

ORIGINAL

IN THE SUPREME COURT OF OHIO

The State, ex rel. Dick Flanagan	*	Original Action in Quo Warranto
	*	
Relator,	*	Case No. 13-0239
	*	
v.	*	
	*	
David M. Lucas	*	
	*	
Respondent.	*	
	*	

**MERIT BRIEF IN SUPPORT OF RELATOR'S CLAIM
FOR A WRIT OF QUO WARRANTO**

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STATEMENT OF FACTS

I. INTRODUCTION.

The Complaint was filed in this case by Relator, Dick Flanagan ("Relator"), seeking a writ of quo warranto. The original jurisdiction of this Court has been properly invoked pursuant to the Ohio Constitution, Article IV, Section 2, and R.C. 2733.03.

The Respondent, David M. Lucas ("Respondent"), is currently occupying and carrying out the duties of the Office of Sheriff in Belmont County, Ohio. Respondent was elected to that office by a vote of the Belmont County voters which took place on November 6, 2012. This case turns on an evaluation of the Respondent's credentials to hold the office of sheriff, under the strict qualification standards of R.C. 311.01. As addressed more fully herein, the Respondent does not qualify for the office under R.C. 311.01(B)(8) or R.C. 311.01(B)(9). Consequently, his election was invalid, and he should be removed from office and Relator installed immediately.

In turn, this Court should recognize Relator as the lawful Belmont County Sheriff. It is undisputed that Relator is qualified and was the only other candidate for sheriff on the ballot on November 6, 2012. (Exhibit 1, p.2, Exhibit 5, Exhibit 6 and Exhibit 11, p.1.). Being the only duly qualified candidate on the ballot, Relator is entitled to certification as the elected Sheriff of Belmont County.

II. THE VACANCY IN THE OFFICE OF BELMONT COUNTY SHERIFF.

At the general election held in Belmont County, Ohio, on November 6, 2012, Respondent was elected to serve as Belmont County, Ohio Sheriff for the term commencing January 7, 2013. Respondent was the Republican candidate for the Office of Sheriff. (Complaint, Answer, Flanagan Affidavit and Exhibit 1, p.1).

Before Respondent assumed office, Relator and the qualified electors complained to the Belmont County Board of Election that Respondent was not qualified to assume the office of sheriff because he did not meet the statutory requirement to have served as a full-time police officer at the rank of corporal or above. Thereafter, the Belmont County Board of Election refused to perform its statutory obligation of insuring Respondent met the qualifications of R.C. 311.01, et al. by refusing to investigate Respondent who then assumed the office of sheriff on January 7, 2013. (Exhibit 1, p.2)

III. RESPONDENT IS ELECTED BELMONT COUNTY SHERIFF.

Respondent has served as the Sheriff of Belmont County, Ohio since January 7, 2013. Respondent was previously a deputy in said office until October 31, 2007 whereby he retired and performed no full-time police duties at the rank of corporal or above until January 7, 2013. (Exhibit 1 pp. 2-3, Exhibit 10, p.2)

IV. TWO PEOPLE ARE ON THE NOVEMBER 7, 2012 BALLOT.

Relator and Respondent were the only names appearing on the November 6, 2012 ballot. (Exhibit 1, pp.2-3, Exhibit 11, p.1). Previously, Relator had defeated incumbent Fred Thompson in the spring primary elections. The citizens of Belmont County elected Respondent as sheriff because the citizens were unaware of his lack of qualifications as required by R.C. 311.01, et al. It is important to note that the Belmont County Board of Elections became aware and was on notice that Respondent did not meet the statutory qualifications but chose to ignore the complaint and illegally certified Respondent as a qualified candidate. (Exhibit 1, pp.2-3, Exhibit 1, pp.2-3).

V. IS HIS SWORN APPLICATION (AND SUPPLEMENT) SEEKING CERTIFICATION AS A CANDIDATE FOR BELMONT COUNTY SHERIFF, THE RESPONDENT LISTS ONLY THE POSITION OF SPECIAL DEPUTY SINCE HIS OCTOBER 31, 2007 RETIREMENT?

The process for seeking to become a candidate at issue in this case involved the completion of an application for review by the Administrative Judge of the Belmont County Court of Common Pleas. (Exhibit 3). It is undisputed that the subject application was authenticated by the Respondent, under oath, in the form of an affidavit. (Exhibit 3, p.5).

In his original application, the Respondent listed only one position under the category of employment history which he believed were pertinent to his credentials for the office of sheriff subsequent to his retirement. Specifically, the Respondent listed the following:

Special Deputy Belmont County Sheriff's Office	October 31, 2007 to Present
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A copy of Respondent's affidavit is in the record. (Exhibit 3). The other employment of Respondent with Pyrotechnics by Presutti, Inc. was subsequent to Respondent's retirement on October 31, 2007 through calendar year 2012 is not relevant to the facts at issue. It is undisputed that the Respondent retired from the Belmont County Sheriff's Office on October 31, 2007 and has not performed any full-time police duties at the rank of corporal or above since October 31, 2007. (Flanagan Affidavit, Exhibit 1, 2 and 4, Thompson Affidavit, Exhibit 10).

Relator maintains that the consideration of Respondent's qualifications for the office of sheriff is confined to the information which the Respondent himself deemed significant for purposes of his application. The only "peace officer" experience which the Respondent identified in his original application, namely, his employment with the Belmont County Sheriff's Office, is well outside of the relevant time period immediately prior to the qualification date. (Exhibit 3, Ohio Peace Officer Appointment History). Thus, as examined herein, that experience does not qualify the Respondent for the office of sheriff.

While any other experience now offered by the Respondent as support for his credentials, outside of that which he believed was significant enough to set forth in his affidavit seeking the

office of sheriff, should be rejected by the Court, such information is also addressed herein below. The referenced information utilized by the Respondent represents his desperate efforts to qualify for the office of sheriff, which were developed only in response to the challenge to his appointment as range officer documentations of a few days over a period of four years due not constitute full-time police duties.

