



Michael C. O'Malley
CUYAHOGA COUNTY PROSECUTOR

**CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION
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TO: Harold A. Pretel, Cuyahoga County Sheriff
Aaron Reese, Chief Deputy, Cuyahoga County Sheriff's Department

FROM: Michael C. O'Malley, Cuyahoga County Prosecutor
David G. Lambert, Chief, Civil Division

DATE: December 5, 2025

RE: Request for Legal Opinion- Sheriff's Authority as Appointing Authority
under the Cuyahoga County Charter

You have requested an opinion from the Cuyahoga County Prosecutor's Office regarding your authority over personnel decisions and fiscal operations within the Sheriff's Department. Specifically, you have asked whether you are an appointing authority under the Cuyahoga County Charter. In addition, you have asked whether your status as the duly appointed Sheriff confers upon you sole authority over your employees, including your fiscal staff. In that vein, you ask whether the County Fiscal Office may assume control or supervisory authority over the Sheriff's Fiscal Department or employees, and exercise that authority by "transferring" them to the County Fiscal Office, or whether such an act could violate the Charter's provisions whereby you maintain independent authority to hire, discipline, and remove employees under your command.

Your Status as an Appointing Authority Under the Charter and General Law

To answer your questions, our analysis must begin with Cuyahoga County Charter Section 16.01. That section clearly provides that the Cuyahoga County Sheriff is an appointing authority. Article XVI, Section 16.01(1) of the County Charter expressly states as follows:

(1) 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)

* Further, Article IX, Section 9.04, of the County Charter also provides that “The County Executive and the officers, offices, agencies, departments, boards and commissions and other public bodies, who under this Charter or under general law are authorized to employ persons in the service of the County, shall be appointing authorities.” (emphasis added). Thus, under both Section 16.01 and 9.04, the County Sheriff is an appointing authority.

Thus, your status as an appointing authority is provided for both in the Charter itself and pursuant to the general law of Ohio. This fundamental fact provides the key to the resolution of your inquiry. The Ohio Supreme Court has recognized that the power to appoint includes the power to discipline and remove employees. *See State ex rel. Minor v. Eschen*, 74 Ohio St.3d 134, 139 (1995)(finding that the power of removal is incident to the power of appointment); *State ex rel. Andrews v. Lake Cty. Court of Common Pleas*, 170 Ohio St.3d 354, 2022-Ohio-4189, ¶ 32 (authority to appoint deputies necessarily implies authority to supervise and manage them). Further, the Supreme Court has stated that “[i]n order for the power to employ to have any significance, it must, of necessity, include the power to fix the compensation of such employees.” *Ebert v. Stark Cty. Bd. of Mental Retardation*, 63 Ohio St.2d 31, 33 (1980).

Charter Section 16.01 provides that the Sheriff is to possess all powers and duties “...vested in or imposed upon county sheriffs by general law.” Further, this authority is explicitly provided for in the Revised Code which is part of the “general law” of Ohio. General law concerning the powers and duties vested in county sheriffs provides that he has the power to appoint and employ the necessary employees for the sheriff’s office. *See* R.C. 311.04; R.C. 325.17. Under R.C. 311.04, a sheriff may appoint one or more deputies. Moreover, pursuant to R.C. 325.17, the sheriff may also appoint and employ additional employees. R.C. 325.17 provides in pertinent part that:

The officers mentioned in section 325.27¹ of the Revised Code may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, shall fix the compensation of those employees and discharge them, and shall file certificates of that action with the county auditor. The employees’ compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for that office. When so fixed, the compensation of each such deputy, assistant, bookkeeper, clerk, and other employee shall be paid biweekly from the county treasury, upon the warrant of the county auditor. The amount of the biweekly payment shall be adjusted so that the total amount paid out to an employee over a period of one year is equal to the amount the employee would receive if the employee were paid semi-monthly.

¹ The officers mentioned in R.C. 325.27 include “a county auditor, county treasurer, probate judge, **sheriff**, clerk of the court of common pleas, county engineer, or county recorder.” R.C. 325.27 (emphasis added).

R.C. 325.17 (emphasis added). Consequently, the general law expressly provides that sheriffs may appoint and employ the necessary employees for their offices, including the necessary deputies, assistants, clerks, bookkeepers, or other employees. This is a broad power of appointment, which would mean the Sheriff may appoint and employ all the necessary employees for the Sheriff's Office, including a human resources department, a fiscal department, or any other necessary department for the Office. This is a power vested in the Sheriff by general law and the Charter. As if to emphasize this result, the Charter confers the status of appointing authority upon the Sheriff in two places, to wit, both in Section 16.01 and in Section 9.04.

Further, you are the sole appointing authority for your office. While the County Charter does provide the County Executive with certain powers of appointment over certain county personnel, those powers are expressly circumscribed by the Charter. Article II, Section 2.03(1) of the Charter, provides that:

The County Executive shall have all the powers and duties of an administrative nature under this Charter and such powers and duties of an administrative nature, except as otherwise provided herein, as are vested in or imposed upon boards of county commissioners by general law. Such powers and duties include, but are not limited to, the following:

(1) 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. (emphasis added).

Thus, the Charter does not provide the County Executive with the power to appoint, suspend, discipline or remove employees, who as provided by general law, are under the jurisdiction of officers of the County other than the board of county commissioners. This would include employees of the County Sheriff, who are under your jurisdiction as a county officer authorized by R.C. 325.17 to "appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, shall fix the compensation of those employees and discharge them."

