August 19, 2010

The Honorable Julia R. Bates
Lucas County Prosecuting Attorney
Lucas County Courthouse, Suite 250
Toledo, Ohio 43624-1680

SYLLABUS: 2010-021

1. A county sheriff who operates a public safety answering point may not charge a township that is served by the public safety answering point a fee for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township when the sheriff and township have entered into a contract whereby the sheriff provides road patrol services to the township.

2. A county sheriff who operates a public safety answering point and township that is served by the public safety answering point may not enter into a contract whereby the township pays the sheriff for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township.

3. Pursuant to R.C. 4931.45, a county's final 9-1-1 plan may be amended to require a township that is served by a public safety answering point operated by the county sheriff to pay a portion of the costs associated with operating the public safety answering point through an addendum approved by a majority of a 9-1-1 planning committee, provided the addendum does not change the source of funding as between the alternatives set forth in R.C. 4931.43(B)(5).

4. Pursuant to R.C. 4931.45(B), an amendment to a county's final 9-1-1 plan that changes the source of funding for a county sheriff's public safety answering point as between the alternatives set forth in R.C. 4931.43(B)(5) must be made in accordance with the procedures set forth in R.C. 4931.42-.44.

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

August 19, 2010

OPINION NO. 2010-021

The Honorable Julia R. Bates
Lucas County Prosecuting Attorney
Lucas County Courthouse, Suite 250
Toledo, Ohio 43624-1680

Dear Prosecutor Bates:

You have requested an opinion concerning the payment of a county sheriff's costs in providing dispatching services to a township as part of a countywide 9-1-1 system created and operated pursuant to R.C. 4931.40-.70.[1] You have explained that, under the final plan creating the countywide 9-1-1 system, the county sheriff is required to operate a public safety answering point (PSAP), which is a "facility to which 9-1-1 system calls for a specific territory are initially routed for response and where personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider, or transferring the call to the appropriate provider." R.C. 4931.40(P). The final plan also states that the sheriff's PSAP will provide dispatching services within certain townships and villages and that the operations of the PSAP are to be funded by the county only.

You have explained further that the county sheriff and a township that is served by the PSAP operated by the sheriff have entered into a contract whereby the sheriff provides road

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[1] Your inquiry does not concern situations in which the county sheriff receives calls for assistance through telephone numbers other than 9-1-1 and then dispatches police and fire personnel to respond to these calls. *See generally* R.C. 4931.41(G) (a county sheriff "participating in a countywide 9-1-1 system shall maintain a telephone number in addition to 9-1-1"). The sheriff also is not using a countywide public safety communications system established under R.C. 307.63 to dispatch police and fire personnel to the township. *See generally* 1998 Op. Att'y Gen. No. 98-032 (syllabus, paragraph 1) ("[a] countywide 9-1-1 system created and operated pursuant to R.C. 4931.40-.53 is not a countywide public safety communications system, as defined by R.C. 307.63(A)").

patrol services to the township. The sheriff asserts that, pursuant to the terms of the contract, he may charge the township a fee for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township. The township, however, has taken the position that the sheriff is not authorized to do this insofar as the sheriff is required to operate a PSAP that serves the township.

In light of these facts, you ask the following questions:

1. May a county sheriff who operates a PSAP charge a township that is served by the PSAP a fee for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township when the sheriff and township have entered into a contract whereby the sheriff provides road patrol services to the township?

2. May a county sheriff who operates a PSAP and township that is served by the PSAP enter into a contract whereby the township pays the sheriff for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township?

3. May a county's final 9-1-1 plan be amended to require a township that is served by a PSAP operated by the county sheriff to pay a portion of the costs associated with operating the PSAP?

It is well settled that a county sheriff may not charge a fee for services provided by his office unless the sheriff has express statutory authorization to do so or authority implied from an express power. 2009 Op. Att'y Gen. No. 2009-004 at 2-17; *see* 2006 Op. Att'y Gen. No. 2006-036 at 2-333; 1999 Op. Att'y Gen. No. 99-012 at 2-101. Also, the fact that the sheriff seeks to assess a fee against a township does not obviate the requirement that the sheriff have express or implied authority for imposing the fee. 2009 Op. Att'y Gen. No. 2009-004 at 2-17; *see* 1995 Op. Att'y Gen. No. 95-004 at 2-17.