It should also be observed that, while the Respondent's application, and those of the other applicants as well, were submitted for consideration by the Administrative Judge of the local Common Pleas Court, that consideration is a limited review only, and the Judge makes no finding or determination as to the pertinent qualifications. The Judge's role is purely ministerial and not judicial. (Exhibit 3, pp.2-4). *State ex rel. Shumate v. Portage County Bd. of Elections* (1992), 64 Ohio St. 3d 12.

ARGUMENT

Proposition of Law No. 1: A writ of quo warranto is the proper remedy for removal of an unqualified office holder appointed to the position of county sheriff.

"For a writ of quo warranto to issue, a relator must establish (1) that the office is being unlawfully held and exercised by respondent, and (2) that relator is entitled to the office." *State ex rel. Newell v. Jackson*, 118 Ohio St. 3d 138, 2008-Ohio-1965, ¶6, quoting *State ex rel. Paluf v. Fenile*, (1995) 69 Ohio St. 3d 138, 141. In this case, the Respondent is unlawfully holding and exercising the Office of Belmont County Sheriff because he did not possess the necessary qualifications for that office at the time he was elected by the Belmont County citizens. (Exhibits 1, 2, 3, 4, 8 and 10). Relator is, in turn, entitled to the office of sheriff, by lawfully appearing on the November 6, 2012 ballot as the only duly qualified candidate. (Exhibit 1, p.1, Exhibit 5, Exhibit 6 and Exhibit 11).

Proposition of Law No. II: Respondent is not qualified for the Office of Sheriff, under R.C. 311.01.

R.C. 311.01 expressly prohibits the appointment of a candidate to the office of sheriff who does not meet the specific statutory requirements. R.C. 311.01 sets forth specific qualifications and requirements for county sheriff, and Section 311.01(B) specifically provides that *no person is eligible to be a candidate* for sheriff unless the requirements of 311.01(B) are met:

(B) Except as otherwise provided in this section, no person is eligible to be a candidate for sheriff, and no person shall be elected or appointed to the office of sheriff, unless that person meets all of the following requirements...

Pursuant to R.C. 311.01(H)(1), the "qualification date" for the Office of Belmont County Sheriff was December 7, 2011. (Complaint, ¶ 11 and Answer, ¶ 11).

A. RESPONDENT DOES NOT QUALIFY FOR THE OFFICE OF COUNTY SHERIFF UNDER R.C. 311.01(B)(8)(a).

R.C. 311.01(B)(8) provides:

(8) The person meets 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 section 5503.05 of the Revised Code, and, within the four-year period ending immediately prior to the qualification date, has been employed as an appointee pursuant to section 5503.01 of the Revised Code or as a full-time peace officer as defined in section 109.71 of the Revised Code performing duties related to the enforcement of statutes, ordinances, or codes;...

The relevant four-year time period for consideration of R.C. 311.01(B)(8)(a) is December 7, 2007 through December 7, 2011.

Analysis of the Respondent's qualifications under R.C. 311.01(B)(8)(a) requires consideration of his employment as: a special deputy of Belmont County Sheriff's Office

whereby the record unequivocally establishes that he performed no full-time police duties or supervisory responsibilities during the period subsequent to his October 31, 2007 retirement. (Exhibit 1, p.1, Exhibit 2, pp.2-3, Exhibit 3, Appointment History, Exhibit 7, Exhibit 8, Open Records Request and Exhibit 10, Affidavit of former Sheriff Thompson).

The position of Special Deputy with Belmont County Sheriff's Office does not qualify as employment as a full-time "Peace Officer" as defined under Ohio Law.

R.C. 311.01(B)(8)(a) may otherwise be satisfied if an application has, within the four year period preceding the qualification date, been "employed...as a full-time peace officer as defined in section 109.71 of the Revised Code performing duties related to the enforcement of statutes, ordinances, or codes." The Respondent's full-time employment during the period of time extending from October 31, 2007 through the qualification date of December 7, 2011 as President of Pyrotechnics by Presutti, Inc. (Relator Exhibit 3).

The record demonstrates that the Respondent never worked as a full-time police officer nor was he paid as such from October 31, 2007 through December, 2012. (Exhibit 7, Exhibit 8, and Exhibit 10).

While the Respondent worked full-time with Pyrotechnics by Presutti, Inc., not just any full-time employment provides an applicant with the credentials necessary to qualify for the office of sheriff. Rather, the Revised Code clearly states that the relevant full-time employment must be as a "peace officer as defined in Section 109.71 of the Revised Code." R.C. 311.01(B)(8)(a). President of Pyrotechnics by Presutti, Inc. is not a "peace officer."

The definition of "peace officer" found in R.C. 109.71 lists a number of qualifying positions. A copy of R.C. 109.71 is attached hereto, as part of the Appendix and, thus, the list is not fully recited herein. None of the subsections therein, used to define a peace officer, includes any reference to a pyrotechnic company. Accordingly, the Respondent's employment with

Pyrotechnics by Presutti, Inc., while full-time and occurring during the relevant four year period of inquiry, does not serve as qualification for the Office of Sheriff under R.C. 311.01(B)(8)(a).

The Respondent's Appointment with the Belmont County Sheriff's Office, after Respondent's retirement, was not "full-time" employment as a Peace Officer and, thus, such appointment does not operate to cure Respondent's lack of timely qualifications.

Following Respondent's retirement on October 31, 2007, he was appointed by Sheriff Fred Thompson to the position of Special Deputy. Indeed Relator was special as he was never paid by the Belmont County Sheriff's Office from October 31, 2007 through December 7, 2011 as he performed no full-time police duties whatsoever. (Exhibit 7, Exhibit 8 and Exhibit 10).

