July 6, 2004

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SYLLABUS: 2004-024

1. A person arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper for violating a law of this state may be confined in either a county or city jail prior to arraignment, initial appearance, or trial. Except as provided in a court order issued pursuant to R.C. 2937.32, a person may not be confined in a city jail unless the city permits the confinement. (1979 Op. Att'y Gen. No. 79-008, syllabus, paragraph three, modified.)

2. A person arrested by a township law enforcement officer for violating a law of this state and confined in a city jail prior to arraignment, initial appearance, or trial is in the custody of the city officials operating the jail.

3. Absent a contract between a county and city providing otherwise, a city is responsible for paying the booking fee and other costs of confinement when a person arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper for violating a law of this state is confined in the city's jail prior to arraignment, initial appearance, or trial. (1976 Op. Att'y Gen. No. 76-012, overruled, in part.)

4. Absent a contract between a county and city providing otherwise, a city is responsible for paying the booking fee and other costs of confinement when a person arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper pursuant to a bench warrant issued by a municipal court is confined in the city's jail.

5. City officials operating a city jail are responsible for supervising and feeding a person arrested for violating a law of this state and placed in the

city jail by the county sheriff for a brief time before and after the person's appearance in a municipal court on the violation.

6. Pursuant to R.C. 1901.32(A)(6), a person arrested for violating a law of this state and placed in a city jail by the county sheriff for a brief time before and after the person's appearance in a municipal court on the violation is to be transported between the city jail and the court by a bailiff or deputy bailiff of the court. (1987 Op. Att'y Gen. No. 87-091 (syllabus, paragraph two) and 1962 Op. Att'y Gen. No. 3420, p. 925, approved and followed.)

7. Pursuant to R.C. 1901.32(A)(5), when a municipal court requires it, a person arrested for violating a law of this state and placed in a city jail by the county sheriff for a brief time before and after the person's appearance in the municipal court on the violation may be transported between the city jail and the court by a police officer of a municipal corporation or constable of a township located within the territory of the court, as an ex officio deputy bailiff of the court. (1987 Op. Att'y Gen. No. 87-091 (syllabus, paragraph three) and 1962 Op. Att'y Gen. No. 3420, p. 925, approved and followed.)

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OPINION NO. 2004-024

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Dear Law Directors Hall and Fitzgerald:

You have each requested an opinion concerning the custody of a person arrested and confined in a city jail for violating a law of this state and the payment of costs associated with that confinement.[1] Your letters present the following questions:

1. When a person arrested by a township law enforcement officer for violating a law of this state is booked and confined in a city jail prior to arraignment, initial appearance, or trial, who has custody of the person?

2. When a person arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper for violating a law of this state is booked and confined in a city jail prior to arraignment, initial appearance, or trial, who is responsible for paying the booking fee and other costs of confinement?

3. When a person arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper pursuant to a bench warrant issued by a municipal court is booked and confined in a city jail, who is responsible for paying the booking fee and other costs of confinement?

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[1] The city jail is not in quarters leased from the board of county commissioners under R.C. 753.02(A). This opinion thus will consider matters that relate to the confinement of persons in a city jail that is not in quarters leased from the county.

4. When a person arrested for violating a law of this state is placed in a city jail by the county sheriff for a brief time before and after the person's appearance in a municipal court on the violation, who is responsible for supervising, feeding, and transporting the person between the jail and the court?[2]

A Person Arrested for Violating a Law of This State May Be Confined in a County or City Jail

Before we address your specific questions, we must first review the arrest and detention authority of a township law enforcement officer, deputy sheriff, and state highway patrol trooper. These officers are authorized to arrest[3] and confine in a jail or other detention facility a person accused of violating a law of this state. *See* R.C. 2935.03; R.C. 2935.09; R.C. 2935.10; R.C. 5503.02; R.C. 5503.07; Ohio R. Crim. P. 4; 1995 Op. Att'y Gen. No. 95-011; 1991 Op. Att'y Gen. No. 91-047; 1988 Op. Att'y Gen. No. 88-060; 1979 Op. Att'y Gen. No. 79-008 (overruled, in part, on other grounds by 1986 Op. Att'y Gen. No. 86-003); 1928 Op. Att'y Gen. No. 2246, vol. II, p. 1505; *see also* 1962 Op. Att'y Gen. No. 3405, p. 905; 1931 Op. Att'y Gen. No. 3211, vol. I, p. 639. *See generally* R.C. 2921.01(E), (F) (for purposes of R.C. 2921.01-.45, the term "[d]etention" includes "confinement in any public or private facility for custody of persons charged with … [a] crime in this state or another state or under the laws of the United States" and the term "[d]etention facility" means "any public or private place used for the confinement of a person charged with … any crime in this state or another state or under the laws of the United States"); R.C. 2929.01(S) (as used in R.C. Chapter 2929, a "[j]ail" is "a jail … used for the confinement of alleged … offenders that is operated by a political subdivision or a combination of political subdivisions of this state").

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[2] You also have asked whether, if a county sheriff transports to a city jail a person arrested for violating a law of this state, may city officials operating the jail refuse to confine the person in their jail for a brief time before and after the person's appearance in a municipal court on the violation, or may they confine the person in their jail and charge a fee for such service. Because the issues raised in this question are raised in your other four questions, it is unnecessary for us to consider this question separately.

[3] Township law enforcement officers, deputy sheriffs, and state highway patrol troopers are authorized to arrest with or without a warrant a person accused of violating a law of this state. *See, e.g.*, R.C. 2935.03; R.C. 2935.09; R.C. 2935.10; R.C. 2935.13; R.C. 5503.02; R.C. 5503.07; Ohio R. Crim. P. 4. *See generally* 1961 Op. Att'y Gen. No. 2214, p. 261 (syllabus, paragraph one) ("where a highway patrolman [now state highway patrol trooper] arrests a person found violating a law of this state, for which violation he is authorized to arrest, he must follow the procedure prescribed by [R.C. 2935.03, R.C. 2935.05, R.C. 2935.08, and R.C. 2935.13]").

