas, and the sheriff shall commit such persons to jail in case they refuse to do so." In order to discharge his statutory duty to preserve the public peace, a county sheriff is authorized to appoint deputy sheriffs. R.C. 311.04; see also R.C. 325.17. See generally R.C. 3.06(A) ("[a] deputy, when duly qualified, may perform any duties of his principal"). In addition, the duty to preserve the public peace necessarily requires the county sheriff and his deputies to investigate crimes that occur within the county. See 1988 Op. Att'y Gen. No. 88-035 at 2-157. As stated in *United States v. Laub Baking Co.*, 283 F. Supp. 217, 220 (N.D. Ohio 1968) (citation omitted):

The common law powers of a sheriff in Ohio have been defined. It is the duty of the sheriff "**** to preserve the peace in his bailiwick or county. To this end he is the first man within the county, and it is incident to his office that he apprehend and commit to prison all persons who break or attempt to break the peace. He is bound, *ex officio*, to pursue and take all traitors, murderers, felons, and rioters."

A county coroner is the custodian of the county morgue, R.C. 313.08(A), and is responsible for determining the cause, manner, and mode of unexplained deaths in the county, R.C. 313.19, and conducting autopsies, R.C. 313.13; R.C. 313.131. A county coroner

⁴ In your letter you indicate that 1952 Op. Att'y Gen. No. 2178, p. 776 addressed the compatibility of the positions of deputy sheriff and county coroner. 1952 Op. Att'y Gen. No. 2178, p. 776 found that the provisions of G.C. 2835 (now R.C. 311.08), G.C. 2855-1 (subsequently R.C. 311.24), and G.C. 2855-2 (subsequently R.C. 311.24) that required a county coroner to serve process on the sheriff and succeed the sheriff when he has been removed from office by the Governor would subject a deputy sheriff to an impermissible conflict of interest if he served also in the position of county coroner. Since the issuance of 1952 Op. Att'y Gen. No. 2178, p. 776, however, the General Assembly has repealed these provisions. 1981-1982 Ohio Laws, Part I, 356 (Am. Sub. S.B. 114, eff. Oct. 27, 1981). A county coroner, thus, is no longer required to serve process on the county sheriff and succeed the sheriff when he has been removed from office by the Governor. As a result, the impermissible conflicts of interest cited in 1952 Op. Att'y Gen. No. 2178, p. 776 no longer exist, and that opinion is not dispositive on the issue whether a deputy sheriff is subject to an impermissible conflict of interest when he serves also in the position of county coroner or deputy coroner.

is authorized by R.C. 313.05(A) to appoint deputy coroners to discharge the assigned functions of the coroner's office. *See generally* R.C. 3.06(A) (a deputy may perform the duties of this principal). Additionally, to accomplish the task of determining the cause, manner, and mode of unexplained deaths in the county, a coroner "has broad authority to gather information at the scene of an unexplained death and beyond, and to interview and subpoena witnesses when necessary." 1988 Op. Att'y Gen. No. 88-035 at 2-157; *see* R.C. 313.11; R.C. 313.13; R.C. 313.17; 1998 Op. Att'y Gen. No. 98-031.

A county coroner and county sheriff and their respective deputies thus are statutorily obligated to investigate unexplained deaths in their county. As a result, the coroner's office and the sheriff's office are required to work together when investigating unexplained deaths. In such investigations there may be instances in which the duties of the coroner and the sheriff overlap or matters that require the staffs of the coroner and the sheriff to interact. *See, e.g.*, R.C. 313.12 (requiring that a member of a law enforcement agency who "obtains knowledge" of an unexplained death in the course of his duties shall "immediately notify the office of the coroner of the known facts concerning the time, place, manner, and circumstances of the death, and any other information which is required pursuant to sections 313.01 to 313.22 of the Revised Code"); R.C. 313.15 ("[a]ll dead bodies in the custody of the coroner shall be held until such time as the coroner, after consultation with the ... sheriff, has decided that it is no longer necessary to hold such body to enable him to decide on a diagnosis giving a reasonable and true cause of death, or to decide that such body is no longer necessary to assist any of such officials in his duties"); R.C. 313.21 (providing that the coroner may "use or may allow the use of the coroner's laboratory and facilities ... for law enforcement-related testing, and may direct his assistants and other personnel to perform such testing in addition to testing performed in execution of their duties as set forth in sections 313.01 to 313.22 of the Revised Code"). *See generally* 1989 Op. Att'y Gen. No. 89-016 (the duties of a coroner's investigator and a law enforcement officer may overlap).

