

Re: Fwd: Records Request 9.23.2023

From: Jack M. Hall for Lorain County Sheriff (jack.hall@hallforsheriff.com)

To: a4xbeaverman@yahoo.com

Date: Wednesday, September 25, 2024 at 11:29 AM EDT

Thank you for providing the information received from the City of Lorain regarding Mr. Resendez's SF-400 form.

Below is my opinion regarding his status as a "Special" police officer.

According to the SF-400 form you have received, Richard Resendez is appointed by Lorain Safety Director Sanford Washington as a "special" police officer with the City of Lorain in alignment with Ohio Revised Code Section 737.051. The Code states in part, "The legislative authority of a city may establish, by ordinance, an auxiliary police unit within the police department of the city, and provide for the regulation of auxiliary police officers." Please note, the Code does not confer any powers of arrest or other duties commonly vested with commissioned police officers.

Of special note, Resendez is defined pursuant to his appointment by the City of Lorain as a "Special" police officer and not an "Auxiliary" officer. Other "Special" police officers that have been appointed by the City of Lorain include Ernest "Buddy" Sivert. The appointment was from 2/4/2021 until 12/2/2022. Sivert was appointed the same date as Resendez but resigned from his appointment to begin employment with the Lorain County Constables on 2/21/2022 - the same date as Resendez.

Other officers appointed as "Special" police officers with Lorain Police Department include: Efrain Torres, David Kuszniir, Ricardo Soto, Reuben Figueroa, John Manion, Keith Riggs and Jeremy Tavenner.

In searching for appointments of Auxiliary Police Officers for the City of Lorain pursuant to R.C. 737.051, I could not locate any officers appointed as auxiliary officers. Even the auxiliary chief of police Malick is listed as "Inactive." Chief Malick is a former full time Lorain Police Officer.

Next, we need to address the commissioning of officers as well pursuant to the definition of "peace officer" as well as those who are conferred the authority of arrest under the Ohio Revised Code.

The SF-400 form as prescribed by the Ohio Peace Officer Training Commission and recorded by the Ohio Attorney General is to provide official notice of "Peace Officer Appointment" by a "Reporting Authority" which is usually an administrative member of a recognized law enforcement agency in the State of Ohio. The appointment is confirmed by the peace officer being administered an oath of office by the appointing authority which is a political subdivision or other recognized authority to appoint peace officers in Ohio (i.e. banks, railroads, nuclear regulatory commissions, etc...).

A "Peace Officer" is defined under Ohio Revised Code Section 2935.01 as, "... except as provided in section 2935.081 of the Revised Code, a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to section 737.04 of the Revised Code; member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code; member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code; state university law enforcement officer appointed under section 3345.04 of the Revised Code; enforcement agent of the department of public safety designated under section 5502.14 of the Revised Code; employee of the department of taxation to whom investigation powers have been delegated under section 5743.45 of the Revised Code; employee of the department of natural resources who is a natural

resources law enforcement staff officer designated pursuant to section 1501.013 of the Revised Code, a forest-fire investigator appointed pursuant to section 1503.09 of the Revised Code, a natural resources officer appointed pursuant to section 1501.24 of the Revised Code, or a wildlife officer designated pursuant to section 1531.13 of the Revised Code; individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code; veterans' home police officer appointed under section 5907.02 of the Revised Code; special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code; police constable of any township; police officer of a township or joint police district; a special police officer employed by a municipal corporation 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; the house of representatives sergeant at arms if the house of representatives sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code; an assistant house of representatives sergeant at arms; the senate sergeant at arms; an assistant senate sergeant at arms; officer or employee of the bureau of criminal identification and investigation established pursuant to section 109.51 of the Revised Code who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program and who is providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer pursuant to section 109.54 or 109.541 of the Revised Code; a state fire marshal law enforcement officer described in division (A)(23) of section 109.71 of the Revised Code; a gaming agent, as defined in section 3772.01 of the Revised Code; and, for the purpose of arrests within those areas, for the purposes of Chapter 5503. of the Revised Code, and the filing of and service of process relating to those offenses witnessed or investigated by them, the superintendent and troopers of the state highway patrol."