When an arrest is made without a warrant, confinement in a jail or other detention facility permits the arresting officer time to obtain a warrant, or summons in lieu of a warrant, for the purpose of securing the person's subsequent appearance before a court to answer the charge brought against him. *See* R.C. 2935.03; R.C. 2935.05; Ohio R. Crim. P. 4; 1995 Op. Att'y Gen. No. 95-011 at 2-56; 1988 Op. Att'y Gen. No. 88-060 at 2-302. *See generally* 1927 Op. Att'y Gen. No. 972, vol. III, p. 1702, at 1705 ("[t]he county jail, formerly called the common [gaol], is for the confinement of persons lawfully committed thereto by some competent tribunal and for the use of peace officers and others who are authorized to make arrests for the purpose of holding the persons arrested until commitment by such competent tribunal may be procured"). Upon the issuance of a warrant,[4] a person may be detained in a jail or other detention facility until he posts sufficient bail or is otherwise discharged by due course of law. *See* R.C. 2935.08; R.C. 2935.09; R.C. 2935.10; Ohio R. Crim. P. 4; 1988 Op. Att'y Gen. No. 88-060 at 2-302; *see also* R.C. 2937.22-.45 (setting forth statutes governing bail and recognizance); Ohio R. Crim. P. 5; Ohio R. Crim. P. 10; Ohio R. Crim. P. 46. *See generally* R.C. 2901.13(E) ("[a] prosecution is commenced on the date an indictment is returned or an information filed, or on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation, or other process is issued, whichever occurs first"). "If an offense is not bailable, if the court denies bail to the accused, or if the accused does not offer sufficient bail, the court shall order the accused to be detained." R.C. 2937.32. Accordingly, a person accused of violating a law of this state may be arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper and confined in a jail or other detention facility prior to arraignment, initial appearance, or trial.

No statute in Ohio prescribes the specific jail or detention facility in which a state law criminal defendant shall be confined prior to arraignment, initial appearance, or trial. *Cf.* R.C. 1905.35 ("[i]mprisonment under the ordinances of a municipal corporation shall be in the workhouse or other jail of the municipal corporation[,]" unless the county jail is being used by the municipal corporation for the purpose of a workhouse or other jail). Prior opinions of the Attorneys General have advised that a county sheriff has a duty to confine in the county jail a person arrested for violating a law of this state. *See, e.g.*, 1995 Op. Att'y Gen. No. 95-011; 1988 Op. Att'y Gen. No. 88-060; 1979 Op. Att'y Gen. No. 79-008; 1928 Op. Att'y Gen. No. 2246, vol. II, p. 1505. With the exception of 1979 Op. Att'y Gen. No. 79-008, these opinions concerned a county sheriff's duty to confine a state law criminal defendant in the county jail and did not further consider whether such a person might also be confined in a city jail.

1979 Op. Att'y Gen. No. 79-008, however, did consider whether a county or municipal corporation is responsible for housing a defendant charged with a misdemeanor under state law prior to conviction upon the offense charged. The opinion advised that the county, rather than a

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[4] A warrant may be issued before or after a person's arrest. *See, e.g.*, R.C. 2935.08; R.C. 2935.10; Ohio R. Crim. P. 4; *see also* R.C. 2935.03.

municipal corporation, is responsible for housing such a criminal defendant, and reasoned as follows:

> I addressed a similar question in 1976 Op. Att'y Gen. No. 76-012, stating in the syllabus that:
>
> > … 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 a prisoner rests with the county.
>
> As the syllabus indicates, responsibility for the housing of a prisoner depends upon the basis of the offense with which he has been charged or convicted. See, also, 1956 Op. Att'y. Gen. No. 6768; 1955 Op. Att'y. Gen. No. 5561; and [1952] Op. Att'y. Gen. No. [1138]. Accordingly, the county is charged with the duty to house a prisoner charged with a misdemeanor under state law, both prior to and after conviction.

Id. at 2-22.

We have considered anew the rationale of this opinion and the laws governing the confinement of persons in jails and other detention facilities prior to trial. On the basis of that reconsideration, we believe it is necessary to modify 1979 Op. Att'y Gen. No. 79-008's advice to the extent that it indicates that a person arrested for violating a law of this state must be confined in the county jail.

In reaching its conclusion, the 1979 opinion relied on the "charging test." This test is used to classify a person as either a municipal prisoner or county prisoner when determining whether the county or municipal corporation is responsible for paying the costs of confining a person in the county jail. *See, e.g.,* 1980 Op. Att'y Gen. No. 80-106; 1956 Op. Att'y Gen. No. 6768, p. 483; 1955 Op. Att'y Gen. No. 5561, p. 317; 1952 Op. Att'y Gen. No. 1138, p. 121. This test is not, however, applicable when determining where a person arrested for violating a law of this state should be confined prior to arraignment, initial appearance, or trial,[5] and thus,

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[5] Various statutes require a county to provide and pay the costs of confining persons in the county jail. *See* R.C. 311.20; R.C. 341.01; R.C. 341.20; *see also* 1985 Op. Att'y Gen. No. 85-054 at 2-202; 1982 Op. Att'y Gen. No. 82-007 at 2-22 and 2-23; 1928 Op. Att'y Gen. No. 2246, vol. II, p. 1505 (syllabus, paragraph two). R.C. 753.02(A) and R.C. 1905.35, however, permit, under certain circumstances, a county to shift the *cost* of providing sustenance and care to

1979 Op. Att'y Gen. No. 79-008's use of the "charging test" in making this determination is not supported by law.

In addition, it is significant that while R.C. 1905.35 specifically provides for the confinement of a person accused of violating a municipal ordinance in a municipal corporation's jail, unless the county jail is being used by the municipal corporation for the purpose of a jail, no statute states where a person accused of violating a law of this state is to be confined prior to arraignment, initial appearance, or trial. If the General Assembly had intended to require the confinement of these persons only in the county jail prior to arraignment, initial appearance, or trial, it could have easily found language to express that purpose, having specifically provided in R.C. 1905.35 where a person accused of violating a municipal ordinance is to be confined prior to arraignment, initial appearance, or trial. *See generally Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a particular meaning, "it would not have been difficult to find language which would express that purpose," having used that language in other connections); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

The intent of the General Assembly is further gleaned from the legislative history of R.C. 2937.32. Former R.C. 2937.32 declared that, "[i]f an offense is not bailable or sufficient bail is not offered, the accused *shall be committed to the jail of the county in which he is to be tried* or, in the case of offense against a municipality, in the jail of said municipality if such there be." 1959 Ohio Laws 97, 109 (Am. Sub. S.B. 73, eff. Jan. 1, 1960) (emphasis added). Former R.C. 2937.32 thus required a person who was accused of violating a law of this state and who was charged with an offense that was not bailable, or who could not offer sufficient bail, to be committed and confined in the jail of the county in which he was to be tried. *See generally In re Baker*, 18 Ohio App. 2d 276, 282, 248 N.E.2d 620 (Hocking County 1969) ("[p]ower to prescribe the place of commitment is exclusively in the Legislature and is not shared by courts so long as constitutional provisions are not infringed. In such cases it has been said that the will of the Legislature is absolute"), *aff'd in part and rev'd in part on other grounds*, 20 Ohio St. 2d 142, 254 N.E.2d 363 (1969).

