



**CONFIDENTIAL – ATTORNEY-CLIENT COMMUNICATION**

TO: William Mason, Chief of Staff  
Sheba Marshall, Interim Director of Human Resources

FROM: Gregory G. Huth, Esq., Law Director  
Jerad J. Zibritosky, Assistant Law Director

RE: Cuyahoga County Sheriff's Department Human Resources Structure

DATE: April 19, 2022

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**Question Presented**

Whether the Cuyahoga County Sheriff's Department may hire and employ its own internal Human Resources division separate and independent from the Cuyahoga County Department of Human Resources?

**Brief Answer**

Yes, The Cuyahoga County Sheriff's Department ("Sheriff's Department") may hire its own internal Human Resources Department separate and independent from the Cuyahoga County Department of Human Resources. An internal human resources department or section within the Sheriff's Department would report only to the Sheriff or to whom the Sheriff designates.

**Analysis**

As a Charter County, the first step in properly analyzing the question presented begins with the Charter of Cuyahoga County (the "Charter") specifically, Article XVI – Sheriff. However, the first part of Section 16.01(1) of Article XVI, points toward Ohio general law as it reads:

**Powers and Duties. All powers and duties now or hereafter vested in or imposed upon county sheriffs by general law shall be carried out by the appointed Sheriff.** The Sheriff's powers and duties shall include appointing authority in accordance with Article IX of this Charter. **The Sheriff shall also have such powers and duties as shall be established by this Charter or by ordinance that are not inconsistent with those provided by general law.** [emphasis added]

General Law

This approach in the Charter uses Ohio general law as both the basis of the Cuyahoga County Sheriff's powers and as a backstop against which any additional Charter or Cuyahoga County Code ("Code") powers are measured. Most of Ohio's general law concerning Sheriffs is contained within Chapter 311 of the Ohio Revised Code. Thorough review of ORC Chapter 311 does not reveal direct language on the matter at hand.<sup>1</sup> By this, the general law contained within R.C. Chapter 311 neither

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<sup>1</sup> See, R.C. Chapter 311.

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expressly permits, nor prohibits a Sheriff from having his or her own Department of Human Resources. Franklin County Ohio, a large general law county in Ohio has an Elected Sheriff, currently Sheriff Dallas Baldwin, and the Franklin County Sheriff's Office has its own independent Human Resources Department.<sup>2</sup> This is consistent with Ohio Revised Code in that it does not prohibit a Sheriff from having an internal Human Resource Department. There is further support in the Ohio Revised Code that under general law, a Sheriff's office may have its own human resources department by inference. R.C. 305.23 gives boards of county commissioners the ability to adopt resolutions establishing centralized services including among others purchasing, revenue collection, and human resources for county offices.<sup>3</sup> This leaves to reason that such "county offices," which by definition include a sheriff, are by default permitted to have their own human resource departments under general law.<sup>4</sup> R.C. 305.23 however goes further to strengthen the position that under general law a county sheriff can have it own control over human personnel decisions by specifically excluding (thus reserving for each county office) important human resource functions by severely limiting the definition of human resources as follows:

...**"human resources" does not authorize a board of county commissioners to adopt a resolution establishing a centralized human resource service that requires any county office to conform to any classification and compensation plan, position descriptions, or organizational structure; to determine the rate of compensation of any employee appointed by the appointing authority of a county office or the salary ranges for positions of a county office within the aggregate limits set in the appropriation resolution of the board of county commissioners; to determine the number of or the terms of employment of any employee appointed by the appointing authority of a county office within the aggregate limits set in the board's appropriation resolution; or to exercise powers relating to the hiring, qualifications, evaluation, suspension, demotion, disciplinary action, layoff, furloughing, establishment of a modified work-week schedule, or the termination of any employee appointed by the appointing authority of any county office.** [emphasis added]<sup>5</sup>

It is clear, that under both R.C. Chapter 311 and Section 305.23, the general law in Ohio permits county sheriffs to retain internal control of many traditional human resource functions. This is important as our analysis now shifts back to the Charter after establishing what powers and duties are afforded to the Cuyahoga County Sheriff under the Charter through its reference to general law.

### Cuyahoga County Charter

The Charter provides direction on this matter. At the most basic level, Charter Section 9.05 establishes the Department of Human Resources ("HR").<sup>6</sup> More critically for our purposes, Charter Section 9.05 also defines HR's role and sphere of influence such that it "shall report to the County Executive and be responsible for management of all personnel matters **for employees of the County Executive** [emphasis added]."<sup>7</sup> The notion of whether the Sheriff's employees are exclusively "employees of the County Executive" is central to the question presented. If Sheriff's employees are exclusively employees of the County Executive, then HR is arguably fully responsible for all management and personnel matters related to them. However, if Sheriff employees are not exclusively

<sup>2</sup> <https://sheriff.franklincountyohio.gov/About/Divisions/Administrative-Services/Human-Resources>

<sup>3</sup> R.C. 305.23(B) in relevant part provides: "...a board of county commissioners may adopt a resolution establishing centralized purchasing, printing, transportation, vehicle maintenance, human resources, revenue collection, and mail operation services for a county office..." Also, R.C. 305.23 defines Sheriff's Office as "county office".