No statute authorizes a county sheriff who operates a PSAP as part of the countywide 9-1-1 system to charge a township a fee for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township. *See* 2009 Op. Att'y Gen. No. 2009-004 at 2-18. Further, while various statutes authorize a sheriff and township to enter into a contract whereby the sheriff provides road patrol services to the township, *see, e.g.*, R.C. 311.29; R.C. 505.43; R.C. 505.49; R.C. 505.50, none of these statutes require the township to pay the sheriff a fee for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township as part of such a contract. A county sheriff thus does not have express statutory authorization to charge a township a fee for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township.

Not only does a county sheriff lack express statutory authority to charge a township that is served by a PSAP operated by the sheriff a fee for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township, but to conclude that a sheriff may do

so pursuant to a contract for road patrol services would be inconsistent with the provisions of law governing the funding of PSAPs. R.C. 4931.41 provides in part:

> [D](2) A subdivision that operates a public safety answering point *shall pay all of the costs associated with* establishing, equipping, furnishing, *operating, and maintaining that facility* and shall allocate those costs among itself and the subdivisions served by the answering point based on the allocation formula in a final plan….
>
> (E) Except to the extent provided in a final plan that provides for funding of a 9-1-1 system in part through charges imposed under [R.C. 4931.51], each subdivision served by a public safety answering point shall pay the subdivision that operates the answering point the amount computed in accordance with the allocation formula set forth in the final plan. (Emphasis added.)

In addition, R.C. 4931.43(B)(5) requires a county's final 9-1-1 plan to specify "[w]hether the cost of establishing, equipping, furnishing, operating, or maintaining each public safety answering point should be funded through charges imposed under [R.C. 4931.51] or will be allocated among the subdivisions served by the answering point and, if any such cost is to be allocated, the formula for so allocating it[.]" Also, when a county operates a PSAP, the "county may fund its portion of the cost in a number of ways…. [I]t may use general revenue funds, pass an additional sales tax and use tax pursuant to R.C. 5739.026(A)(6) and R.C. 5741.023, or pass a property tax in excess of the ten-mill limitation pursuant to R.C. 5705.19(BB)" or R.C. 5705.19(SS). 2000 Op. Att'y Gen. No. 2000-044 at 2-270. Finally, "[t]he General Assembly has also provided two options for counties where a final plan has either not been approved or has not been implemented because of a lack of funding." *Id.*; *see* R.C. 4931.52; R.C. 4931.53.

A review of the options available to a county to fund the operations and maintenance of PSAPs discloses that the General Assembly has carefully and very specifically provided a comprehensive scheme for the funding of PSAPs, and that it has not included within that scheme revenue derived from the imposition of fees by the operators of PSAPs. *See* 2009 Op. Att'y Gen. No. 2009-004 at 2-20 and 2-21; 2000 Op. Att'y Gen. No. 2000-044 at 2-269 through 2-271. As explained in 2009 Op. Att'y Gen. No. 2009-004 at 2-21, which concerned the authority of a county sheriff who operates a PSAP to charge the board of county commissioners a fee for dispatching the ambulances of the county's emergency medical service organization:

> the General Assembly has not included within the 9-1-1 funding scheme authority for a county sheriff operating a PSAP to charge the county a fee for dispatching ambulances. As summarized above, the cost of a 9-1-1 system as a whole is projected and then apportioned among the participating subdivisions, which have a number of specific options for funding their allocated portion of the cost. Nowhere in the scheme are offices of a participating subdivision authorized to charge their own or other participating subdivisions fees to cover the costs their offices incur in operating a PSAP.

A county sheriff thus does not have express statutory authorization or authority implied from an express power to charge a township a fee for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township. Accordingly, a county sheriff who operates a PSAP may not charge a township that is served by the PSAP a fee for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township when the sheriff and township have entered into a contract whereby the sheriff provides road patrol services to the township.

Your second question asks whether a county sheriff who operates a PSAP and township that is served by the PSAP may enter into a contract whereby the township pays the sheriff for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township. As explained earlier, a sheriff who operates a PSAP is prohibited from charging a township a fee for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township. A county sheriff who operates a PSAP and township that is served by the PSAP therefore may not enter into a contract whereby the township pays the sheriff for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township.