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persons confined in the county jail to a municipal corporation. In light of these statutes, prior opinions of the Attorneys General have developed and consistently used the "charging test" for classifying persons who are confined in a county jail as either municipal prisoners or county prisoners for the purpose of determining whether the county or a municipal corporation is responsible for the cost of providing sustenance and care to the person. *See, e.g.*, 1980 Op. Att'y Gen. No. 80-106; 1956 Op. Att'y Gen. No. 6768, p. 483; 1955 Op. Att'y Gen. No. 5561, p. 317; 1952 Op. Att'y Gen. No. 1138, p. 121. The "charging test" thus is used to implement the provisions of R.C. 753.02(A) and R.C. 1905.35.

R.C. 2937.32 has been amended and now provides: "If an offense is not bailable, if the court denies bail to the accused, or if the accused does not offer sufficient bail, the court shall order the accused to be detained." 1999-2000 Ohio Laws, Part IV, 8197, 8200 (Sub. S.B. 8, eff. July 29, 1999). R.C. 2937.32 no longer requires a person who is arrested for violating a law of this state and who is charged with an offense that is not bailable or who cannot offer sufficient bail to be committed and confined in the jail of the county in which he is to be tried. R.C. 2937.32, as thus amended, further supports the conclusion that the General Assembly does not require that a person arrested for violating a law of this state be confined in the county jail prior to arraignment, initial appearance, or trial. *See generally Lynch v. Gallia County Bd. of Comm'rs*, 79 Ohio St. 3d 251, 254, 680 N.E.2d 1222 (1997) ("[w]hen confronted with amendments to a statute, an interpreting court must presume that the amendments were made to change the effect and operation of the law").

Based on the foregoing, the third syllabus paragraph of 1979 Op. Att'y Gen. No. 79-008 is modified to the extent that it indicates that a person arrested for violating a law of this state may not be confined in a municipal corporation's jail prior to arraignment, initial appearance, or trial. *Cf. Tomko v. McFaul*, 133 Ohio App. 3d 742, 747, 729 N.E.2d 832 (Cuyahoga County 1999) (pursuant to R.C. 341.12, a county sheriff may "house prisoners in local municipal jail facilities within Cuyahoga County"), *appeal not allowed*, 87 Ohio St. 3d 1429, 718 N.E.2d 447 (1999); *cf. also* R.C. 753.16 ("[a]ny city or district having a workhouse may receive as inmates of the workhouse persons sentenced or committed to it from counties other than the one in which the workhouse is situated, upon the terms and during the length of time agreed upon by the boards of county commissioners of those counties, or by the legislative authority of a municipal corporation in those counties and the legislative authority of the city, or the board of the district workhouse, or other authority having the management and control of the workhouse"). It is, instead, our opinion that a person arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper for violating a law of this state may be confined in either a county or city jail prior to arraignment, initial appearance, or trial.

It is significant to note, however, that, unlike the county, a city does not have a mandatory duty to confine a person arrested for violating a law of this state unless a court orders the city to do so pursuant to R.C. 2937.32, which authorizes a court to "order [an] accused to be detained." *See* 1995 Op. Att'y Gen. No. 95-011; 1988 Op. Att'y Gen. No. 88-060; 1979 Op. Att'y Gen. No. 79-008; 1928 Op. Att'y Gen. No. 2246, vol. II, p. 1505. A city thus may refuse to confine such a criminal defendant in its jail when there is no court order requiring the defendant's confinement therein.

Accordingly, a person arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper for violating a law of this state may be confined in either a county or city jail prior to arraignment, initial appearance, or trial. Except as provided in a court order issued pursuant to R.C. 2937.32, a person may not be confined in a city jail unless the city permits the confinement.

A Person Confined in a City Jail Prior to Arraignment, Initial Appearance, or Trial Is in the Custody of the City Officials Operating the Jail

We will now turn to your first question concerning custody. You ask who has custody of a person when the person is arrested by a township law enforcement officer for violating a law of this state and booked[6] and confined in a city jail prior to arraignment, initial appearance, or trial.[7] In such a situation, the person is in the custody of the city law enforcement officials operating the jail.

Black's Law Dictionary 390 (7th ed. 1999) defines "custody" as, *inter alia*:

> **1.** The care and control of a thing or person for inspection, preservation, or security.
>
> ….
>
> **physical custody.** Custody of a person (such as an arrestee) whose freedom is directly controlled and limited.
>
> ….
>
> **3.** The detention of a person by virtue of lawful process or authority. — Also termed *legal custody*.

The term "custody" thus "is very elastic and may mean actual imprisonment or physical detention or mere power, legal or physical, of imprisoning or of taking manual possession." 1987 Op. Att'y Gen. No. 87-062 at 2-381 (quoting *Black's Law Dictionary* 347 (5th ed. 1979)).

In light of this definition, a person formally arrested by a township law enforcement officer for violating a law of this state is initially in the custody of that officer insofar as the person's freedom has been restrained by the officer and such detention by the officer is authorized by law. 1987 Op. Att'y Gen. No. 87-062 at 2-381; *see* R.C. 2935.03; R.C. 2935.09;

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[6] The term "booked" is a derivative of the verb "book," which in criminal parlance means "[t]o record the name of (a person arrested) in a sequential list of police arrests, with details of the person's identity (usu. including a photograph and a fingerprint), particulars about the alleged offense, and the name of the arresting officer <the defendant was booked immediately after arrest>." *Black's Law Dictionary* 176 (7th ed. 1999).

[7] In statutes pertaining to criminal proceedings the General Assembly has frequently used the term "custody" without defining it. *See, e.g.*, R.C. 341.011; R.C. 341.13; R.C. 2949.06; R.C. 2949.08; R.C. 2949.12. Because your question does not reference a particular statute, we will not consider the meaning of the term "custody" with regard to a particular statute. *See generally* R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly").

R.C. 2935.10; Ohio R. Crim. P. 4; *cf. State v. Reed*, 65 Ohio St. 2d 117, 418 N.E.2d 1359 (1981) (syllabus) ("a person is under 'detention,' as that term is used in R.C. 2921.34, when he is arrested and the arresting officer has established control over his person"). *See generally State v. Scott*, 146 Ohio App. 3d 233, 238, 765 N.E.2d 930 (Richland County 2001) ("[f]or purposes of *Miranda* warnings, 'custody' is defined as a formal arrest or restraint on the freedom of movement to the degree associated with a formal arrest"), *appeal not allowed*, 94 Ohio St. 3d 1434, 761 N.E.2d 49 (2002). The person remains in the custody of the township law enforcement officer until he is formally released by the officer, *see* R.C. 2935.03; R.C. 2935.10; R.C. 2935.13; R.C. 2937.22-.45; Ohio R. Crim. P. 4; Ohio R. Crim. P. 46, or custody of the person is transferred from the township law enforcement officer to another law enforcement officer, *see* R.C. 2935.08; R.C. 2937.32; 1987 Op. Att'y Gen. No. 87-062 at 2-381.