1988 Op. Att'y Gen. No. 88-035, which addressed the rights and duties of coroners and law enforcement officers at the scene of an unexplained death, set forth specific instances in which a coroner's office and a law enforcement agency such as the sheriff's office interact during the investigation of an unexplained death. In particular, the opinion identified the following instances: (1) law enforcement personnel must receive a permissive order from the coroner before removing or disturbing the body or articles found on or near the body, R.C. 313.11; (2) law enforcement officers may request that the coroner or his staff perform forensic tests on physical items found at the scene of an unexplained death; (3) law enforcement officials are not entitled to evidence found at the scene of an unexplained death until after the coroner makes his initial observation of the evidence, unless the coroner permits the officials to remove or disturb the evidence; (4) the coroner has the authority to decide, within the exercise of his discretion, whether or not to permit law enforcement officials to photograph the body during an autopsy; and (5) the coroner, after consulting with the appropriate law enforcement officers, may release a body.

In light of the powers and duties conferred upon a county coroner and a county sheriff, it may be concluded that a county coroner's office and a county sheriff's office do not operate independently of each other. *See* 1988 Op. Att'y Gen. No. 88-035; *see also* 1989 Op. Att'y Gen. No. 89-016. Accordingly, a county coroner or deputy coroner who serves as a deputy sheriff may be in a situation in which he is required to make a decision that affects the county sheriff and his deputies during an investigation of an unexplained death.

It is a well-settled rule in Ohio that a conflict of interest exists when a public servant is subject to divided loyalties and conflicting duties or exposed to the temptation of acting

other than in the best interest of the public. 1989 Op. Att'y Gen. No. 89-037 at 2-164; 1985 Op. Att'y Gen. No. 85-042 at 2-150. Additionally, a conflict of interest occurs when the duties of one position may be administered or discharged in such a manner as to result in favoritism and preference being accorded the other position. *State ex rel. Baden v. Gibbons*, 17 Ohio Law Abs. 341, 344 (Ct. App. Butler County 1934); 1990 Op. Att'y Gen. No. 90-005 at 2-19.

With respect to your specific inquiry, a county coroner or deputy coroner who serves as a deputy sheriff may be inclined to give preferential treatment to the county sheriff's office. For example, an individual, as a county coroner or deputy coroner, may perform, for the county sheriff, laboratory testing or other tasks that are not regularly provided by the coroner's office to law enforcement agencies, or give the county sheriff's cases higher priority. In addition, a situation may arise where the county coroner is required to investigate an unexplained death that occurs at the county jail. Pursuant to R.C. 341.01, a county sheriff is in charge of the county jail and is responsible for all individuals confined therein. A deputy sheriff that serves as county coroner or a deputy coroner thus may be placed in the position of having to investigate his employer (*i.e.*, the county sheriff) when investigating an unexplained death that occurs at the county jail. Accordingly, since the duties of a county coroner and a county sheriff overlap and there is a significant amount of interaction between their respective offices, an individual who serves simultaneously as a deputy sheriff and county coroner or deputy coroner would be subject to potential conflicts of interest. *See generally* 1989 Op. Att'y Gen. No. 89-016 (an individual who serves simultaneously in the positions of city police chief and county coroner's investigator is subject to conflicts of interest).