Further, Section 109.71 of the Revised Code defines a peace officer as the following:

(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 natural resources officer appointed pursuant to section 1501.24, a forest-fire investigator appointed pursuant to section 1503.09, or a wildlife officer designated pursuant to section 1531.13 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 and addiction services pursuant to section 5119.08 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 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;

(25) An employee of the state board of pharmacy designated by the executive director of the board pursuant to section 4729.04 of the Revised Code to investigate violations of Chapters 2925., 3715., 3719., 3796., 4729., and 4752. of the Revised Code and rules adopted thereunder.

Richard Resendez is appointed as a "Special" police officer pursuant to the City of Lorain which is a political subdivision of the State of Ohio and has the authority to confer appointments of peace officers. The Lorain Police Department is a recognized municipal police department by the Ohio Peace Officer Training Commission and the Office of the Ohio Attorney General. Resendez is not appointed as a municipal police officer.

In review of the above-listed sections of the Ohio Revised Code which define a "Peace Officer," Special Police Officer is identified as a peace officer under Ohio law in the following circumstances:

- One who is employed by the department of mental health and addiction services pursuant to section 5119.08 of the Revised Code or the department of developmental disabilities pursuant to section 5123.13 of the Revised Code;
- One who is 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;
- One who is 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;
- One who is 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;

None of the peace officer definitions apply to an individual who is employed by an organized municipal police department who are, "... part-time employees, to be known as special policemen, during holidays or other special occasions," as defined by Lorain City Ordinance 131.04 entitled, "Special Police."

The Revised Code Sections which pertain to defining peace officers are very specific as intended by the Ohio General Assembly. In fact, the Lorain City legislative authority acted with parallel specificity when defining Special Police Officers and Auxiliary Police Officers. Per Lorain City Ordinance 131.05 it states in-part, "Pursuant to the provisions of Section 737.051, Ohio Revised Code, there is hereby established a Reorganized Lorain Police Auxiliary Unit within the Lorain Police Department, which auxiliary unit shall continue to be known as the Lorain Police Auxiliary, and which shall be subject to the following:"

Lorain City Council defined auxiliary police officers as, "within the Lorain Police Department," - an organized municipal police department. However, Lorain City Council never included Special Police Officers as members of the organized municipal police department. Additionally, Lorain City Ordinance does not state that Special Police Officers are established pursuant to Revised Code Section 737.051.

Additionally, Auxiliary Police Units and Special Police are granted specific authorities by their political subdivisions. Lorain City Council has not granted the auxiliary police unit or special police powers of arrest or to act as peace officers as defined by the Ohio Revised Code. Peace officer definitions and appointments have been argued above and powers of arrest without warrant are reserved for peace officers and other very specific circumstances as defined by Revised Code 2935.03.

In contrast, examples of municipal corporations who have granted peace officer and arrest authorities to auxiliary and special police are enumerated below:

Madeira, Ohio Auxiliary Police Officer Ordinance:

- § 32.09 AUXILIARY POLICE UNIT ESTABLISHED. (A) An auxiliary police unit is established within the Police Department of the city. The City Manager shall be the executive head of the unit and shall make all appointments of officers to and removals of officers from the unit. The Manager shall prescribe rules and regulations for the organization, training, administration, control and conduct of the unit and the members thereof. The members of the unit shall be volunteers and shall not be entitled to receive compensation as officers thereof or for any services or duties performed by them while acting as officers thereof except for reimbursement of expenses as may be specifically prescribed by the Manager, and, in such event, the Manager shall also prescribe the amount of reimbursement for such expenses. (B) ***Officers of the auxiliary police unit shall and are hereby vested with all police powers including the power to pursue, arrest and detain persons violating the law of the state and ordinances of the city in accordance with such written policies and regulations as may be approved by the City Manager and Chief of Police.*** (C) The City Manager shall state the period for which the officer or officers are to serve and the power vested in the officers. However, the Manager shall have the authority to re-deputize any officer upon expiration of the term. (1985 Code, § 32.09) (Ord. 90-85, passed 12-17-1990; Ord. 92-14, passed 4-6-1992)

Dayton, Ohio Special Police Ordinance:

- The powers and duties of all persons licensed under the provisions of §§ 112.180 through 112.195 shall be:

(A) To obey the orders of the Director of Police.

(B) To be permitted to carry arms and have the power of arrest only when on duty and in the scope of his employment and then only in compliance with R.C. § 2923.12.

(C) To obey and comply with all rules and regulations for special police officers and special police agencies as set forth by the Director of Police.

(D) When on duty and in the scope of his employment a special police officer:

1. May work in uniform or not in uniform; provided, however, that any uniform that is worn shall be approved as to color and style by the Director of Police.