In your particular situation, you have indicated that a person arrested by a township law enforcement officer for violating a law of this state is taken by the officer to a city jail where he is confined until discharged by due course of law or transferred to another jail or detention facility. In this situation, the custody of the person is transferred from the township law enforcement officer to the city officials operating the city jail. As explained in 1987 Op. Att'y Gen. No. 87-062 at 2-381 and 2-382, which concerned the custody of persons arrested and committed to the county jail:

> Clearly, *a person who has been brought to the* [*county*] *jail under arrest and booked and who is not free to leave until released on a bond or on his own recognizance has been placed in the custody of the sheriff, who has "charge of the county jail and all persons confined therein" pursuant to R.C. 341.01*. Prisoners are "booked" according to the procedures contained in R.C. 341.02 and 9 Ohio Admin. Code 5120:1-12-01. R.C. 341.02 provides that the sheriff shall enter the name of each prisoner, the date and cause of his confinement, and the date and manner of his discharge into "a suitable book, which shall be known as the 'jail registrar.'" In addition, Rule 5120:1-12-01 details an elaborate booking procedure for prisoners who have not yet been convicted of crimes, providing that the jail registrar shall include a listing of the "official charge or charges." The rule further indicates that prisoners awaiting pretrial release are subject to much the same booking procedures as those who will remain in custody. *Prisoners who are booked are in confinement and are therefore in the sheriff's custody and control*. Accordingly, when the sheriff "books" a prisoner, that prisoner is "received" by the sheriff for purposes of R.C. 311.17(B)(3)(a).[8] Thus, *a person who is arrested for a misdemeanor violation and who is brought to the jail is transferred to the custody and control of the sheriff when he is booked*, and is a

[8] R.C. 311.17(B)(3)(a) allows a county sheriff to charge a fee for "receiving a prisoner."

> prisoner who has been received by the sheriff. (Emphasis and footnote added; citations omitted.)

1987 Op. Att'y Gen. No. 87-062's analysis is applicable to persons arrested and then confined in a city jail. Pursuant to 15 Ohio Admin. Code 5120:1-7-02(A), the "Minimum Standards for Jails in Ohio," which are set forth in "rules 5120:1-8-01 to 5120:1-12-19 of the Administrative Code[,]" are applicable to city jails. Under these standards, when a person is confined in a city jail, a booking and identification record must be made of that person's confinement in the jail. 15 Ohio Admin. Code 5120:1-8-01(A)(3); 15 Ohio Admin. Code 5120:1-10-01(A)(3); 15 Ohio Admin. Code 5120:1-12-01(A)(3). This record must include, *inter alia*, the time and date of commitment into the city jail, the official charge or charges filed against the person, and the authority for the person's commitment into the city jail. Rule 5120:1-8-01(A)(3); rule 5120:1-10-01(A)(3); rule 5120:1-12-01(A)(3). Upon confinement in a city jail, the person is under the control of the city officials operating the city jail. *See* 15 Ohio Admin. Code 5120:1-8-17(A) ("[e]ach full service jail shall have a designated jail administrator who is qualified by training or experience to supervise and control prisoners as outlined in a written job description"); 15 Ohio Admin. Code 5120:1-10-17(A) ("[e]ach facility shall have a designated jail administrator who is qualified by training or experience to supervise and control prisoners as outlined in a written job description"); 15 Ohio Admin. Code 5120:1-12-17(A) ("[e]ach twelve-hour facility shall have a designated jail administrator who is qualified by training or experience to supervise and control prisoners as outlined in a written job description"). *See generally* 1987 Op. Att'y Gen. No. 87-062 at 2-382 ("a person who is arrested for a misdemeanor violation and who is brought to the jail is transferred to the custody and control of the sheriff when he is booked"); 1980 Op. Att'y Gen. No. 80-084 at 2-333 ("[w]hen confined in a county jail, a parolee comes within the management and control of the county sheriff").

In addition, a person may not be confined in a city jail unless such confinement is authorized by law. *See* rule 5120:1-8-01(A)(1) and (3)(d); rule 5120:1-10-01(A)(1) and (3)(d); rule 5120:1-12-01(A)(1) and (3)(d); *see also* R.C. 2935.16 ("[w]hen it comes to the attention of any judge or magistrate that a prisoner is being held in any jail or place of custody in his jurisdiction without commitment from a court or magistrate, he shall forthwith, by summary process, require the officer or person in charge of such jail or place of custody to disclose to such court or magistrate, in writing, whether or not he holds the person described or identified in the process and the court under whose process the prisoner is being held"). This means that a person booked into a city jail is detained by the city officials operating the city jail pursuant to lawful process or authority. *See* rule 5120:1-8-01(A)(3) (the record of a person booked into a city jail must show the authority for the person's confinement in the city jail); rule 5120:1-10-01(A)(3) (same); rule 5120:1-12-01(A)(3) (same).

A person confined in a city jail thus has his freedom restrained by the city officials operating the jail. The person's confinement in the jail also is pursuant to lawful process or authority. As such, the person is in the custody of the city officials operating the jail. *See* 1987 Op. Att'y Gen. No. 87-062 at 2-381 and 2-382. *See generally* rule 5120:1-8-17(D)(2) (each full

service jail's staffing plan "shall reflect that the facility has staff for administration and supervision; … prisoner supervision, custody and back-up"); rule 5120:1-10-17(D)(2) (each five-day facility's staffing plan "shall reflect that the facility has staff for administration and supervision; … prisoner supervision, custody, and back-up"); rule 5120:1-12-18 (employees of a twelve-hour facility "who have been assigned direct responsibility of custody and supervision of prisoners" must receive certain specified training). It follows, therefore, that a person arrested by a township law enforcement officer for violating a law of this state and confined in a city jail prior to arraignment, initial appearance, or trial is in the custody of the city officials operating the jail.

Payment of a Booking Fee and Other Costs of Confinement When a Person Arrested for Violating a Law of This State Is Confined in the City's Jail

Your second question pertains to costs of confinement.[9] You are particularly interested in who is responsible for paying the booking fee and other costs of confinement when a person

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[9] The costs of confining a person in a city jail generally include, but are not limited to, the cost of repairing or replacing city property that is damaged or destroyed by the person, the cost of providing food, housing, clothes, toiletries, and medical care to the person, and the cost of any other items necessary in providing for the care and safety of the person.