<sup>4</sup> R.C. 305.23(A)(1).

<sup>5</sup> R.C. 305.23(A)(1).

<sup>6</sup> Charter of Cuyahoga County Section 9.05.

<sup>7</sup> Charter of Cuyahoga County, Section 9.05.

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employees of the County Executive, then it may be possible and permissible for the Sheriff to maintain an internal human resources department or section. To answer this question, we must first determine what it means to be an employee of the County Executive. The Charter provides further direction.

The Charter does not define “employees of the County Executive” directly, but Charter Section 2.03(1) is informative on this point by giving the County Executive the power:

To appoint, suspend, discipline and remove all County personnel, including those appointive officers provided for in Article V hereof **and except those who, as provided by general law, are under the jurisdiction of officers, boards, agencies, commissions and authorities of the County other than the board of county commissioners**, and except those who are appointed by the Council pursuant to Section 3.09(1) of this Charter or by the Prosecuting Attorney.<sup>8</sup> [emphasis added]

This gives the County Executive broad employment powers over many County Employees, but it does not give him or her employment control over all of them. Charter Section 2.03(1) plainly carves out employees of the County Council and specifically the Prosecutor’s Offices from control by the by the Executive. Charter Section 2.03(1) also excepts from the County Executives control employees under the jurisdiction of county officers, as provided under general law, whom are not under the control of the board of county commissioners. As previously discussed, under general law a separately elected sheriff and his or her employees are not under the control of the board of county commissioners.<sup>9</sup> Further, while Charter Section 2.03(1) specifically extends the County Executive’s authority to the employees of Article V officers, who serve at the pleasure of the Executive, a ballot issue approved in 2019 removed the Sheriff as an Article V officer.

In 2019 the voters of Cuyahoga County changed the Charter by adding new Article XVI. Prior to 2019, The Sheriff was one of several officers appointed by the County Executive and confirmed by Council, who then serve at the pleasure of the County Executive.<sup>10</sup> Now, among other changes, the Sheriff is appointed for a four year term by the Executive, confirmed by the Council, but can only be removed for cause by the affirmative vote of at least eight (8) Council members pursuant to the new Charter Article XVI. This is a marked changed from the former framework and a marked difference with other Article V Directors; likewise, the Directors of Development and Human Resources serve at the pleasure of the Executive. Under the Charter, the Sheriff is one of only two department heads who does not serve at the pleasure of the Executive.<sup>11</sup> Arguably, one of the major impetus for new Charter Article XVI was to afford the Sheriff greater independence.<sup>12</sup> Logically, the independence the Sheriff now has under Charter Article XVI would be diminished, if not lost, if the County Executive retained unfettered control over all of the employees of the Sheriff.

Arguably, there is a conflict between the Authority of the sheriff under Charter Article XVI, Section 16.01, and Charter Sections 2.03(1) and 9.05. Where two provisions of law conflict, the specific provision controls over the general provision (BMI Fed. Credit Union v. Charlton, Court of Appeals of Ohio, 2017 Ohio App. Lexis 5183). Here, I am of the opinion Charter Sections 2.03(1) and 9.05 are provisions addressing Executive employees, generally, while Charter Article XVI, when read in its

<sup>8</sup> Charter of Cuyahoga County Section 2.03(1).

<sup>9</sup> See, General Law section above.

<sup>10</sup> Charter of Cuyahoga County Section 5.01. The voters amended Article V of the Charter to remove the Sheriff from Article V and create new Article XVI specially for the position of Sheriff on November 5, 2019.

<sup>11</sup> The other being the Director of Health and Human Services. Charter of Cuyahoga County Section 8.02. Notably, the HHS Director is NOT removable by Council as is the Sheriff.

<sup>12</sup> <https://www.cleveland.com/news/2019/11/voters-decide-cuyahoga-county-sheriff-charter-amendment-see-latest-results.html>

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entirety, is specific as to the authority of the Sheriff. The Sheriff's Article XVI authority read together with the fact that no Charter provisions specifically contradict the position that the Sheriff has control over his or her employees leads me to the conclusion that the Sheriff is authorized, under the Charter, to develop an internal human resources division.