The term 'full-time' is not defined for purposes of R.C. 311.01. However, the Ohio Attorney General has addressed the meaning of "full-time" within the context of the applicable statute. 2001 Ohio Atty. Gen. Ops. No. 026. The Attorney General was asked to determine whether a village mayor was a full-time law enforcement officer under R.C. 311.01(B)(8)(b). The Attorney General found that the definition of "full-time" should be based on its ordinary meaning and common usage, and it is a factual inquiry (not based simply on a label assigned to given tasks). *Id.* at *18. In reaching its conclusion, the Attorney General reviewed several definitions of "full-time:"

R.C. 124.382 (defining "full-time permanent employee" for purposes of R.C. 124.382-.383 and R.C. 124.386-.388 as "an employee whose regular hours of duty total eighty hours in a pay period in a state agency, and whose appointment is not for a limited period of time"); R.C. 325.19(J)(1) (defining "full-time employee" for purposes of R.C. 325.19 as "an employee whose regular hours of service for a county total forty hours per week, or who renders any other standard of service accepted as full-time by an office, department, or agency of county service"). See generally R.C. 124.18(A) ("forty hours shall be the standard work week for all employees whose salary or wage is paid in whole or in part by the state or by any state-supported college or university").

Webster's New World Dictionary 564 (2d college ed. 1986) defines the adjective "full-time" as "designating, of, or engaged in work, study, etc. for specified periods regarded as taking all of one's regular working hours." See *The American*

Heritage Dictionary 538 (2d college ed. 1982) ("full-time" means "[e]mployed for or involving a standard number of hours of working time"); *See also* 1962 Op. Att'y Gen. No. 3464, p 971 (syllabus, paragraph two) ("there is no statutory designation of what constitutes full-time employment for county employees within the purview of [R.C. 325.19], and, in the absence of such designation, a full-time employee is a person who regularly works all of the working hours required by the employer as normal working hours for his employees").

Id. at *17-18. The Attorney General thus concluded that a person is "employed as a 'full-time' law enforcement officer for purposes of R.C. 311.01(B)(8)(b) when the person's work as a law enforcement officer takes all of his regular working hours." *Id.* at 19, citing 1986 Op. Att'y Gen. No. 86-077, at *2-428.

To determine whether a village mayor is "full-time" for purposes of R.C. 311.01(B)(8)(b), the Attorney General indicated:

[T]hat the board of elections should consider the "mayor's specific duties related to law enforcement and the *actual amount of time he spends discharging those duties* and a village mayor's specific duties unrelated to law enforcement and the actual amount of time he spends discharging those duties" as well as "the total number of working hours a village mayor devotes to discharging law enforcement duties *in relation to the total number of working hours he devotes to matters unrelated to law enforcement* and any other law enforcement positions that a village mayor may hold."

Id. at *20.

Here, the Respondent's full-time job from October 31, 2007 through December, 2012 was in his capacity as President of Pyrotechnics by Presutti, Inc. Respondent's service as a range officer for a de minimus period of time for the Belmont County Sheriff's Office cannot constitute "full-time" under the definition articulated by the Attorney General or the ordinary meaning and common usage of the term within the Revised Code. In his filing, Respondent submitted that time served as a range officer within Belmont County Sheriff's Office constituted full-time police work but no evidence to substantiate same exists. (Exhibit 8) (Respondent's Answer to Complaint). Thus, his service with the Belmont County Sheriff's Office did not take "all of his

regular working hours." 2001 Ohio Atty. Gen. Ops. No. 026 at *19. Neither did his service meet the minimum hour requirements articulated throughout the Revised Code. Perhaps more importantly, the Respondent's de minimus period with the Belmont County Sheriff's Office did not satisfy the definition of "full time" utilized by that office or any office in the State of Ohio. Respondent has provided no proof in the record before this Honorable Court that he enforced statutes, ordinances or otherwise at any time subsequent to his retirement on October 31, 2007. (Exhibit 8).

Under both the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*, and Ohio law, the term "employee" expressly excludes volunteers who are not compensated for the services they perform. *See*, 20 U.S.C. 203(4); R.C. 4111.14(B); R.C. 4111.14(B)(2) (2). This Court has also recognized a distinction between employment and volunteer experience within the context of R.C. 311.01(B). *State ex rel. Altiere v. Trumbull County Board of Elections*, (1992) 65 Ohio St.3d 164. In *Altiere*, the Court considered a prior version of R.C. 311.01(B)(9) requiring full-time law enforcement "experience." *Id.* The Court explained that a volunteer may have "experience" under the statute even if he was never employed in law enforcement. *Id.* at 166. This case presents the reverse situation. Here, the statute requires full-time employment. Following the Court's reasoning in *Altiere*, volunteer experience is not sufficient to satisfy the employment requirement under R.C. 311.01(B)(8)(a).

B. RESPONDENT DOES NOT QUALIFY FOR THE OFFICE OF COUNTY SHERIFF UNDER R.C. 311.01(B)(8)(b).

R.C. 311.01(B)(8) otherwise provides:

(8) The person meets at least one of the following conditions:

(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 division (A)(11) of section 2901.01 of the Revised Code, performing duties related to the enforcement of statutes, ordinances, or codes. Respondent's employment history indicates a gap in employment between January 11, 2011 and February 1, 2012. Consequently, it is impossible for Respondent to have held a full-time law enforcement position for at least the last three years, and he does not qualify under R.C. 311.01(B)(8)(b).

Respondent's employment history indicates a gap in full-time police duties from October 31, 2007 through December 11, 2011. Consequently, it is impossible for Respondent to have held a full-time law enforcement position for at least the last three years, and he does not qualify under R.C. 311.01(B)(8)(b).

C. RESPONDENT DOES NOT QUALIFY FOR THE OFFICE OF COUNTY SHERIFF UNDER R.C. 311.01(B)(9)(a).

R.C. 311.01(B)(9) further provides the following requirements:

(9) The person meets at least one of the following conditions:

(a) Has at least two years of supervisory experience as a peace officer at the rank of corporal or above, or has been appointed pursuant to section 5503.01 of the Revised Code and served at the rank of sergeant or above, in the five-year period ending immediately prior to the qualification date;

The relevant time period for purposes of R.C. 311.01(B)(9)(a) is December 7, 2006 to December 6, 2011 (the "qualification date"). While R.C. 311.01(B)(9)(a) does not define "peace officer" therein, in construing 311.01(B)(9) it is "useful to refer to other provision of R.C. 311.01 to ascertain the meaning of the term 'peace officer.'" 2001 Ohio Atty. Gen. Ops. No. 026 (Citations omitted). *See also, State v. Parks* (1983), 13 Ohio App. 3d 85, 86 (sections of a statute that relate to the same subject are to be construed together so as to give full force and effect to the legislative intent.). 2001, Ohio Atty. Gen. Ops. No. 026, *25. "It is a basic rule of statutory construction that a word repeatedly used in [a] statute will be presumed to bear the same

meaning throughout the statute unless there is something to show that another meaning is intended." *Id.*, **25-26 (Citations omitted).