You have stated that the cost of confining the person also includes a booking fee that must be paid by the law enforcement agency of the arresting officer prior to the person's confinement in the city jail. There does not appear to be express statutory authority for city officials to impose and collect a "booking fee" when they confine in their jail a person arrested for violating a state law and awaiting arraignment, initial appearance, or trial. *Cf.* R.C. 311.17(B) (a county sheriff may charge five dollars each time he receives a prisoner and such fee is taxed as a court cost); R.C. 2929.38(A) (a legislative authority of a municipal corporation "that operates a local detention facility … may establish a policy that requires any prisoner who is confined in the facility as a result of pleading guilty to or having been convicted of an offense to pay a one-time reception fee for the costs of processing the prisoner into the facility at the time of the prisoner's initial entry into the facility under the confinement in question"); 1999 Op. Att'y Gen. No. 99-021 (syllabus) ("[p]ursuant to R.C. 341.06, [which was repealed and replaced by R.C. 2929.35-.38, Sub. H.B. 170, 124th Gen. A. (2002) (eff. Sept. 6, 2002)], a board of county commissioners may adopt a prisoner reimbursement policy that requires a person to reimburse the county for the costs it incurs when the person is processed for confinement in the county jail"). *But see generally* Ohio Const. art. XVIII, § 3 ("[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws"). Further, one federal court in Ohio has held that a county is not authorized to appropriate cash immediately upon a pre-trial detainee's arrival at the county jail to cover "booking fees,"

arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper for violating a law of this state is booked and confined in a city jail prior to arraignment, initial appearance, or trial. In this circumstance, absent a contract between a county and city providing otherwise, the city is responsible for these costs.

It is a well-settled rule in Ohio that, absent authority for apportioning the financial responsibility for the costs of confining a person in a jail or other detention facility, the responsibility for such costs rests with the law enforcement agency in physical control of the person, regardless of which agency employs the arresting law enforcement officer or the criminal charge brought against the person. *See* R.C. 311.20; R.C. 341.01; R.C. 341.20; R.C. 753.02(A); R.C. 1905.35; *see, e.g., Akron City Hosp. v. City of Akron*, C.A. No. 12133, 1985 Ohio App. LEXIS 9082 (Summit County Oct. 30, 1985); *Cuyahoga County Hosp. v. City of Cleveland*, 15 Ohio App. 3d 70, 472 N.E.2d 757 (Cuyahoga County 1984); *Sisters of Mercy of Hamilton, Ohio v. Bd. of Comm'rs, Butler County*, CA74-08-0070, 1975 Ohio App. LEXIS 6236 (Butler County Dec. 22, 1975); *City of Cleveland v. Comm'rs of Cuyahoga County*, 10 Ohio C.C. (n.s.) 277, 20 Ohio Cir. Dec. 193 (Cuyahoga County Cir. Ct. 1907), *aff'd*, 80 Ohio St. 752, 89 N.E. 1117 (1909); *University Hosp. of Cleveland v. City of Cleveland*, 28 Ohio Misc. 134, 276 N.E.2d 273 (C.P. Cuyahoga County 1971).[10] This rule is premised on the fact that the "[p]rovision of

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and that any such county policy violates a person's right to due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution. *Allen v. Leis*, 213 F. Supp.2d 819 (S.D. Ohio 2002). *See generally State v. Heinrich*, 142 Ohio App.3d 654, 655, 756 N.E.2d 732 (Butler County 2001) ("[i]t is unconstitutional to apply R.C. 4511.195(D)(2) to order a person who has been adjudicated not guilty of driving while under the influence of alcohol to pay the costs of storing his impounded vehicle, as such an order would deprive the person of his property without due process of law"); 1995 Op. Att'y Gen. No. 95-028 (syllabus) ("[t]he county sheriff has no authority to prescribe a schedule of fees to be collected from the personal funds of a person confined in the county jail for the cost of medical care provided to that person while so confined"). We cannot advise you with respect to the authority of city officials to charge and collect a "booking fee" when confining in their jail a person arrested for violating a law of this state, *see* 1988 Op. Att'y Gen. No. 88-008 at 2-25 (the Attorney General advises requestors only to the extent of their statutory duties), or the constitutionality of such authority, either facially or as applied, *see* 2002 Op. Att'y Gen. No. 2002-006 at 2-32 n.10, but will assume, for the purpose of this opinion, that the imposition and collection of this fee by these officials is authorized and constitutional.

[10] This rule has been relied upon in numerous opinions of the Attorneys General when determining who is responsible for the costs of confining a person in a jail or other detention facility. *See, e.g.*, 1991 Op. Att'y Gen. No. 91-047; 1989 Op. Att'y Gen. No. 89-017; 1985 Op. Att'y Gen. No. 85-054; 1981 Op. Att'y Gen. No. 81-042; 1980 Op. Att'y Gen. No. 80-106; 1980 Op. Att'y Gen. No. 80-084; 1962 Op. Att'y Gen. No. 3405, p. 905; 1956 Op. Att'y Gen. No.

sustenance is a natural corollary to physical custody of the person." *Akron City Hosp. v. City of Akron*, C.A. No. 12133, 1985 Ohio App. LEXIS 9082, at *6-7. *See generally* R.C. 2921.44(C)(2) (a law enforcement officer having charge of a detention facility may be charged with dereliction of duty if he negligently fails to provide persons confined in the facility with adequate food, clothing, bedding, shelter, and medical attention).

As previously explained, a person arrested for violating a law of this state and confined in a city jail is in the custody of the city officials operating the jail. Accordingly, absent authority permitting a city to apportion the financial responsibility for the costs of confining such a person in its jail, the city is responsible for paying these costs.[11] *See* R.C. 753.02(A). *See generally*

6768, p. 483; 1955 Op. Att'y Gen. No. 5561, p. 317; 1954 Op. Att'y Gen. No. 4177, p. 429; 1952 Op. Att'y Gen. No. 1139, p. 128; 1952 Op. Att'y Gen. No. 1138, p. 121; 1949 Op. Att'y Gen. No. 807, p. 492; 1941 Op. Att'y Gen. No. 3459, p. 78; 1939 Op. Att'y Gen. No. 869, vol. II, p. 1168; 1937 Op. Att'y Gen. No. 1424, vol. III, p. 2370; 1931 Op. Att'y Gen. No. 3211, vol. I, p. 639; 1928 Op. Att'y Gen. No. 2246, vol. II, p. 1505.

[11] The syllabus of 1976 Op. Att'y Gen. No. 76-012 advised that, "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 a prisoner rests with the county." This opinion thus appears to advise that the costs of confining a person arrested and confined in a city jail for violating a law of this state is the responsibility of the county rather than the city that has physical custody of the person.