### Cuyahoga County Code

Whereas nothing in the Charter or general law prohibits the Sheriff from maintaining his or her own human resources department or section, the Cuyahoga County Code ("Code") injects some possible ambiguity to our analysis, but the Code is of secondary importance under the priority of laws compared to the Charter. Code Section 202.07 was adopted in 2013, prior to the more recent Charter changes, and has not yet been updated to reflect any or all of the changes to the Charter.<sup>13</sup> In relevant part, Section 202.07 reads:

A. The Sheriff's Department is hereby established, and **it shall be its own appointing authority pursuant to the relevant provisions of the Cuyahoga County Charter.**

B. **The Sheriff's Department shall be under the direction of the County Sheriff.** The Sheriff's Department and its employees shall aid and assist the County Sheriff in carrying out the powers, duties, and responsibilities that are assigned to the Sheriff by the general law, the County Charter, and by County law. **With the approval of the County Executive, the Sheriff shall employ and supervise such number of deputies, assistants, and employees as are reasonably necessary to carry out the Department's functions.** All employees assigned to the County Sheriff are hereby assigned to the Sheriff's Department. Nothing in the Cuyahoga County Code is intended to limit the ability of the County Executive and the County Sheriff to abolish positions for the purpose of enhancing the efficiency of operations or for any other reason permitted by general law or County law. [emphasis added]

The first indication under the Code of whether the Sheriff or County Executive, or both, control the employees is not the most obvious one. Code Chapter 202, which contains 202.07, also contains other sections that establish other County Departments. Some of these other sections contain language Code Section 202.07 does not. For instance, Code Section 202.04 establishes the Department of Public Works "**under the supervision of the of the County Executive** and the Director of public works."<sup>14</sup> Other Code Sections establishing other County departments also contain similar, if not exact references, to the departments being established under the supervision or direction of the County Executive, including the Departments of Public Safety and Justice Services (Section 202.012(C)), Regional Collaboration (Section 202.13(A)), Communications (Section 202.13(B)), Consumer Affairs (Section 202.16(A)(1)), Sustainability (Section 202.18(A)(1)), and Equality and Inclusion (Section 202.21(A)). Unlike other Department described in Code Chapter 202, the Sheriff's Department is not under the supervision of the County Executive. This is consistent with language in Charter Section 16.01(1), and reinforces the position that the Sheriff controls the employment of Sheriff Department employees. In addition to being one of only two department heads not serving at the pleasure of the Executive, the Sheriff also holds the distinction of being one of only two Charter officer appointed by the Executive but removable only by County Council - the other being the Inspector General (which, by its very nature, must be independent of the Executive).<sup>15</sup> This important distinction sets the Sheriff's Department apart from all other County departments.

<sup>13</sup> Cuyahoga County Ordinance O2012-0030, Enacted 1/22/2013.

<sup>14</sup> Cuyahoga County Code Section 202.04(A).

<sup>15</sup> Charter of Cuyahoga County Article XV.



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Code Section 202.07 is not however silent on the role of the role of County Executive respecting the Sheriff's ability to employ and supervise employees. Rather than "under the supervision" or "under the direction" of the County Executive, Section 202.07 states that "**With the approval of the County Executive**, the Sheriff shall employ and supervise such number of deputies, assistants, and employees as are reasonably necessary to carry out the Department's functions. [emphasis added]"<sup>16</sup> Taken plainly, this indicates that the Sheriff may employ and supervise departmental employees, including an internal human resources department or section, so long as the County Executive approves of the same. Code Section 202.07 does not stipulate what happens in the event the County Executive does not approve of such employment and supervision. This language also creates the potential for confusion and conflict between the more recently adopted Charter Section 16.01 and Code Section 202.07 in that Charter Section 16.01 contemplates greater independence than Code Section 202.07. It is clear, however, that where the Code conflicts with the Charter, the Charter prevails. And contained in Code Section 202.07, or any Code Section, prohibits the Sheriff's Department from creating or maintaining its own internal human resources department or section.

### Conclusion

It is the Law Department's opinion that the Cuyahoga County Sheriff may employ and supervise its own internal human resources department or section independent from the County Department of Humans Recourses. We find no legal basis under Ohio general law, the Charter of Cuyahoga County, or the Cuyahoga County Code prohibiting the Sheriff from doing so. There is similarly no legal reason or prohibition on any such internal human department or section within the Sheriff's Department from working with and leveraging the current resources and services of the County's Department of Humans Resources.

The Law department also recommends Section 202.07 be considered for possible amendment to delete references to the County Executive to eliminate the potential for confusion or conflict with Article XBVI of the Charter.

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<sup>16</sup> Cuyahoga County Code Section 202.07(B).