Pursuant to Respondent's application and employment history, he has not held a "rank of corporal or above," in the capacity of a peace officer since October 31, 2007. On the latter point, the record clearly demonstrates that Respondent's employment with the Belmont County Sheriff's Office concluded with his retirement effective October 31, 2007. (Relator Exhibit 3). Because the record does not contain any credentials conforming to R.C. 311.01 (B)(9)(a), the Respondent advanced the argument that his acting as a range officer since he retired from the Belmont County Sheriff's Office is equivalent for purposes of appointment as County Sheriff. As addressed herein below, such argument has been rejected by this Court and, therefore, does not withstand scrutiny as a matter of law. *Wellington v. Mahoning County Board of Elections*, 117 Ohio St. 3d 143, 2008-Ohio-554.

There is no evidence that the Respondent has supervisory experience as a Peace Officer, in the rank of corporal or above, within the applicable five year period.

The record of Respondent's employment history has already been examined at length. Respondent was employed with Pyrotechnics by Presutti, Inc. for a portion of the time under consideration. That position does not qualify as a "peace officer" appointment, and does not represent a "rank of corporal or above," and thus does not render the Respondent qualified for the Office of Sheriff under R.C. 311.01(B)(9)(a).

The statute is not satisfied simply on the basis of supervisory experience in Respondent's capacity as President of Pyrotechnics by Presutti, Inc. Rather, the statute is clear and specific. The two years of supervisory experience must be "as a peace officer," at the rank of corporal or above.

Respondent's short-lived experience as a range officer with the Belmont County Sheriff's Office during the period of 2007 through 2011 does not qualify Respondent for the Office of Sheriff. During any range training or otherwise, the Respondent did not serve in any supervisory role at the rank of corporal or above since he had retired and he does not keep his status as a major once retired. (Exhibit 8 and Exhibit 10).

The record reflects Respondent's appointment as a special deputy with the Belmont County Sheriff's Office effective November 1, 2007. (Exhibit 3 and Exhibit 10). Respondent did not hold such assignment with any rank of corporal or above, and there is no evidence of any supervisory experience as a special deputy. (Exhibit 10).

The Respondent did not supervise anyone in the Belmont County Sheriff's Office in a rank position above corporal as one does not keep their rank in retirement. Thus, he was not providing supervision "as a peace officer," and his experience does not conform to R.C. 311.01(B)(9)(a). Respondent would not have been in any supervisory role in his status as special deputy. The statute is not satisfied by performing limited range training; rather, one must demonstrate supervisory experience "as a peace officer" and "at a rank of corporal or above," within the requisite period prior to the qualification date which Respondent has failed to so substantiate.

Respondent was appointed as a special deputy with the Belmont County Sheriff's Office from October 31, 2007 through December 7, 2011. This "special deputy" appointment does not hold the "rank of Corporal or above," and thus cannot serve as support for the qualifications necessary under R.C. 311.01(B)(9)(a), for the Office of Sheriff. This appointment does not represent service as a peace officer in the "rank of Corporal or above." There is no evidence that this position was supervisory in any sense. (Exhibit 10).

In *Wellington v. Mahoning County Board of Elections, supra*, the Court granted a writ of prohibition in a contested County Sheriff case. A prospective candidate's name was precluded from a primary ballot, because the candidate failed to demonstrate his qualifications under R.C. 311.01(B)(9). In part, the candidate claimed that he met the "supervisory experience" requirement of subsection (B)(9)(a). The candidate, David Aey, claimed that his supervisory experience with a federal Marshal's task force was "tantamount to" or the "de facto equivalent" or the responsibilities of a corporal or above. *Id.*, at ¶9. The Court ultimately barred Aey's name from the ballot for the reason tendered by Wellington, namely, that "Aey had never served as a peace officer at the rank of corporal or above for the pertinent period." *Id.*, at ¶38.

With respect to R.C. 311.01(B)(9)(a), the Court observed that:

A candidate for sheriff can satisfy R.C. 311.01(B)(9) in one of the following ways:

(1) have at least two years of supervisory experience as a peace officer at the rank of corporal or above in the five-year period ending immediately before the qualification date, [or] (2) be appointed to the Highway Patrol under R.C. 5503.01 and serve at the rank of sergeant or above in the five-year period ending immediately before the qualification date.....

CONCLUSION

This case is intended to protect the integrity of the Office of Belmont County Sheriff, and the integrity of the qualification statute for that office.

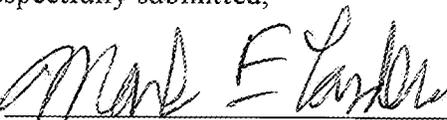
Because Respondent does not qualify by law for the position, his election by the Belmont County citizens was a nullity. Respondent has, nonetheless, assumed the office. He has, thereby, usurped, intruded into and unlawfully holds or exercises the Office of Belmont County Sheriff. By this unlawful usurpation, the Respondent possesses the office, immunities, and privileges appertaining to the office, contrary to Ohio law and against the rights of the Relator. Quo warranto is the remedy to effect his ouster. R.C. 2733.01.

Under Ohio law, Relator retains the right to the Office of Belmont County Sheriff as the duly elected Sheriff in accordance with law. Consequently, the Relator is entitled to a writ of quo warranto removing Respondent from the Office of Belmont County Sheriff and declaring the Relator to be entitled to possession of that Office.

WHEREFORE, Relator, Dick Flanagan, respectfully requests:

- A. That a peremptory writ in quo warranto be issued ousting Respondent, David M. Lucas, from the Office of Belmont County, Ohio Sheriff; and
- B. An order declaring and determining that Relator is entitled to possession of the Office of Belmont County Sheriff.