Although a deputy sheriff who serves as a county coroner or deputy coroner is subject to conflicts of interest, it still must be determined whether such conflicts of interest are impermissible. As indicated in previous opinions of the Attorneys General, a person is not prohibited from serving simultaneously in two public positions because he is subject to potential conflicts of interest. 1979 Op. Att'y Gen. No. 79-111 at 2-372. "Rather, an inquiry must be made into the immediacy of potential conflicts of interest, and where the potential for conflicts of interest is remote and speculative, the conflict of interest rule is not violated." 1998 Op. Att'y Gen. No. 98-017, slip op. at 6; *accord* 1979 Op. Att'y Gen. No. 79-111 at 2-372. Factors used in analyzing whether a public servant is subject to impermissible conflicts of interest include:

the degree of remoteness of a potential conflict, the ability or inability of an individual to remove himself from the conflict, whether the individual exercises decision-making authority in both positions, whether the potential conflict involves the primary functions of each position, and whether the potential conflict may involve budgetary controls.

1979 Op. Att'y Gen. No. 79-111 at 2-372.

A review of the conflicts of interest that a county coroner or deputy coroner is subjected to when he also serves as a deputy sheriff discloses that the conflicts are not remote and speculative. The investigation of unexplained deaths is a primary function of the county coroner's office and the county sheriff's office. It is very likely that the county coroner, deputy coroners, and deputy sheriffs will be required to investigate unexplained deaths regularly; therefore, the potential conflicts are not remote. Additionally, the potential conflicts may involve budgetary controls. A deputy sheriff who serves as a coroner or deputy coroner and who investigates an unexplained death may be unable to determine whether an

action was taken on behalf of the sheriff's office or the coroner's office, and thus may be unable to determine which entity's budget should be billed for compensation or any incidental costs resulting from the investigation. See 1989 Op. Att'y Gen. No. 89-016 at 2-79 and 2-80. Also, when the county coroner, deputy coroners, or deputy sheriffs conduct investigations they are required to exercise decision-making authority.

Moreover, it would be impracticable for the individual, as the coroner or a deputy coroner, to remove himself from the potential conflicts of interest. First, the potential for conflicts would not be uncommon since it is likely that the county coroner's office and the county sheriff's office will be required to simultaneously conduct an investigation concerning an unexplained death. Second, pursuant to R.C. 313.06, a county coroner and deputy coroners must be available at all times for the performance of their duties. Finally, in any such investigation, the county coroner is required to be involved. This is true even if the investigation is conducted by a deputy coroner because the coroner appoints all of his deputies, R.C. 313.05, and is responsible for their conduct during an investigation, R.C. 3.06(A). An individual who serves as a deputy sheriff and a county coroner or deputy coroner within the same county thus lacks the ability to remove himself from the potential conflicts of interest. Therefore, based on the above examination of the positions of county coroner, deputy coroner, and deputy sheriff, a deputy sheriff who also serves in the position of county coroner or deputy coroner is subject to impermissible conflicts of interest.

In reaching this conclusion, we are aware that it may be argued that such an individual may avoid the conflicts of interest, if, as a deputy coroner or deputy sheriff, he is assigned to perform only limited duties on behalf of the coroner or sheriff, respectively. See generally 1989 Op. Att'y Gen. No. 89-016 (examining the duties of city law enforcement officers *vis a vis* the county coroner, and concluding that an individual who serves as a city police chief is not barred by conflict of interest from accepting employment as a part-time investigator for the county coroner, provided that the individual does not investigate matters within the jurisdiction of the police chief of the city). However, as stated above, deputy coroners must "be available at all times for the performance of their duties." R.C. 313.06. Thus, even though a deputy coroner may not be required presently to conduct investigations in conjunction with the county sheriff's office, the county coroner may require a deputy coroner at any time to conduct an investigation. If such a situation arose, the individual, as a deputy coroner, would be unable to remove himself from the conflict of interest. Further, because the duties of the county coroner's office and the county sheriff's office overlap extensively and the investigation of unexplained deaths is very likely, the individual, as a deputy coroner, would have regular and frequent interaction with the county sheriff's office. This interaction would occur even if the individual, as a deputy coroner, were not assigned the task of conducting investigations that involve the county sheriff's office. For instance, the individual, as a deputy coroner, may allow tests conducted on behalf of the sheriff's office to take precedence over tests that he is conducting on behalf of another law enforcement agency. The immediacy of the potential conflicts of interest and the extensiveness of such conflicts thus militates against finding the conflicts permissible. Accordingly, in response to your second question, it is our opinion that an individual who holds a special deputy sheriff's commission that allows the individual to act as a volunteer, part-time, SWAT team tactical EMT is subjected to impermissible conflicts of interest when he serves also in the position of county coroner or deputy coroner.