Your final question asks whether a county's final 9-1-1 plan may be amended to require a township that is served by a PSAP operated by the county sheriff to pay a portion of the costs associated with operating the PSAP. R.C. 4931.45 sets forth provisions for amending a county's final 9-1-1 plan. Division (A) of this statute provides that a county's final 9-1-1 plan may be amended for the following purposes:

> (1) Expanding the territory included in the countywide 9-1-1 system;
> (2) Upgrading any part or all of a system from basic to enhanced wireline 9-1-1;
> (3) Adjusting the territory served by a public safety answering point;
> (4) *Represcribing the funding of public safety answering points as between the alternatives set forth in* [*R.C. 4931.43(B)(5)*];
> (5) Providing for wireless enhanced 9-1-1;
> (6) Adding a telephone company as a participant in a countywide 9-1-1 system after the implementation of wireline 9-1-1 or wireless enhanced 9-1-1;
> (7) Providing that the state highway patrol or one or more public safety answering points of another 9-1-1 system function as a public safety answering point or points for the provision of wireline or wireless 9-1-1 for all or part of the territory of the system established under the final plan, as contemplated under [R.C. 4931.41(J)];
> (8) *Making any other necessary adjustments to the plan*. (Emphasis added.)

It is apparent from the language of R.C. 4931.45(A)(4) and (8) that a county's final 9-1-1 plan may be amended to change the manner in which the operations of the plan's PSAPs are funded. *See generally* 2009 Op. Att'y Gen. No. 2009-017 at 2-124 and 2-125 ("R.C.

4931.45(A)(8) thus authorizes the amending of a county's final 9-1-1 plan for the purpose of making any adjustments to the plan that are not delineated in R.C. 4931.45(A)(1)-(7)"). As stated in 2008 Op. Att'y Gen. No. 2008-014 at 2-152:

> [T]he subdivisions included in a final plan for implementing a countywide 9-1-1 system have the authority to amend the final plan after the final plan is adopted for the purpose of meeting current and future needs. R.C. 4931.45 expressly grants this authority to the subdivisions included in a final plan. *Under this statute, any of the terms, conditions, requirements, or specifications of a final plan for implementing a countywide 9-1-1 system that was adopted pursuant to R.C. 4931.44 may be changed by adopting an amended final plan or adding addendums to the final plan.* Any amendments to a final plan must, however, be done as provided in R.C. 4931.45. (Emphasis added.)

Thus, pursuant to R.C. 4931.45, a county's final 9-1-1 plan may be amended to require a township that is served by a PSAP operated by the county sheriff to pay a portion of the costs associated with operating the PSAP.

The manner in which a county's final 9-1-1 plan may be amended to require a township that is served by a PSAP operated by the county sheriff to pay a portion of the costs associated with operating the PSAP turns on whether the amendment to the county's final 9-1-1 plan is done pursuant to R.C. 4931.45(A)(4) or R.C. 4931.45(A)(8). R.C. 4931.45(A)(4) applies when a county's final 9-1-1 plan is amended to change the funding of PSAPs as between the alternatives set forth in R.C. 4931.43(B)(5).[2] In all other instances involving the funding of PSAPs, R.C. 4931.45(A)(8) applies. *See State ex rel. DiFrangia v. Trumbull County Bd. of Comm'rs,* 99 Ohio App. 3d 569, 571-72, 651 N.E.2d 447 (Trumbull County 1994).

If the amending is done for the purpose described in R.C. 4931.45(A)(4), the county's final 9-1-1 plan must "be amended in the manner provided for adopting a final plan under [R.C. 4931.42-.44]." R.C. 4931.45(B). The process for adopting an amended final county 9-1-1 plan begins when a board of county commissioners or the legislative authority of any municipal corporation in the county that contains at least thirty percent of the county's population adopts a resolution to convene a 9-1-1 planning committee to prepare a proposal to amend the county's final 9-1-1 plan. *See* R.C. 4931.42-.43; R.C. 4931.45(B). Upon completion of the proposal, the committee holds a public meeting on the proposal to explain the county's amended final 9-1-1 plan to, and receive comments from, public officials. *See* R.C. 4931.43(A). Following the public meeting, the committee may modify the proposal and adopt the county's amended final 9-1-1 plan. *See* R.C. 4931.43(C).

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[2] The funding alternatives for paying for the operation of PSAPs set forth in R.C. 4931.43(B)(5) are (1) charging a reasonable assessment to real property owners pursuant to R.C. 4931.51 or (2) allocating the costs among the subdivisions served by a PSAP.