1976 Op. Att'y Gen. No. 76-012 did not consider, however, the general rule that, absent authority for apportioning the financial responsibility for the costs of confining a person in a jail or other detention facility, the responsibility for such costs rests with the law enforcement agency that has physical custody of the person. As indicated previously, this general rule has been applied repeatedly by Ohio courts and prior Attorneys General when determining who is responsible for paying the costs of confining a person in a jail or other detention facility. In fact one appellate court in Ohio specifically declined to follow the reasoning of 1976 Op. Att'y Gen. No. 76-012, and stated as follows:

> The competing theory, advocated by the city, is characterized as the "nature of the offense" theory. Under this theory, drawn from language contained in 1976 Ohio Atty. Gen. Ops. No. 76-012, the responsibility for the cost of a prisoner's medical care depends on whether the person is charged with a violation of a municipal ordinance or a state statute. Responsibility for the sustenance of those charged with a violation of a state statute would rest with the county regardless of the arresting authority. We decline to accept this theory.
>
> Provision of sustenance is a natural corollary to physical custody of the person. It seems only natural that the authority responsible for the decision to

1991 Op. Att'y Gen. No. 91-047 (syllabus, paragraph two) ("[t]he State Highway Patrol is not required to pay for the cost of the medical treatment provided to individuals arrested by its troopers and incarcerated, pursuant to R.C. 2937.32, in a regional jail facility established under R.C. 307.93"); 1962 Op. Att'y Gen. No. 3405, p. 905 (syllabus) ("[w]here a township police constable, appointed pursuant to [R.C. 509.01] arrests a person for violation of a state statute, and said person is confined in a municipal jail pending trial, the township which said police constable serves is not liable for the costs of confinement"); 1931 Op. Att'y Gen. No. 3211, vol. I, p. 639 (syllabus) ("[t]he expense of the board and maintenance of a person held in a municipal prison for trial for the violation of a state statute should be paid by the municipality").

Various statutes authorize a city to shift the costs of confining a person in its jail to another governmental entity. R.C. 753.04(A) provides that, in certain instances, when a person convicted of an offense is confined in a municipal workhouse, the municipal corporation operating the workhouse receives from the committing governmental entity a sum of money that is not less than seventy cents per day for the time of commitment. R.C. 753.16, R.C. 2947.19, and R.C. 5120.161 authorize the legislative authority of a municipal corporation to agree to house for a fee persons who have been convicted of an offense and are under the control of another governmental entity. These statutes are not applicable to the situation you have posed to us since the person has not been convicted of an offense.

Nevertheless, the city and county may enter into a contract whereby the county agrees to pay the city for housing defendants arrested for violating a law of this state and confined in the city's jail prior to arraignment, initial appearance, or trial. As explained previously, except when ordered by a court, a city may refuse to confine these criminal defendants in its jail. When a city refuses to confine such defendants, the defendants are confined in the county jail. *See* 1995 Op. Att'y Gen. No. 95-011; 1988 Op. Att'y Gen. No. 88-060; 1979 Op. Att'y Gen. No. 79-008; 1928 Op. Att'y Gen. No. 2246, vol. II, p. 1505.

> incarcerate a person also assume financial responsibility for that person's care until there has been a shift in custody. Sustenance, including medical care, being a natural incident of custody, absent a special statutory provision or agreement between the city and the county, financial responsibility for the cost of providing sustenance rests with the authority having physical custody of the prisoner.

Akron City Hosp. v. City of Akron, C.A. No. 12133, 1985 Ohio App. LEXIS 9082, at *6-7 (Summit County Oct. 30, 1985) (footnote omitted). In view of the wide acceptance of this general rule by courts and prior Attorneys General, 1976 Op. Att'y Gen. No. 76-012 is overruled to the extent that it may be construed as requiring a county, rather than a city, to pay the costs of confining a person arrested and confined in a city jail for violating a law of this state.

In order to make a city jail available for the confinement of these defendants, a city may agree to confine these defendants in its jail pursuant to a contract with the county.[12] Such a contract may contain any terms as are agreed upon by the city and county, including a provision requiring the county to pay the city for housing these defendants in its jail.

Therefore, absent a contract between a county and city providing otherwise, a city is responsible for paying the booking fee and other costs of confinement when a person arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper for violating a law of this state is confined in the city's jail prior to arraignment, initial appearance, or trial.[13] *See* R.C. 753.02(A).

Payment of a Booking Fee and Other Costs of Confinement When a Person Is Confined in the City's Jail Pursuant to a Bench Warrant

Your third question relates to the payment of the costs of confinement when the person is booked and confined in the city jail pursuant to a bench warrant issued by a municipal court. In particular you ask who is responsible for paying the booking fee and other costs of confinement when a person arrested by a township law enforcement officer, deputy sheriff, or state highway

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[12] A county, rather than a city, is responsible for paying, on behalf of the state, for the criminal prosecution of persons arrested for violating a law of this state and confined in a city's jail, and for court costs when the persons are acquitted or the charges are dismissed. *See* R.C. 309.08(A); R.C. 1901.34(C); 2003 Op. Att'y Gen. No. 2003-016. In addition, the county is required to confine these persons in its jail when a city refuses to do so. *See* 1995 Op. Att'y Gen. No. 95-011; 1988 Op. Att'y Gen. No. 88-060; 1979 Op. Att'y Gen. No. 79-008; 1928 Op. Att'y Gen. No. 2246, vol. II, p. 1505. In light of these duties and obligations, it follows that a county may enter into a contract with a city for the confinement of these persons in the city's jail. *See, e.g.,* R.C. 307.15 (authorizing a board of county commissioners to enter into an agreement with the legislative authority of any city, *inter alia,* whereby the city undertakes to perform a service or function on behalf of the county); *Tomko v. McFaul,* 133 Ohio App. 3d 742, 729 N.E.2d 832 (Cuyahoga County 1999) (pursuant to R.C. 341.12, a county sheriff may use county monies to pay for the housing of prisoners in local municipal jails), *appeal not allowed,* 87 Ohio St. 3d 1429, 718 N.E.2d 447 (1999).

[13] We are aware that, under certain circumstances, a person arrested for violating a law of this state and detained in a city jail may be liable for the costs of his confinement. *See, e.g.,* R.C. 753.04; R.C. 753.16; R.C. 2929.18; R.C. 2929.24; R.C. 2929.35-.38; R.C. 2947.19; *see also* R.C. 4511.19; R.C. 5120.56; R.C. 5120.57. *See generally* 1995 Op. Att'y Gen. No. 95-028 at 2-143 ("[t]he fact that there is a statutory procedure in place for reimbursement of the costs of a person's confinement in the county jail, suggests that the General Assembly intends that scheme to be the only manner in which the county may recover such costs" (citations omitted)). None of these circumstances, however, are present in the situation about which you have asked.

patrol trooper pursuant to a bench warrant issued by a municipal court is booked and confined in a city jail. Like the previous question, absent a contract between a county and city providing otherwise, the city is responsible for these costs.

