

OPINION NO. 95-033**Syllabus:**

The Adult Parole Authority is not required to transport from the county jail to the court of common pleas a probationer under its supervision who is arrested pursuant to R.C. 2951.08. A probationer of the court of common pleas who is arrested pursuant to R.C. 2951.08 and detained in the county jail must be transported to the court of common pleas by the county sheriff.

To: Reginald A. Wilkinson, Director, Department of Rehabilitation and Correction, Columbus, Ohio; Paul F. Kutscher, Jr., Seneca County Prosecuting Attorney, Tiffin, Ohio
By: Betty D. Montgomery, Attorney General, October 10, 1995

You have each requested an opinion whether R.C. 2951.08 requires the Adult Parole Authority (APA) to transport an arrested probationer from the county jail to the court of common pleas. Information provided indicates that the probationers are placed on probation by the Seneca County Court of Common Pleas. The Seneca County Court of Common Pleas has neither established a probation department in the county pursuant to R.C. 2301.27(A) nor requested the board of county commissioners to enter into a contract with any nonprofit, public or private agency, association, or organization for the provision of probation services, *see* R.C. 2301.27(B). Instead, the court of common pleas has entered into a contract with the APA whereby the court places probationers under the supervision of the APA. R.C. 2301.32(B); *see* 1980 Op. Att'y Gen. No. 80-084 at 2-334; *see also* R.C. 5149.06(A) (the section on probation development and supervision of the APA, "within limits of available personnel and funds, may supervise selected probationers from local courts"). Pursuant to this contract, the APA is vested with the same powers and duties that are imposed upon a county department of probation. *See* R.C. 2951.05.

R.C. 2951.08 states, in relevant part:

(A) During a period of probation, any field officer or probation officer may arrest the person on probation without a warrant and bring him before the judge or magistrate before whom the cause was pending. During a period of probation, any peace officer may arrest the person on probation without a warrant upon the written order of the chief county probation officer if the person on probation is under the supervision of that county department of probation or on the order of an officer of the adult parole authority created pursuant to section 5149.02 of the Revised Code if the person on probation is under the supervision of the authority. During a period of probation, any peace officer may arrest the

person on probation on the warrant of the judge or magistrate before whom the cause was pending.

During a period of probation, any peace officer may arrest the person on probation without a warrant if the peace officer has reasonable ground to believe the person on probation has violated or is violating any of the following that is a condition of his probation:

(1) A condition that prohibits his ownership, possession, or use of a firearm, deadly weapon, ammunition, or dangerous ordnance;

(2) A condition that prohibits him from being within a specified structure or geographic area;

(3) A condition that confines him to a residence, facility, or other structure;

(4) A condition that prohibits him from contacting or communicating with any specified individual;

(5) A condition that prohibits him from associating with a specified individual.

(B) Upon making an arrest under this section, the arresting field officer, probation officer, or peace officer or his department or agency promptly shall notify the chief probation officer or the chief probation officer's designee that the person has been arrested. *Upon being notified that a peace officer has made an arrest under this section, the chief probation officer or designee, or another probation officer designated by the chief probation officer, promptly shall bring the person who was arrested before the judge or magistrate before whom the cause was pending.* (Emphasis added.)

R.C. 2951.08(B) thus requires a county probation department, or the APA acting in its stead, to bring before the court of common pleas any probationer of the court arrested pursuant to R.C. 2951.08.¹ Resolution of your question, therefore, turns on whether the language of R.C. 2951.08(B) that directs the APA to "bring the person who was arrested before the judge or magistrate" imposes a responsibility upon the APA to physically transport a probationer from the county jail to the court of common pleas.

The primary goal when interpreting a statute is to give effect to the intention of the General Assembly. *Henry v. Central Nat'l Bank*, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968). Legislative intent is primarily determined from the language used by the General Assembly and the purpose it sought to accomplish. *Provident Bank v. Wood*, 36 Ohio St. 2d 101, 105, 304 N.E.2d 378, 381 (1973); *Henry v. Central Nat'l Bank*. Where "the language of a statute clearly

¹ "Ohio courts have found that Crim. R. 32.3 has superseded the statutory provisions in R.C. 2951.08 and R.C. 2951.09." *State v. Esparza*, 1 Ohio App. Unrep. 121, 123 (Defiance County 1990); see *State v. Carreker*, 39 Ohio App. 3d 112, 529 N.E.2d 951 (Clark County 1987). R. Crim. P. 32.3(A) provides, in part, that "[t]he court shall not revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which such action is proposed." Because "Crim. R. 32.3 contains no specific requirement that the judge or magistrate, before whom the cause is pending, decide whether the defendant's probation should be revoked, as set forth in R.C. 2951.08 and R.C. 2951.09," a probationer of the court of common pleas may be brought before any judge or magistrate of the court of common pleas. *Esparza*, 1 Ohio App. Unrep. at 123.

expresses the legislative intent, there is no occasion to resort to the rules of statutory construction." *Herrick v. Lindley*, 59 Ohio St. 2d 22, 27, 391 N.E.2d 729, 733 (1979).