Respectfully submitted,

By 

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CERTIFICATE OF SERVICE

Service of the foregoing Merit Brief was had upon counsel for the Respondent by mailing a true and correct copy thereof by U. S. mail, postage prepaid, this 25 day of July, 2013, to:

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Current through Legislation passed by the 130th Ohio General Assembly
and filed with the Secretary of State through File 1
*** Annotations current through November 9, 2012 ***

CONSTITUTION OF THE STATE OF OHIO
ARTICLE IV. JUDICIAL

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Oh. Const. Art. IV, § 2 (2013)

§ 2. The supreme court

(A) The supreme court shall, until otherwise provided by law, consist of seven judges, who shall be known as the chief justice and justices. In case of the absence or disability of the chief justice, the judge having the period of longest total service upon the court shall be the acting chief justice. If any member of the court shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice or the acting chief justice may direct any judge of any court of appeals to sit with the judges of the supreme court in the place and stead of the absent judge. A majority of the supreme court shall be necessary to constitute a quorum or to render a judgment.

(B) (1) The supreme court shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo;
- (f) In any cause on review as may be necessary to its complete determination;
- (g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

(2) The supreme court shall have appellate jurisdiction as follows:

- (a) In appeals from the courts of appeals as a matter of right in the following:
 - (i) Cases originating in the courts of appeals;
 - (ii) Cases involving questions arising under the constitution of the United States or of this state.
- (b) In appeals from the courts of appeals in cases of felony on leave first obtained,
- (c) In direct appeals from the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed;

Oh. Const. Art. IV, § 2

(d) Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;

(e) In cases of public or great general interest, the supreme court may direct any court of appeals to certify its record to the supreme court, and may review and affirm, modify, or reverse the judgment of the court of appeals;

(f) The supreme court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B) (4) of this article.

(3) No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

(C) The decisions in all cases in the supreme court shall be reported, together with the reasons therefor.

HISTORY:

(Amended November 8, 1994)



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Appendix B

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TITLE I. STATE GOVERNMENT
 CHAPTER 109. ATTORNEY GENERAL
 OHIO PEACE OFFICER TRAINING COMMISSION

Go to the Ohio Code Archive Directory

ORC Ann. 109.71 (2013)

§ 109.71. Creation of peace officer training commission; definitions

There is hereby created in the office of the attorney general the Ohio peace officer training commission. The commission shall consist of nine members appointed by the governor with the advice and consent of the senate and selected as follows: one member representing the public; two members who are incumbent sheriffs; two members who are incumbent chiefs of police; one member from the bureau of criminal identification and investigation; one member from the state highway patrol; one member who is the special agent in charge of a field office of the federal bureau of investigation in this state; and one member from the department of education, trade and industrial education services, law enforcement training.

This section does not confer any arrest authority or any ability or authority to detain a person, write or issue any citation, or provide any disposition alternative, as granted under Chapter 2935. of the Revised Code.

As used in sections 109.71 to 109.801 of the Revised Code:

(A) "Peace officer" means:

- (1) A deputy sheriff, marshal, deputy marshal, member of the organized police department of a township or municipal corporation, member of a township police district or joint police district police force, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, or township constable, who is commissioned and employed as a peace officer by a political subdivision of this state or by a metropolitan housing authority, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of this state, ordinances of a municipal corporation, resolutions of a township, or regulations of a board of county commissioners or board of township trustees, or any of those laws, ordinances, resolutions, or regulations;
- (2) A police officer who is employed by a railroad company and appointed and commissioned by the secretary of state pursuant to sections 4973.17 to 4973.22 of the Revised Code;
- (3) Employees of the department of taxation engaged in the enforcement of Chapter 5743. of the Revised Code and designated by the tax commissioner for peace officer training for purposes of the delegation of investigation powers under section 5743.45 of the Revised Code;
- (4) An undercover drug agent;

(5) Enforcement agents of the department of public safety whom the director of public safety designates under *section 5502.14 of the Revised Code*;

(6) An employee of the department of natural resources who is a natural resources law enforcement staff officer designated pursuant to *section 1501.013*, a park officer designated pursuant to *section 1541.10*, a forest officer designated pursuant to *section 1503.29*, a preserve officer designated pursuant to *section 1517.10*, a wildlife officer designated pursuant to *section 1531.13*, or a state watercraft officer designated pursuant to *section 1547.521 of the Revised Code*;

(7) An employee of a park district who is designated pursuant to *section 511.232 or 1545.13 of the Revised Code*;

(8) An employee of a conservancy district who is designated pursuant to *section 6101.75 of the Revised Code*;

(9) A police officer who is employed by a hospital that employs and maintains its own proprietary police department or security department, and who is appointed and commissioned by the secretary of state pursuant to *sections 4973.17 to 4973.22 of the Revised Code*;

(10) Veterans' homes police officers designated under *section 5907.02 of the Revised Code*;

(11) A police officer who is employed by a qualified nonprofit corporation police department pursuant to *section 1702.80 of the Revised Code*;

(12) A state university law enforcement officer appointed under *section 3345.04 of the Revised Code* or a person serving as a state university law enforcement officer on a permanent basis on June 19, 1978, who 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;

(13) A special police officer employed by the department of mental health pursuant to *section 5119.14 of the Revised Code* or the department of developmental disabilities pursuant to *section 5123.13 of the Revised Code*;

(14) A member of a campus police department appointed under *section 1713.50 of the Revised Code*;

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

(16) Investigators appointed by the auditor of state pursuant to *section 117.091 of the Revised Code* and engaged in the enforcement of Chapter 117. of the Revised Code;

(17) A special police officer designated by the superintendent of the state highway patrol pursuant to *section 5503.09 of the Revised Code* or a person who was serving as a special police officer pursuant to that section on a permanent basis on October 21, 1997, and who 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;

(18) A special police officer employed by a port authority under *section 4582.04 or 4582.28 of the Revised Code* or a person serving as a special police officer employed by a port authority on a permanent basis on May 17, 2000, who 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;