A "bench warrant" is "[a] warrant issued directly by a judge to a law-enforcement officer, esp. for the arrest of a person who has been held in contempt, has been indicted, has disobeyed a subpoena, or has failed to appear for a hearing or trial." *Black's Law Dictionary* 1579 (7th ed. 1999); *see* 1999 Op. Att'y Gen. No. 99-029 at 2-197; 1984 Op. Att'y Gen. No. 84-004 at 2-9 n.4. A bench warrant is a method by which a court may serve process upon a person in criminal or civil cases. 1999 Op. Att'y Gen. No. 99-029 at 2-197; 1984 Op. Att'y Gen. No. 84-004 at 2-9 n.4; *see also* 1961 Op. Att'y Gen. No. 2214, p. 261, at 266 (in criminal cases before a municipal court, the issuance of a bench warrant "would undoubtedly be part of the service of process in the prosecution"). In your particular situation, the bench warrant is issued to secure the appearance before a municipal court of a person who has posted bail and failed to appear before the court when required.

The fact that a person is confined in a city jail pursuant to a bench warrant in order to secure his appearance before the municipal court does not relieve the city of its duty to pay the costs of confining the person in its jail. In such a situation, no statute authorizes the city to shift the costs of confining the person to another governmental entity. The city thus is responsible for the costs of confining the person in its jail since it has physical custody of the person, unless there is a contract providing otherwise. *See* R.C. 753.02(A); *Akron City Hosp. v. City of Akron*; *Cuyahoga County Hosp. v. City of Cleveland*; *Sisters of Mercy of Hamilton, Ohio v. Bd. of Comm'rs, Butler County*; *City of Cleveland v. Comm'rs of Cuyahoga County*; *University Hosp. of Cleveland v. City of Cleveland.* Accordingly, absent a contract between a county and city providing otherwise, a city is responsible for paying the booking fee and other costs of confinement when a person arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper pursuant to a bench warrant issued by a municipal court is confined in the city's jail.

City Officials Operating a City Jail Are Responsible for Supervising and Feeding a Person Placed in the City Jail by the County Sheriff

Your final question has two parts. The first part concerns the supervision and feeding of persons placed in a city jail by a county sheriff. The second part is about the transportation of these persons to court appearances. For ease of discussion, we will consider the two parts separately.

In the first part you ask who is responsible for supervising and feeding a person arrested for violating a law of this state and placed in the city jail by the county sheriff for a brief time before and after the person's appearance in a municipal court on the violation. For the reasons that follow, the city officials operating the jail are required to supervise and feed this person.

Your question concerns a situation in which a person arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper for violating a law of this state is initially booked and confined in the county jail. On days in which the person is required to appear in a municipal court on the violation, the county sheriff transports the person to a city jail where the person is confined until he is required to appear before the municipal court.[14] When the municipal court requires the person's presence, the person is transported from the city jail to the municipal court. After the person's appearance before the court, the person is transported from the court to the city jail. The person remains in the city jail until the county sheriff transports the person back to the county jail. From start to finish the process takes several hours and requires the confinement of the person in the city jail for a brief time before and after the person's appearance in the municipal court.

In the situation described above, the county sheriff has physical custody of the person prior to and following the person's confinement in the city jail since the person's freedom is restrained by the county sheriff. *See* 1987 Op. Att'y Gen. No. 87-062 at 2-381 and 2-382; *Black's Law Dictionary* 390 (7th ed. 1999). However, when the sheriff places the person in the city jail for purposes of confining him for a brief time, the sheriff relinquishes physical custody of the person to city officials operating the jail. In other words, the person's freedom is no longer restrained by the sheriff, but rather is restrained by city officials operating the jail. Physical custody of the person thus is transferred from the county sheriff to the city officials. *See* 1987 Op. Att'y Gen. No. 87-062 at 2-381 and 2-382; 1980 Op. Att'y Gen. No. 80-084 at 2-333.

As stated above, the provision of sustenance and care to a person in the physical custody of city officials operating a city jail is a responsibility of the city because the provision of these services is a natural corollary to physical custody of the person. *Akron City Hosp. v. City of Akron*, C.A. No. 12133, 1985 Ohio App. Lexis 9082, at *6-7; *see* R.C. 753.02(A); R.C. 2921.44(C)(2); 1982 Op. Att'y Gen. No. 82-007 at 2-23. In addition, when a person is confined in a city jail, the person is subject to the control and supervision of the city officials operating the city jail. *See* 1980 Op. Att'y Gen. No. 80-084 at 2-333 (a parolee confined in the county jail comes within the management and control of the county sheriff); R.C. 2921.44(C)(3) (a law enforcement officer having charge of a detention facility may be charged with dereliction of duty if he negligently fails to control an unruly prisoner, or to prevent intimidation of or physical harm to a prisoner by another); *see also* rule 5120:1-8-17 (each full service jail shall have persons and a plan for supervising and controlling persons confined in the jail); rule 5120:1-10-17 (each five-day facility shall have persons and a plan for supervising and controlling persons confined in the facility); rule 5120:1-12-17(A) (each twelve-hour facility shall have a jail administrator to supervise and control persons confined in the facility). *See generally* R.C. 753.16(A) (prisoners received into a city workhouse under an agreement pursuant to this section

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[14] The city jail is located in the same building as the municipal court.

remain under the control of the committing entity and are "subject to the rules and discipline of the workhouse to which the other prisoners detained in the workhouse are subject"). *See generally also* R.C. 2301.15 (the criminal bailiff in a court of common pleas "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 [the court], and have care and charge of such prisoners when so doing"). Accordingly, city officials operating a city jail are responsible for supervising and feeding a person arrested for violating a law of this state and placed in the city jail by the county sheriff for a brief time before and after the person's appearance in a municipal court on the violation.

Transportation of a Person Confined in a City Jail to and from a Municipal Court for Court Appearances

We will now turn to the second part of your final question concerning the transportation of persons to court appearances. You ask who is responsible for transporting between a city jail and a municipal court a person arrested for violating a law of this state and placed in the city jail by the county sheriff for a brief time before and after the person's appearance in a municipal court on the violation. Earlier opinions of the Attorneys General on this subject have clearly stated that these persons are transported between the jail and court by a bailiff or deputy bailiff of the court.

