May 19, 1995

OPINION NO. 95-011

The Honorable Russell V. Leffler
Huron County Prosecuting Attorney
85 Benedict Avenue
Norwalk, Ohio 44857

Dear Prosecutor Leffler:

You have requested an opinion concerning the transportation of arrestees from one county to another county. By way of background, you state that individuals arrested by municipal police officers without a warrant for violation of the laws of this state are transported to the county jail for detention. If the county jail is full, the individuals are transported to the county jail of an adjacent county for detention. Based upon these facts, you wish to know whether the municipal police departments or county sheriff is required to transport these individuals from the Huron County jail to the county jail of an adjacent county.[1]

County Sheriff's Duty to Detain Individuals in the County Jail

Pursuant to R.C. 2935.03(A), a municipal police officer is authorized to arrest an individual without a warrant for a violation of a law of this state and detain him until a warrant can be obtained. *See* 1993 Op. Att'y Gen. No. 93-003 at 2-22. After making a warrantless arrest, a municipal police officer must take the individual before a court or magistrate having jurisdiction of the offense[2] and

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[1] The authority of the Attorney General to give legal advice to county prosecuting attorneys arises under R.C. 109.14, which requires the Attorney General, when requested, to advice county prosecuting attorneys concerning matters relating to their official duties. Because a county prosecuting attorney has no duty to provide legal advise to municipal corporations or their officials, *see* R.C. 309.09; 1993 Op. Att'y Gen. No. 93-003 at 2-21 n.1, I am unable to provide you with an opinion concerning the duties of a municipal police department with respect to the transportation of arrestees from one county to another county. A county prosecuting attorney, however, must provide legal advice to the county sheriff, insofar as the county sheriff is a county officer. Op. No. 93-003 at 2-21 n.1; *see* R.C. 309.09(A). This opinion thus will address the duty of a county sheriff to transport from the county jail to another county jail an individual who was arrested by a municipal police officer without a warrant for violation of the laws of this state.

[2] According to R.C. 2901.02(A), the term "offense" includes "aggravated murder, murder,

file or cause to be filed a complaint describing the offense for which the individual was arrested. R.C. 2935.05; Ohio R. Crim. P. 4(E)(2). An individual arrested by a municipal police officer for an offense may be detained in order to allow time to obtain a warrant, or summons in lieu of a warrant, and to secure a subsequent appearance before the court to answer the charge. R.C. 2935.03(A); *see* 1988 Op. Att'y Gen. No. 88-060 at 2-302.

In Ohio, the responsibility for the detention of an individual before his initial appearance is based on whether the individual is classified as a county or municipal prisoner. Op. No. 88-060; 1979 Op. Att'y Gen. No. 79-008 at 2-22 (overruled, in part, on other grounds by 1986 Op. Att'y Gen. No. 86-003). In Op. No. 88-060, one of my predecessors examined the duty of the county sheriff to detain in the county jail alleged misdemeanants arrested by municipal police officers or troopers of the State Highway Patrol and concluded as follows:

> Classification of prisoners as either municipal prisoners or county prisoners has long been recognized by prior opinions of the Attorney General. One of my predecessors explained the classification as being based on the nature of the charges brought:
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> It is quite clear that under the statutes of Ohio, the counties, on behalf of the state and the municipalities, have certain responsibilities for board and maintenance of prisoners. From an examination of the many statutes touching on this subject matter, I also believe that it is quite clear that, except to the extent specifically directed by statute, a municipality has such responsibility only for "municipal prisoners." I do not find, however, any statutes or decisions of Ohio courts, or previous opinions of this office, defining precisely what is meant by "municipal prisoners."...
>
> It is my opinion that the distinction is based solely on whether the violation is that of a municipal ordinance. The fact that the convicting court is designated as a mayor's court or a municipal court, supported at least in part by the municipal corporation, appears to be of no consequence in the consideration of this question. My opinion in this regard is in accord with what I understand has been the long accepted practice in Ohio and is fully supported by the reported authorities outside of Ohio. (Citation omitted.)

1952 Op. Att'y Gen. No. 1138, p. 121, 123. *See also* 1979 Op. Att'y Gen. No. 79-008, p. 2-22 ("responsibility for the housing of a prisoner depends upon the basis of the offense with which he has been charged or convicted"); 1978 Op. Att'y Gen. No. 78-019; 1976 Op. Att'y Gen. No. 76-012; 1956 Op. Att'y Gen. No. 6768, p. 483; 1955

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aggravated felonies of the first, second, and third degree, felonies of the first, second, third, and fourth degree, misdemeanors of the first, second, third, and fourth degree, minor misdemeanors, and offenses not specifically classified."