(19) A special police officer employed by a municipal corporation who has been awarded a certificate by the executive director of the Ohio peace officer training commission for satisfactory completion of an approved peace officer basic training program and who is employed on a permanent basis on or after March 19, 2003, 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;

(20) A police officer who is employed by an owner or operator of an amusement park that has an average yearly attendance in excess of six hundred thousand guests and that employs and maintains its own proprietary police

ORC Ann. 109.71

department or security department, and who is appointed and commissioned by a judge of the appropriate municipal court or county court pursuant to *section 4973.17 of the Revised Code*;

(21) A police officer who is employed by a bank, savings and loan association, savings bank, credit union, or association of banks, savings and loan associations, savings banks, or credit unions, who has been appointed and commissioned by the secretary of state pursuant to *sections 4973.17 to 4973.22 of the Revised Code*, and who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the person's satisfactory completion of a state, county, municipal, or department of natural resources peace officer basic training program;

(22) An investigator, as defined in *section 109.541 of the Revised Code*, of the bureau of criminal identification and investigation who is commissioned by the superintendent of the bureau as a special agent for the purpose of assisting law enforcement officers or providing emergency assistance to peace officers pursuant to authority granted under that section;

(23) A state fire marshal law enforcement officer appointed under *section 3737.22 of the Revised Code* or a person serving as a state fire marshal law enforcement officer on a permanent basis on or after July 1, 1982, who 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;

(24) A gaming agent employed under *section 3772.03 of the Revised Code*.

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

(C) "Crisis intervention training" means training in the use of interpersonal and communication skills to most effectively and sensitively interview victims of rape.

(D) "Missing children" has the same meaning as in *section 2901.30 of the Revised Code*.

HISTORY:

142 v H 708 (Eff 4-19-88); 143 v H 110 (Eff 5-31-90); 143 v H 271 (Eff 4-10-91); 143 v H 669 (Eff 1-10-91); 144 v H 77 (Eff 9-17-91); 144 v S 49 (Eff 7-21-92); 144 v H 758 (Eff 1-15-93); 145 v S 182 (Eff 10-20-94); 146 v S 162 (Eff 10-29-95); 146 v S 2 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v H 670 (Eff 12-2-96); 146 v H 351 (Eff 1-14-97); 146 v S 285 (Eff 3-13-97); 147 v S 60 (Eff 10-21-97); 147 v S 213 (Eff 7-29-98); 147 v S 187 (Eff 3-18-99); 148 v H 163 (Eff 6-30-99); 148 v S 137 (Eff 5-17-2000); 149 v H 675 (Eff 3-14-2003); 149 v H 545 (Eff 3-19-2003); 151 v H 58, § 1, eff. 5-3-05; 151 v H 81, § 1, eff. 4-14-06; 151 v H 347, § 1, eff. 3-14-07; 151 v H 454, § 1, eff. 4-6-07; 152 v H 562, § 101.01, eff. 9-23-08; 153 v S 79, § 1, eff. 10-6-09; 153 v H 519, § 1, eff. 9-10-10; 2011 HB 153, § 101.01, eff. Sept. 29, 2011.



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Appendix C

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TITLE 3. COUNTIES
 CHAPTER 305. BOARD OF COUNTY COMMISSIONERS -- GENERALLY

Go to the Ohio Code Archive Directory

ORC Ann. 305.02 (2013)

Legislative Alert: LEXSEE 2013 Ohio SB 47 -- See sections 1 and 2.

§ 305.02. Filling vacancy in county offices

(A) If a vacancy in the office of county commissioner, prosecuting attorney, county auditor, county treasurer, clerk of the court of common pleas, sheriff, county recorder, county engineer, or coroner occurs more than fifty-six days before the next general election for state and county officers, a successor shall be elected at such election for the unexpired term unless such term expires within one year immediately following the date of such general election.

In either event, the vacancy shall be filled as provided in this section and the appointee shall hold office until a successor is elected and qualified.

(B) If a vacancy occurs from any cause in any of the offices named in division (A) of this section, the county central committee of the political party with which the last occupant of the office was affiliated shall appoint a person to hold the office and to perform the duties thereof until a successor is elected and has qualified, except that if such vacancy occurs because of the death, resignation, or inability to take the office of an officer-elect whose term has not yet begun, an appointment to take such office at the beginning of the term shall be made by the central committee of the political party with which such officer-elect was affiliated.

(C) Not less than five nor more than forty-five days after a vacancy occurs, the county central committee shall meet for the purpose of making an appointment under this section. Not less than four days before the date of such meeting the chairperson or secretary of such central committee shall send by first class mail to every member of such central committee a written notice which shall state the time and place of such meeting and the purpose thereof. A majority of the members of the central committee present at such meeting may make the appointment.

(D) If the last occupant of the office or the officer-elect was elected as an independent candidate, the board of county commissioners shall make such appointment at the time when the vacancy occurs, except where the vacancy is in the office of county commissioner, in which case the prosecuting attorney and the remaining commissioners or a majority of them shall make the appointment.

(E) Appointments made under this section shall be certified by the appointing county central committee or by the board of county commissioners to the county board of elections and to the secretary of state, and the persons so appointed and certified shall be entitled to all remuneration provided by law for the offices to which they are appointed.

ORC Ann. 305.02

(F) The board of county commissioners may appoint a person to hold any of the offices named in division (A) of this section as an acting officer and to perform the duties thereof between the occurrence of the vacancy and the time when the officer appointed by the central committee qualifies and takes the office.

(G) A person appointed prosecuting attorney or assistant prosecuting attorney shall give bond and take the oath of office prescribed by *section 309.03 of the Revised Code* for the prosecuting attorney.

HISTORY:

RS §§ 841, 842; S 243, 244; 51 v 422, §§ 3, 4, 5; 98 v 272; GC §§ 2396, 2397; 117 v 81; 118 v 574; Bureau of Code Revision, 10-1-53; 126 v 205; 127 v 894 (Eff 8-30-57); 129 v 1365 (Eff 10-12-61); 130 v 191 (Eff 8-26-63); 130 v 190 (Eff 6-28-63); 143 v S 196. Eff 6-21-90; 153 v H 48, § 1, eff. 7-2-10.