2. When in uniform shall wear a shoulder patch on the left sleeve, bearing the name of the agency by whom employed, the color and design to be approved by the Director of Police.
3. When in uniform shall wear the special police badge issued by the city on the left breast of the outermost garment.
4. May drive a vehicle in the course of his employment only after the color, equipment, and apparatus have been approved by the Director of Police. The Director of Police may waive the uniform and badge requirements for any industrial manufacturer or other private business concern which employs its own guard or security force and requires them to be licensed special police officers.

(E) A special police officer who notifies the Department of Police of the commission of a crime shall not, after such notification, conduct an investigation into the matter without the consent of the Department of Police. During an investigation of any crime, the Department of Police reserves the right to stop a special police officer from investigating or interfering in any way with the Department of Police.

Qualifications for persons to be eligible for sheriff under Ohio Revised Code Section 311.01 include:

- The qualified applicant will hold a current valid peace officer certificate of training issued by the Ohio Peace Officer Training Commission or have been issued a certificate of training pursuant to section 5503.05 of the Revised Code; or,
- The qualified applicant will have been employed full-time by a law enforcement agency performing duties related to the enforcement of statutes, ordinances, or codes for a minimum of thirteen consecutive pay periods within the four-year period prior to the qualification date.

I believe Rich Resendez is not qualified to be eligible for the office of Lorain County Sheriff for the following reasons:

- Resendez does not currently possess a "valid" peace officer training certificate pursuant to ORC 5503.05 as his peace officer certification is based upon attestation of the Lorain Police Department and appointment by the City of Lorain to a position that is not recognized by Ohio Law as a defined peace officer. The Ohio Peace Officer Training Commission shall be informed of this issue for appropriate disposition of his certificate which includes revocation of his peace officer certification.
- Resendez has not been employed full-time by a law enforcement agency performing duties related to the enforcement of statutes, ordinances or codes for a minimum of thirteen consecutive pay periods within a four-year period prior to the qualification date of January 6, 2025.
 - Resendez was last employed full time by the Lorain County Sheriff's Office from 9/5/2017 through 1/4/2021. This full time employment is outside the four-year period prior to the qualification date of January 6, 2025.
 - Resendez was employed as a full time "Constable" from February 21, 2022 through March 21, 2023 with Sheffield Township. However, this status as a Constable was deemed incompatible with his position as lead investigator or lead Secret Service Agent for the Lorain County Prosecutor's Office which he began in January, 2021. A Secret Service Agent is appointed pursuant to Ohio Revised Code Section 309.07 and is not considered a peace officer under Ohio Law. They simply assist the prosecutor in the collection and discovery of evidence to be used in trial. However, a secret service agent is considered a law enforcement officer in Lorain County for these purposes but does not enforce statutes, ordinances or codes nor do they make warrantless arrests.
 - In a 2023 Ohio Attorney General Opinion, Ohio Attorney General Dave Yosts found the positions of Township Constable (Sheffield Township) and Secret Service Agent for the Prosecutor's Office (Lorain County) were incompatible due to overlying jurisdictions in the same county and giving way to conflicts of interest.
 - Due to the attorney general opinion, the Sheffield Township constables (known by the Ohio Peace Officer Training Commission as the "Lorain County Constables" was abolished.
 - Additionally, Resendez was on the payroll full-time as an employee of the Lorain County Prosecutor's Office. To date, no records have been located that Resendez or any constable was a full-time employee of Sheffield Township where the Lorain Constables Department was recognized and Sheffield Township Trustee Chad Parsons was recognized as the Chief of Police. Please note, Chad Parsons does not hold an Ohio Peace Officer Training Certification. Thus, Resendez was not a full time law enforcement officer for purposes of complying with R.C. 311.01

I believe this issue should be brought before the administrative judge of the Lorain County Common Pleas Court for review of the application for qualification to be sheriff as I feel the "Order of Candidacy" issued by Judge Ewers may have been issued based upon misleading information.

Aaron Knapp



Jack M. HALL
FOR LORAIN COUNTY SHERIFF

FEEL SAFE, AGAIN

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PAID FOR BY THE COMMITTEE TO ELECT HALL FOR SHERIFF

The graphic features a dark blue background with a gold star containing the word 'SHERIFF'. A photograph of Jack M. Hall in a suit is positioned on the right side of the banner.

 jack_hall.vcf
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