> Op. Att'y Gen. No. 5561, p. 317 (where a prisoner is arrested by a city police officer, and held in the county jail to await the filing of formal charges, the responsibility to feed the prisoner rests with the county if the prisoner is charged with a state offense, but rests with the municipality if the prisoner is charged with a municipal offense). The formulation of this "charging test" was expressly expanded to include those charged but not convicted:

> [A] municipal prisoner is one who has been *charged with* or sentenced for *violation of a municipal ordinance* and responsibility for the sustenance and care of such a prisoner rests with the municipality; and a county prisoner is one *charged with* or sentenced by the county for *violation of a state statute* and responsibility for the sustenance and care of such prisoner rests with the county. (Emphasis added.)

> Op. No. 76-012, p. 2-36. Op. No. 76-012 was expressly followed in Op. No. 79-008, in which my predecessor concluded in the syllabus that "The county is charged with the duty to house a prisoner charged with a misdemeanor under state law, both prior to and after conviction." In reviewing the Revised Code and the opinions of my predecessors I see nothing to indicate that the duty of the county sheriff to hold a person being detained after arrest turns upon whether the arrest was made by a municipal police officer, highway patrolman, or deputy sheriff. To the contrary, the status of the arresting officer is irrelevant to this determination.

> Op. No. 88-060 at 2-303 and 2-304.

Op. No. 88-060 thus determined that a county is required to detain an individual before his initial appearance if the individual is charged with a violation of a state statute. Concomitantly, if the individual is charged with a violation of a municipal ordinance, the municipal corporation is required to detain the individual. Accordingly, a county sheriff has a duty to detain in the county jail an individual arrested without a warrant by a municipal police officer for any violation of the laws of this state. *Accord* 1928 Op. Att'y Gen. No. 2246, vol. II, p. 1505; *see* Op. No. 79-008.

A County Sheriff Must Transport Arrestees to the Jail of Another County

Pursuant to R.C. 341.01, the county sheriff has a duty to keep safely all prisoners confined in the county jail. However, if the county jail is full, R.C. 341.12-.14 authorize the county sheriff to convey any prisoner in his custody to the jail of another county. R.C. 341.12 provides for the removal of prisoners from one county to another as follows:

> *In a county not having a sufficient jail or staff, the sheriff shall convey any person charged with the commission of an offense,* sentenced to imprisonment in the county jail, or in custody upon civil process, *to a jail in any county which the sheriff considers most convenient and secure.*

> The sheriff may call such aid as is necessary in guarding, transporting, or returning such person. Whoever neglects or refuses to render such aid, when so called upon, shall forfeit and pay the sum of ten dollars, to be recovered by an action in the name and for the use of the county.
> Such sheriff and his assistants shall receive such compensation for their services as the county auditor of the county from which such person was removed considers reasonable. The compensation shall be paid from the county treasury on the warrant of the auditor. (Emphasis added.)

R.C. 341.13 requires the county sheriff of a county to which a prisoner has been conveyed to receive the prisoner into his custody upon being furnished a copy of the process or commitment. 1986 Op. Att'y Gen. No. 86-105 at 2-576. The county sheriff of an adjoining county, however, is not required to receive prisoners under R.C. 341.12 "unless there is deposited with him, in addition to all fees allowed him by law, fifty cents per week for the use of the jail of such county for each prisoner so committed, and the same amount for a period of time less than one week." R.C. 341.14; *see* Op. No. 86-105 at 2-576.

Accordingly, if the county jail is full, the county sheriff is required to convey any prisoner who has been accused of a crime to the jail of any county which the sheriff deems most convenient and secure. R.C. 341.12; *see* Op. No. 86-105; 1981 Op. Att'y Gen. No. 81-042. *See generally Dorrian v. Scioto Conserv. Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (the use of the word "shall" indicates that the procedure set forth therein is mandatory). I conclude, therefore, that, where the jail of a county is insufficient to house an individual arrested without a warrant by a municipal police officer for any violation of the laws of this state, the county sheriff is required, pursuant to R.C. 341.12, to transport the individual to the jail of any county which the sheriff deems most convenient and secure.

Conclusion

In light of the foregoing, it is my opinion and you are advised that:

1. A county sheriff has a duty to detain in the county jail an individual arrested without a warrant by a municipal police officer for any violation of the laws of this state. (1988 Op. Att'y Gen. No. 88-060, approved and followed.)

2. Where the jail of a county is insufficient to house an individual arrested without a warrant by a municipal police officer for any violation of the laws of this state, the county sheriff is required, pursuant to R.C. 341.12, to transport the individual to the jail of any county which the sheriff deems most convenient and secure.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

May 19, 1995

The Honorable Russell V. Leffler
Huron County Prosecuting Attorney
85 Benedict Avenue
Norwalk, Ohio 44857

SYLLABUS: 95-011

1.A county sheriff has a duty to detain in the county jail an individual arrested without a warrant by a municipal police officer for any violation of the laws of this state. (1988 Op. Att'y Gen. No. 88-060, approved and followed.)

2.Where the jail of a county is insufficient to house an individual arrested without a warrant by a municipal police officer for any violation of the laws of this state, the county sheriff is required, pursuant to R.C. 341.12, to transport the individual to the jail of any county which the sheriff deems most convenient and secure.