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TITLE 3. COUNTIES
 CHAPTER 311. SHERIFF

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ORC Ann. 311.01 (2013)

§ 311.01. Qualifications for sheriff; basic training course; continuing education

(A) A sheriff shall be elected quadrennially in each county. A sheriff shall hold office for a term of four years, beginning on the first Monday of January next after the sheriff's election.

(B) Except as otherwise provided in this section, no person is eligible to be a candidate for sheriff, and no person shall be elected or appointed to the office of sheriff, unless that person meets all of the following requirements:

(1) The person is a citizen of the United States.

(2) The person has been a resident of the county in which the person is a candidate for or is appointed to the office of sheriff for at least one year immediately prior to the qualification date.

(3) The person has the qualifications of an elector as specified in *section 3503.01 of the Revised Code* and has complied with all applicable election laws.

(4) The person has been awarded a high school diploma or a certificate of high school equivalence issued for achievement of specified minimum scores on the general educational development test of the American council on education.

(5) The person has not been convicted of or pleaded guilty to a felony or any offense involving moral turpitude under the laws of this or any other state or the United States, and has not been convicted of or pleaded guilty to an offense that is a misdemeanor of the first degree under the laws of this state or an offense under the laws of any other state or the United States that carries a penalty that is substantially equivalent to the penalty for a misdemeanor of the first degree under the laws of this state.

(6) The person has been fingerprinted and has been the subject of a search of local, state, and national fingerprint files to disclose any criminal record. Such fingerprints shall be taken under the direction of the administrative judge of the court of common pleas who, prior to the applicable qualification date, shall notify the board of elections, board of county commissioners, or county central committee of the proper political party, as applicable, of the judge's findings.

(7) The person has prepared a complete history of the person's places of residence for a period of six years immediately preceding the qualification date and a complete history of the person's places of employment for a period of six years immediately preceding the qualification date, indicating the name and address of each employer and the period of time employed by that employer. The residence and employment histories shall be filed with the administrative judge of the court of common pleas of the county, who shall forward them with the findings under division (B)(6) of this

section to the appropriate board of elections, board of county commissioners, or county central committee of the proper political party prior to the applicable qualification date.

(8) The person meets 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 *section 5503.05 of the Revised Code*, and, within the four-year period ending immediately prior to the qualification date, has been employed as an appointee pursuant to *section 5503.01 of the Revised Code* or as a full-time peace officer as defined in *section 109.71 of the Revised Code* 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 division (A)(11) of *section 2901.01 of the Revised Code*, performing duties related to the enforcement of statutes, ordinances, or codes.

(9) The person meets at least one of the following conditions:

(a) Has at least two years of supervisory experience as a peace officer at the rank of corporal or above, or has been appointed pursuant to *section 5503.01 of the Revised Code* and served at the rank of sergeant or above, in the five-year period ending immediately prior to the qualification date;

(b) Has completed satisfactorily at least two years of post-secondary education or the equivalent in semester or quarter hours in a college or university authorized to confer degrees by the Ohio board of regents or the comparable agency of another state in which the college or university is located or in a school that holds a certificate of registration issued by the state board of career colleges and schools under Chapter 3332. of the Revised Code.

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

(D) Newly elected sheriffs shall attend a basic training course conducted by the Ohio peace officer training commission pursuant to division (A) of *section 109.80 of the Revised Code*. A newly elected sheriff shall complete not less than two weeks of this course before the first Monday in January next after the sheriff's election. While attending the basic training course, a newly elected sheriff may, with the approval of the board of county commissioners, receive compensation, paid for from funds established by the sheriff's county for this purpose, in the same manner and amounts as if carrying out the powers and duties of the office of sheriff.

Appointed sheriffs shall attend the first basic training course conducted by the Ohio peace officer training commission pursuant to division (A) of *section 109.80 of the Revised Code* within six months following the date of appointment or election to the office of sheriff. While attending the basic training course, appointed sheriffs shall receive regular compensation in the same manner and amounts as if carrying out their regular powers and duties.

Five days of instruction at the basic training course shall be considered equal to one week of work. The costs of conducting the basic training course and the costs of meals, lodging, and travel of appointed and newly elected sheriffs attending the course shall be paid from state funds appropriated to the commission for this purpose.

(E) In each calendar year, each sheriff shall attend and successfully complete at least sixteen hours of continuing education approved under division (B) of *section 109.80 of the Revised Code*. A sheriff who receives a waiver of the continuing education requirement from the commission under division (C) of *section 109.80 of the Revised Code* because of medical disability or for other good cause shall complete the requirement at the earliest time after the disability or cause terminates.

(F) (1) Each person who is a candidate for election to or who is under consideration for appointment to the office of sheriff shall swear before the administrative judge of the court of common pleas as to the truth of any information the person provides to verify the person's qualifications for the office. A person who violates this requirement is guilty of falsification under *section 2921.13 of the Revised Code*.

ORC Ann. 311.01

(2) Each 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.

(G) The office of a sheriff who is required to comply with division (D) or (E) of this section and who fails to successfully complete the courses pursuant to those divisions is hereby deemed to be vacant.

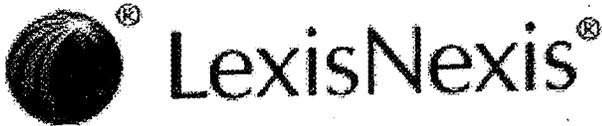
(H) As used in this section:

(1) "Qualification date" means the last day on which a candidate for the office of sheriff can file a declaration of candidacy, a statement of candidacy, or a declaration of intent to be a write-in candidate, as applicable, in the case of a primary election for the office of sheriff; the last day on which a person may be appointed to fill a vacancy in a party nomination for the office of sheriff under Chapter 3513. of the Revised Code, in the case of a vacancy in the office of sheriff; or a date thirty days after the day on which a vacancy in the office of sheriff occurs, in the case of an appointment to such a vacancy under *section 305.02 of the Revised Code*.