Your third question asks whether, if an individual who holds a special deputy sheriff's commission that allows the individual to act as a volunteer, part-time, SWAT team tactical EMT is subject to an impermissible conflict of interest when he serves also in the position of county coroner or deputy coroner, the individual may retain the special deputy sheriff's

commission. No provision within the Revised Code provides for the remission of a special deputy sheriff's commission. However, the Revised Code does address the removal of an individual from public office by civil action in quo warranto.

A quo warranto action may be brought against a person who, *inter alia*, unlawfully holds or exercises a public office. R.C. 2733.01(A). Such actions are initiated by either a prosecuting attorney or the Attorney General on their own relation, R.C. 2733.05, or when directed by the Governor, supreme court, or the General Assembly, R.C. 2733.04. Whether the facts in a given case warrant the bringing of a quo warranto action against a county coroner or deputy coroner who retains a special deputy's commission is a factual question that must be answered on a case-by-case basis, and not by means of an opinion of the Attorney General. *See generally* 1986 Op. Att'y Gen. No. 86-076 at 2-422 (an opinion of the Attorney General cannot resolve questions of fact or provide advice with respect to disputed factual matters). More specifically, before a quo warranto action may be instituted, it must be determined that the individual, as a deputy sheriff, is serving in a "public office" for purposes of R.C. 2733.01. *See generally State ex rel. Newman v. Skinner*, 128 Ohio St. 325, 327, 191 N.E. 127, 128 (1934) (a public officer "must possess some sovereign functions of government to be exercised by him for the benefit of the public, either of an executive, legislative, or judicial character"). If an individual is commissioned by the county sheriff as a deputy sheriff, but is not paid any compensation or delegated or required to perform any functions on behalf of the sheriff, *see Geyer v. Griffin*; 1989 Op. Att'y Gen. No. 89-071 at 2-326, the mere commissioning of the individual as a special deputy sheriff may not constitute the holding of a "public office" for purposes of R.C. 2733.01. Therefore, in response to your third question, we are constrained to conclude that no provision in the Revised Code requires an individual commissioned as a special deputy sheriff to relinquish his commission if he serves as a county coroner or deputy coroner. However, such individual may have a quo warranto action instituted against him pursuant to R.C. 2733.01 if it is determined that the individual unlawfully holds or exercises the special deputy sheriff's commission by reason of the conflicts of interest inherent in serving as county coroner or deputy coroner and special deputy sheriff.

Your final question asks whether an individual may retain his peace officer basic training certificate when he is elected or appointed to the office of county coroner and relinquishes his commission as a special deputy sheriff. In Ohio, no individual may be appointed a peace officer unless he has been awarded a peace officer basic training certificate. R.C. 109.77(B)(1) reads, in part, as follows:

Notwithstanding any general, special, or local law or charter to the contrary, and except as otherwise provided in this section, 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[.]

See 2 Ohio Admin. Code 109:2-1-12. A deputy sheriff is a peace officer for purposes of R.C. 109.77. R.C. 109.71(A)(1). Accordingly, special deputy sheriffs must possess a peace officer basic training certificate. See 1984 Op. Att'y Gen. No. 84-008.⁵

In addition to setting forth the instances in which an individual must possess a peace officer basic training certificate, R.C. 109.77 delineates the situations in which a certificate is to be revoked. R.C. 109.77(F) states:

Regardless of whether the person has been awarded the certificate or has been classified as a peace officer prior to, on, or after the effective date of this amendment, the executive director of the Ohio peace officer training commission shall revoke any certificate that has been awarded to a person as prescribed in this section if the person does either of the following:

(a) Pleads guilty to a felony committed on or after January 1, 1997.

(b) Pleads guilty to a misdemeanor committed on or after January 1, 1997, pursuant to a negotiated plea agreement as provided in division (D) of section 2929.29 of the Revised Code in which the person agrees to surrender the certificate awarded to the person under this section.