An examination of R.C. 2951.08 in its entirety discloses that the provision is primarily addressed to the manner in which a probationer may be arrested for a probation violation and the constitutional guarantees that must be afforded him. See *State v. Deener*, 64 Ohio St. 2d 335, 414 N.E.2d 1055 (1980), *cert. denied*, 450 U.S. 1044 (1981). The statute specifically authorizes a peace officer to arrest a probationer on the warrant of a judge or magistrate and sets forth the circumstances under which a peace officer, probation officer, or field officer may arrest a probationer without a warrant. The statute further requires that a probationer arrested pursuant to its provisions be brought before the court. An arrested probationer is taken before a court "to prevent the incarceration of [the] probationer without probable cause and to allow independent review of the charges against him 'while information is fresh and sources are available.'" *State v. Delaney*, 11 Ohio St. 3d 231, 233, 465 N.E.2d 72, 74 (1984) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 485 (1972)).

This conclusion is consistent with the statutes that address the transportation of prisoners from the county jail to the court of common pleas. Specifically, R.C. 311.07(A) requires the county sheriff to "attend upon the court of common pleas," and R.C. 2301.15 sets forth the duties that a "criminal bailiff" performs on behalf of the county sheriff:

The criminal bailiff shall act for the sheriff in criminal cases and matters of a criminal nature in the court of common pleas and the probate court of the county. Under the direction of the sheriff, he shall be present during trials of criminal cases in those courts and during such trials perform all the duties as are performed by the sheriff. The criminal bailiff shall conduct prisoners to and from the jail of the county and for that purpose shall have access to the jail and to the courtroom, whenever ordered by such courts, and have care and charge of such prisoners when so doing. Under the direction of the sheriff, the criminal bailiff shall convey to state correctional institutions all persons sentenced thereto. He shall receive and collect from the treasurer of state all costs in such criminal cases in the same manner as the sheriff is required to do, and pay the amount so collected to the sheriff of such county. (Emphasis added.)

In light of the language in R.C. 311.07(A) and R.C. 2301.15, prior opinions of the Attorney General have concluded that "responsibility for transportation of prisoners between the county jail and the common pleas court lies in the sheriff and a special officer under his direction, the criminal bailiff." 1962 Op. Att'y Gen. No. 3420, p. 925 at 926; *accord* 1991 Op. Att'y Gen. No. 91-047 at 2-248; 1987 Op. Att'y Gen. No. 87-091 at 2-601.

Therefore, the county sheriff is responsible pursuant to R.C. 311.07(A) and R.C. 2301.15 for the transportation of prisoners from the county jail to the court of common pleas. Because it is presumed that the General Assembly acts with knowledge of existing statutes when it enacts legislation, *Eggleston v. Harrison*, 61 Ohio St. 397, 404, 55 N.E. 993, 996 (1900), 1992 Op. Att'y Gen. No. 92-006 at 2-18, I must assume that when the General Assembly enacted R.C. 2951.08(B), it was aware of the provisions of R.C. 311.07(A) and R.C. 2301.15

regarding the transporting of prisoners between the county jail and the court of common pleas.² Accordingly, since the probationers about which you ask are detained in the county jail, the county sheriff is responsible, pursuant to R.C. 311.07(A) and R.C. 2301.15, for the transportation of these probationers from the county jail to the court of common pleas.

The General Assembly's use of the language of R.C. 2951.08(B) that directs the APA to "bring the person who was arrested before the judge or magistrate" thus evidences a legislative intent to protect an arrested probationer's constitutional rights by requiring a county probation department, or the APA acting in its stead, to promptly institute probation revocation proceedings against the arrested probationer. The General Assembly did not intend to delegate to the county probation department, or its designee, the ministerial duty of transporting an arrested probationer between the county jail and the court. Accordingly, I conclude that R.C. 2951.08(B) does not require the APA to transport from the county jail to the court of common pleas a probationer under its supervision who is arrested pursuant to R.C. 2951.08.

In conclusion, it is my opinion, and you are hereby advised, that the Adult Parole Authority is not required to transport from the county jail to the court of common pleas a probationer under its supervision who is arrested pursuant to R.C. 2951.08. A probationer of the court of common pleas who is arrested pursuant to R.C. 2951.08 and detained in the county jail must be transported to the court of common pleas by the county sheriff.

² The General Assembly enacted the language concerning the transportation of prisoners found currently in R.C. 311.07(A) and R.C. 2301.15 prior to enacting R.C. 2951.08(B). *See* 1991-1992 Ohio Laws, Part I, 303, 311 (Sub. S.B. 49, eff. July 21, 1992) (enacting R.C. 2951.08(B)); 1879 Ohio Laws 54 (S.B. 201, Passed Apr. 2, 1879) (creating the office of criminal bailiff in the court of common pleas); 1831 Ohio Laws 112, 113 (An Act defining the duties of the Sheriff's and Coroners, in certain cases, eff. June 1, 1824) (requiring the county sheriff to attend upon all courts of common pleas).