Our opinion is not affected by the fact that the County currently operates a central Human Resources Department. While R.C. 305.23 does authorize the centralization of certain "human resource services," it also makes clear that the provision of such services does not diminish your control over personnel decisions concerning your employees. It does this by specifically excluding, and thus reserving to the appointing authority of a county office, important human resource functions. That limitation is contained in the statutory definition of human resources in R.C. 305.23(A)(2) as follows:

“Human resources” means any and all functions relating to human resource management, including civil service, employee benefits administration, collective bargaining, labor relations, risk management, workers’ compensation, unemployment compensation, and any human resource management function required by state or federal law, but “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)

Thus, under R.C. Chapter 311, R.C. 325.17 and R.C. 305.23, the general law in Ohio vests county sheriffs with appointing authority which necessarily includes maintaining its own personnel and fiscal departments.

You have reported that the County Executive has ordered your employees performing fiscal functions to begin to report to another office, namely the office of the Fiscal Officer. You have asked for an opinion as to the legality of such an order under the Charter and general law. It is unclear what authority is being relied upon by the County Fiscal Office to justify its right to assume control over employees within the fiscal department of the County Sheriff. However, the Charter and general law establish that the Sheriff alone has the authority to hire, discipline, and remove employees under his command. There does not appear to be a legal basis under the Charter or general law for someone other than you to “transfer” these employees to a different appointing authority within the County.

Any attempt to rely upon a County ordinance to modify or reduce your appointment authority, which authority is expressly provided by for in both the County Charter and general law, would create a conflict between the plain language of the Charter and the ordinance. That conflict would render the ordinance invalid. It is a fundamental principle in a charter form of government that the charter is essentially the “constitution” of the governmental body and represents the framework within which the government must operate. *Cleveland ex rel. Neelon v. Locher*, 25 Ohio St.2d 49, 51 (1971); *State ex rel. Pell v. Westlake*, 64 Ohio St.2d 360 (1980).

As the Ohio Supreme Court has held: “If the members of a legislative body can ignore, with impunity, the mandates of a constitution or a [county] charter, then it is certain that the faith of the people in constitutional government will be undermined and eventually eroded completely.” *Neelon, supra*, at 52. No ordinance can conflict with the provisions of a charter and be effective. *Reed v. Youngstown*, 173 Ohio St. 265 (1962), paragraph two of the syllabus. Moreover, “when

the provisions of an ordinance are prohibited by it, the charter will prevail.” *Morris v. City of Brook Park*, 8th Dist. No. 49630, 1985 Ohio App. LEXIS 8994, *3 (Oct. 24, 1985).

Additionally, when the language of a charter “is plain, clear, and unambiguous, such language must be given its usual and ordinary meaning.” *Deluca v. City of Aurora*, 144 Ohio App. 3d 501, 510 (11th Dist. 2001). “In matters of construction, it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used.” *State ex rel. Cater v. City of N. Olmsted*, 69 Ohio St.3d 315, 324, 1994-Ohio-488. Thus, when the intent of a charter provision is clear, “it may not be enlarged, restricted, or abridged.” *Deluca, supra*, at 511.

Ohio courts have repeatedly held that: “[l]egislative deference to [county] charter provisions is fundamental to the charter form of government and is necessary to assure ‘the faith of the people in constitutional government.’” *Deluca, supra*, at 512 (citing *Cater, supra*). A conflict exists if the ordinance restricts what the Charter permits. *See generally, State ex rel. Morrison v. Beck Energy Corp.*, 2015-Ohio-485; *State ex rel. King v. Summit County Council*, 99 Ohio St.3d 172, 2003-Ohio-3050, ¶ 35-40 (holding that the test for establishing a conflict is if one provision permits what another prohibits, and vice versa).

Here, it appears that there has been an attempt to improperly limit the appointing authority of the County Sheriff through an ordinance that is in conflict with the County Charter. Cuyahoga County Code Section 202.07, entitled “Sheriff’s Department”, the ordinance provides, in pertinent part, as follows:

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.

Cuy.Co. Code, Section 202.07 (emphasis added). In subsection A of Section 202.07, it supports the express language of the Charter that the Sheriff is an appointing authority. However, the very next subsection attempts to limit the appointing authority of the Sheriff by providing that the Sheriff’s employment of his employees must be “with the approval of the County Executive.” See Section 202.07(B). This limiting provision is invalid as it is in conflict with the plain language of the Charter, which provides that the Sheriff is an appointing authority and has the powers vested in sheriffs by general law. See Charter, Article XVI, Section 16.01.

As addressed above, it is also in conflict with the general law of Ohio, which expressly provides that sheriffs themselves may appoint and employ the necessary employees for their offices, including the necessary deputies, assistants, clerks, bookkeepers, or other employees. There is no limitation in either the Charter or general law that requires the Sheriff to first obtain approval from the County Executive for his appointment decisions. Thus, any ordinance seeking to require such approval is in conflict with the Charter and is consequently invalid as the Charter prevails over the ordinance.

Conclusion:

In conclusion, it is the opinion of this Office that as the duly appointed Sheriff of Cuyahoga County you are an independent appointing authority under Cuyahoga County Charter, Article XVI, Section 16.01, and general law. As Sheriff you maintain independent authority to hire, discipline, assign and remove employees under your command. You further possess the authority to assign work to your employees. The County Fiscal Officer does not possess the authority to control or supervise your employees, nor to re-assign your employees to another County office.

I trust this is sufficient for your purposes.