(2) The executive director of the commission shall suspend any certificate that has been awarded to a person as prescribed in this section if the person is convicted, after trial, of a felony committed on or after January 1, 1997. The executive director shall suspend the certificate pursuant to this division pending the outcome of an appeal by the person from that conviction to the highest court to which the appeal is taken or until the expiration of the period in which an appeal is required to be filed.... If the person files an appeal from that person's conviction of the felony and the conviction is upheld by the highest court to which the appeal is taken or if the person does not file a timely appeal, the executive director shall revoke the certificate awarded to the person under this section.

R.C. 109.77 thus does not require the revocation of a peace officer basic training certificate when an individual resigns his commission as a special deputy sheriff. Moreover, our research has disclosed no provision within the Revised Code or the Ohio Administrative Code that requires a peace officer to surrender his training certificate when his employment as a peace officer is terminated. To the contrary, rule 109:2-1-12 permits an individual to retain his certificate for re-appointment as a peace officer. Rule 109:2-1-12 reads:

(C) All persons who have previously been certified by the Ohio peace officer training council and have had their employment as a peace officer

⁵ 1984 Op. Att'y Gen. No. 84-008 at 2-25 determined that, since deputy sheriffs are specifically enumerated in R.C. 109.71(A)(1) and are commissioned or employed by a political subdivision of this state, such deputies are peace officers for purposes of R.C. 109.71(A)(1) if their primary duties are to preserve the peace, protect life and property and to enforce laws, ordinances or regulations. This determination modified the conclusion reached in 1967 Op. Att'y Gen. No. 67-123 (syllabus, paragraph one) that "[m]andatory police training, prescribed by Section 109.77, Ohio Revised Code, is required by any sheriff's deputy unless the rights, powers, and duties of such deputy were significantly limited by the appointing sheriff."

terminated for less than one year may maintain their eligibility for re-appointment as a peace officer

(D) All persons who have not been employed as a peace officer for one year or more but less than four years shall, upon re-entry into employment as a peace officer, attend a refresher course prescribed by the executive director.

(E) All persons who have not been employed as a peace officer for more than four years shall, upon re-entry into employment as a peace officer, complete a basic course.

Rule 109:2-1-12 thus indicates that an individual is not required to surrender his peace officer basic training certificate when his employment as a peace officer terminates.⁶ Therefore, pursuant to rule 109:2-1-12, a deputy sheriff who is elected or appointed county coroner may retain his peace officer basic training certificate when he surrenders his commission as a special deputy sheriff.

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

1. Neither a county coroner nor deputy coroner is a "[l]aw enforcement officer," as defined by R.C. 2901.01(A)(11) and Ohio R. Crim. P. 2(J), for purposes of the Revised Code and the Ohio Rules of Criminal Procedure, respectively.
2. An individual who holds a special deputy sheriff's commission that allows the individual to act as a volunteer, part-time, swat team tactical emergency medical technician is subjected to impermissible conflicts of interest when he serves also in the position of county coroner or deputy coroner.
3. No provision in the Revised Code requires an individual commissioned as a special deputy sheriff to relinquish his commission if he serves as a county coroner or deputy coroner. However, such individual may have a quo warranto action instituted against him pursuant to R.C. 2733.01 if it is determined that the individual unlawfully holds or exercises the special deputy sheriff's commission by reason of the conflicts of interest inherent in serving as county coroner or deputy coroner and special deputy sheriff.

⁶ Although a person is not required to surrender his peace officer training certificate when his employment as a peace officer terminates, such person's eligibility for re-appointment as a peace officer without a new certificate exists for only four years. In this regard, 2 Ohio Admin. Code 109:2-1-12(E) provides that a person who has not been employed as a peace officer for more than four years must, upon re-entry into employment as a peace officer, complete a basic course. In addition, a person who has not been employed as a peace officer for one year or more but less than four years must, upon re-entry into employment as a peace officer, attend a refresher course prescribed by the executive director. Rule 109:2-1-12(D).

4. Pursuant to 2 Ohio Admin. Code 109:2-1-12, a deputy sheriff who is elected or appointed county coroner may retain his peace officer basic training certificate when he surrenders his commission as a special deputy sheriff.