As explained in the second syllabus paragraph of 1987 Op. Att'y Gen. No. 87-091 (footnote added): "Pursuant to R.C. 1901.32(A)(6),[15] bailiffs and deputy bailiffs of a municipal court have a mandatory duty to transport prisoners from the jail to the municipal court before the prisoners have been convicted and sentenced." *Accord* 1962 Op. Att'y Gen. No. 3420, p. 925. *See generally* 1991 Op. Att'y Gen. No. 91-047 (syllabus, paragraph one) (a state highway patrol trooper is not required to transport between a regional jail facility, which serves as a municipal jail, and a municipal court a person who is arrested by the trooper for a misdemeanor and formally charged with a misdemeanor offense); 1978 Op. Att'y Gen. No. 78-019 (syllabus, paragraph two) ("[a] county sheriff does not have a duty to accompany municipal court prisoners to court during trials and hearings prior to conviction"). The opinion reasoned that, insofar as the county sheriff and criminal bailiff are required to transport persons between the county jail and the court of common pleas, *see* R.C. 2301.15,[16] and municipal court bailiffs and deputy bailiffs

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[15] R.C. 1901.32(A)(6) provides, in part, "[t]he bailiff and deputy bailiffs [of a municipal court] shall perform for the court services similar to those performed by the sheriff for the court of common pleas and shall perform any other duties that are requested by rule of court."

[16] R.C. 2301.15 states, in pertinent part:

> 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

perform for the municipal court "services similar to those performed by the sheriff for the court of common pleas," R.C. 1901.32(A)(6), the duties of municipal court bailiffs and deputy bailiffs must be construed to include the transportation of persons between the municipal court and municipal jail. *See* 1991 Op. Att'y Gen. No. 91-047 at 2-248; 1987 Op. Att'y Gen. No. 87-091 at 2-601; 1978 Op. Att'y Gen. No. 78-019 at 2-45; 1962 Op. Att'y Gen. No. 3420, p. 925.

In addition, the third syllabus paragraph of 1987 Op. Att'y Gen. No. 87-091 further advised:

> Pursuant to R.C. 1901.32(A)(5),[17] police officers and constables of municipalities and townships located within the territory of a municipal court are ex officio deputy bailiffs of that court. R.C. 1901.32(A)(5) gives municipal court judges, clerks, bailiffs, and deputy bailiffs the authority to require ex officio deputy bailiffs to transport, without additional compensation, prisoners from the jail to the municipal court before the prisoners have been convicted and sentenced. (Footnote added.)

Accord 1962 Op. Att'y Gen. No. 3420, p. 925; *see* 1991 Op. Att'y Gen. No. 91-047 at 2-248. Thus, the plain language of R.C. 1901.32(A)(5) authorizes a municipal court to require police officers of municipal corporations and constables of townships located within the territory of the court, as ex officio deputy bailiffs of the court, to transport persons confined in a municipal jail to and from the court for court appearances.

The current language of R.C. 1901.32(A)(5), (6), and R.C. 2301.15 is similar to the language of these statutes that was interpreted in the prior opinions addressing the transportation

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> 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.

[17] R.C. 1901.32(A)(5) states:

> Every police officer of any municipal corporation and police constable of a township within the territory of the court is ex officio a deputy bailiff of the court in and for the municipal corporation or township within which he is commissioned as a police officer or police constable, and shall perform any duties in respect to cases within his jurisdiction that are required of him by a judge of the court, or by the clerk or a bailiff or deputy bailiff of the court, without additional compensation.

of persons confined in a jail to and from a municipal court for court appearances. We are not aware of any statute or case law requiring us to alter the advice of these opinions. Thus, we believe the analysis and conclusions set forth in these prior opinions remain a correct statement of the law.

Accordingly, pursuant to R.C. 1901.32(A)(6), a person arrested for violating a law of this state and placed in a city jail by the county sheriff for a brief time before and after the person's appearance in a municipal court on the violation is to be transported between the city jail and the court by a bailiff or deputy bailiff of the court. Pursuant to R.C. 1901.32(A)(5), when a municipal court requires it, a person arrested for violating a law of this state and placed in a city jail by the county sheriff for a brief time before and after the person's appearance in the municipal court on the violation may be transported between the city jail and the court by a police officer of a municipal corporation or constable of a township located within the territory of the court, as an ex officio deputy bailiff of the court.

Conclusions

In conclusion, it is my opinion, and you are hereby advised as follows:

1. A person arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper for violating a law of this state may be confined in either a county or city jail prior to arraignment, initial appearance, or trial. Except as provided in a court order issued pursuant to R.C. 2937.32, a person may not be confined in a city jail unless the city permits the confinement. (1979 Op. Att'y Gen. No. 79-008, syllabus, paragraph three, modified.)

2. A person arrested by a township law enforcement officer for violating a law of this state and confined in a city jail prior to arraignment, initial appearance, or trial is in the custody of the city officials operating the jail.

3. Absent a contract between a county and city providing otherwise, a city is responsible for paying the booking fee and other costs of confinement when a person arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper for violating a law of this state is confined in the city's jail prior to arraignment, initial appearance, or trial. (1976 Op. Att'y Gen. No. 76-012, overruled, in part.)

4. Absent a contract between a county and city providing otherwise, a city is responsible for paying the booking fee and other costs of confinement when a person arrested by a township law enforcement officer, deputy sheriff, or state highway patrol trooper pursuant to a bench warrant issued by a municipal court is confined in the city's jail.

5. City officials operating a city jail are responsible for supervising and feeding a person arrested for violating a law of this state and placed in the city jail by the county sheriff for a brief time before and after the person's appearance in a municipal court on the violation.

6. Pursuant to R.C. 1901.32(A)(6), a person arrested for violating a law of this state and placed in a city jail by the county sheriff for a brief time before and after the person's appearance in a municipal court on the violation is to be transported between the city jail and the court by a bailiff or deputy bailiff of the court. (1987 Op. Att'y Gen. No. 87-091 (syllabus, paragraph two) and 1962 Op. Att'y Gen. No. 3420, p. 925, approved and followed.)

7. Pursuant to R.C. 1901.32(A)(5), when a municipal court requires it, a person arrested for violating a law of this state and placed in a city jail by the county sheriff for a brief time before and after the person's appearance in the municipal court on the violation may be transported between the city jail and the court by a police officer of a municipal corporation or constable of a township located within the territory of the court, as an ex officio deputy bailiff of the court. (1987 Op. Att'y Gen. No. 87-091 (syllabus, paragraph three) and 1962 Op. Att'y Gen. No. 3420, p. 925, approved and followed.)

Respectfully,

JIM PETRO
Attorney General