(2) "Newly elected sheriff" means a person who did not hold the office of sheriff of a county on the date the person was elected sheriff of that county.

HISTORY:

RS § 1202; S&C 1403; 55 v 150; 93 v 351; GC § 2823; 116 v PtII, 184; Bureau of Code Revision, 10-1-53; 141 v H 683 (Eff 3-11-87); 146 v S 2 (Eff 7-1-96); 146 v H 670 (Eff 12-2-96); 146 v H 351 (Eff 1-14-97); 148 v H 283. Eff 9-29-99; 150 v H 75, § 1, eff. 12-9-03.



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TITLE 27. COURTS -- GENERAL PROVISIONS -- SPECIAL REMEDIES
CHAPTER 2733. QUO WARRANTO

Go to the Ohio Code Archive Directory

ORC Ann. 2733.01 (2013)

§ 2733.01. Proceedings against a person

A civil action in quo warranto may be brought in the name of the state:

- (A) Against a person who usurps, intrudes into, or unlawfully holds or exercises a public office, civil or military, or a franchise, within this state, or an office in a corporation created by the authority of this state;
- (B) Against a public officer, civil or military, who does or suffers an act which, by law, works a forfeiture of his office;
- (C) Against an association of persons who act as a corporation within this state without being legally incorporated.

HISTORY:

RS § 6760; S&C 1264; 36 v 68; GC § 12303; Bureau of Code Revision. Eff 10-1-53.



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TITLE 27. COURTS -- GENERAL PROVISIONS -- SPECIAL REMEDIES
CHAPTER 2733. QUO WARRANTO

Go to the Ohio Code Archive Directory

ORC Ann. 2733.03 (2013)

§ 2733.03. Jurisdiction and venue in quo warranto actions

An action in quo warranto can be brought only in the supreme court, or in the court of appeals of the county in which the defendant, or one of the defendants, resides or is found, or, when the defendant is a corporation, in the county in which it is situated or has a place of business. When the attorney general files the petition, such action may be brought in the court of appeals of Franklin county.

HISTORY:

RS § 6768; S&C 89, 1264; 36 v 68; 50 v 267, § 13; 82 v 16, 39; GC § 12311; 103 v 405(433); Bureau of Code Revision. Eff 10-1-53.



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TITLE 27. COURTS -- GENERAL PROVISIONS -- SPECIAL REMEDIES
CHAPTER 2733. QUO WARRANTO
USURPATION OF OFFICE

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ORC Ann. 2733.06 (2013)

§ 2733.06. Usurpation of office

A person claiming to be entitled to a public office unlawfully held and exercised by another may bring an action therefor by himself or an attorney at law, upon giving security for costs.

HISTORY:

RS § 6764; S&C 1270; 37 v 70; GC § 12307; Bureau of Code Revision. Eff 10-1-53.



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TITLE 55. ROADS -- HIGHWAYS -- BRIDGES
 CHAPTER 5503. STATE HIGHWAY PATROL

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ORC Ann. 5503.01 (2013)

Legislative Alert: LEXSEE 2013 Ohio HB 51 -- See section 101.01.

§ 5503.01. Division of state highway patrol

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

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

The superintendent, with the approval of the director, may appoint any number of state highway patrol troopers and radio operators as are necessary to carry out *sections 5503.01 to 5503.06 of the Revised Code*, but the number of troopers shall not be less than eight hundred eighty. The number of radio operators shall not exceed eighty in number. Except as provided in this section, at the time of appointment, troopers shall be not less than twenty-one years of age, nor have reached thirty-five years of age. A person who is attending a training school for prospective state highway patrol troopers established under *section 5503.05 of the Revised Code* and attains the age of thirty-five years during the person's period of attendance at that training school shall not be disqualified as over age and shall be permitted to continue to attend the training school as long as the person otherwise is eligible to do so. Such a person also remains eligible to be appointed a trooper. Any other person who attains or will attain the age of thirty-five years prior to the time of appointment shall be disqualified as over age.

At the time of appointment, troopers shall have been legal residents of Ohio for at least one year, except that this residence requirement may be waived by the superintendent.

If any state highway patrol troopers become disabled through accident or illness, the superintendent, with the approval of the director, shall fill any vacancies through the appointment of other troopers from a qualified list to serve during the period of the disability.

The superintendent and state highway patrol troopers shall be vested with the authority of peace officers for the purpose of enforcing the laws of the state that it is the duty of the patrol to enforce and may arrest, without warrant, any person who, in the presence of the superintendent or any trooper, is engaged in the violation of any such laws. The state highway patrol troopers shall never be used as peace officers in connection with any strike or labor dispute.

ORC Ann. 5503.01

Each state highway patrol trooper and radio operator, upon appointment and before entering upon official duties, shall take an oath of office for faithful performance of the trooper's or radio operator's official duties and execute a bond in the sum of twenty-five hundred dollars, payable to the state and for the use and benefit of any aggrieved party who may have a cause of action against any trooper or radio operator for misconduct while in the performance of official duties. In no event shall the bond include any claim arising out of negligent operation of a motorcycle or motor vehicle used by a trooper or radio operator in the performance of official duties.

The superintendent shall prescribe a distinguishing uniform and badge which shall be worn by each state highway patrol trooper and radio operator while on duty, unless otherwise designated by the superintendent. No person shall wear the distinguishing uniform of the state highway patrol or the badge or any distinctive part of that uniform, except on order of the superintendent.

The superintendent, with the approval of the director, may appoint necessary clerks, stenographers, and employees.

HISTORY:

GC § 1183; 121 v 455 (518); 123 v 862 (923); 124 v 711; Bureau of Code Revision, 10-1-53; 125 v 127 (142) (Eff 10-2-53); 126 v 621 (Eff 10-5-55); 129 v 1671 (1691); 131 v 1263 (Eff 11-11-65); 132 v H 1 (Eff 2-21-67); 132 v H 658 (Eff 3-20-68); 138 v H 165 (Eff 11-13-79); 144 v S 144 (Eff 8-8-91); 144 v S 98 (Eff 11-12-92); 147 v S 22. Eff 4-22-97.