Immediately upon completion of the county's amended final 9-1-1 plan, the committee must send a copy of the plan to various entities that will be served by PSAPs under the plan. *See id.* The county's amended final 9-1-1 plan becomes effective when it is approved in the manner set forth in R.C. 4931.44. *See* R.C. 4931.44(B); R.C. 4931.45(B).

However, if the amending of a county's final 9-1-1 plan is done pursuant to R.C. 4931.45(A)(8), rather than R.C. 4931.45(A)(4), the county's final 9-1-1 plan does not need to be amended in the manner set forth in R.C. 4931.42-.44. *See* R.C. 4931.45(B) and (C)(2); *State ex rel. DiFrangia v. Trumbull County Bd. of Comm'rs*, 99 Ohio App. 3d at 571-72. Instead, the amendment "may be made by an addendum approved by a majority of the 9-1-1 planning committee." R.C. 4931.45(C)(2); *see* 2009 Op. Att'y Gen. No. 2009-017 at 2-124 and 2-125.

To sum up the amendment process, pursuant to R.C. 4931.45, a county's final 9-1-1 plan may be amended to require a township that is served by a PSAP operated by the county sheriff to pay a portion of the costs associated with operating the PSAP through an addendum approved by a majority of a 9-1-1 planning committee, provided the addendum does not change the source of funding as between the alternatives set forth in R.C. 4931.43(B)(5). Also, pursuant to R.C. 4931.45(B), an amendment to a county's final 9-1-1 plan that changes the source of funding for a county sheriff's PSAP as between the alternatives set forth in R.C. 4931.43(B)(5) must be made in accordance with the procedures set forth in R.C. 4931.42-.44.

In your particular situation, you have explained that the residents of Lucas County have passed a property tax in excess of the ten-mill limitation pursuant to R.C. 5705.19 to fund the countywide 9-1-1 system. You indicate further that the costs associated with operating the county sheriff's PSAP are not paid through an assessment on real property owners pursuant to R.C. 4931.51.

Your situation thus involves reallocating the costs associated with operating the county sheriff's PSAP among the subdivisions that are served by the PSAP, rather than changing the source of funding for the county sheriff's PSAP as between the alternatives set forth in R.C. 4931.43(B)(5). This means that the Lucas County final 9-1-1 plan may be amended to require a township that is served by a PSAP operated by the county sheriff to pay a portion of the costs associated with operating the PSAP by an addendum approved by a majority of the 9-1-1 planning committee. *See* R.C. 4931.45(A)(8); R.C. 4931.45(C)(2); *State ex rel. DiFrangia v. Trumbull County Bd. of Comm'rs*, 99 Ohio App. 3d at 571-72. It also means that it is unnecessary for Lucas County to adopt an amended final county 9-1-1 plan pursuant to R.C. 4931.42-.44 for the purpose of requiring a township to pay a portion of the costs associated with operating the county sheriff's PSAP since the change in the source of funding for the county sheriff's PSAP would not involve changing the source of funding as between the alternatives set forth in R.C. 4931.43(B)(5). *See* R.C. 4931.45(A)(4); R.C. 4931.45(B); *State ex rel. DiFrangia v. Trumbull County Bd. of Comm'rs*, 99 Ohio App. 3d at 571-72; *see also* note 2, *supra*.

Nevertheless, nothing in R.C. 4931.45 or elsewhere in the Revised Code bars a county from adopting an amended final county 9-1-1 plan pursuant to R.C. 4931.42-.44 for the purpose

of requiring a township to pay a portion of the costs associated with operating the county sheriff's PSAP. As such, Lucas County may, but is not required to, adopt an amended final county 9-1-1 plan pursuant to R.C. 4931.42-.44 for the purpose of requiring a township to pay a portion of the costs associated with operating the county sheriff's PSAP.

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

1. A county sheriff who operates a public safety answering point may not charge a township that is served by the public safety answering point a fee for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township when the sheriff and township have entered into a contract whereby the sheriff provides road patrol services to the township.

2. A county sheriff who operates a public safety answering point and township that is served by the public safety answering point may not enter into a contract whereby the township pays the sheriff for receiving 9-1-1 calls and dispatching police and fire personnel to respond to 9-1-1 calls in the township.

3. Pursuant to R.C. 4931.45, a county's final 9-1-1 plan may be amended to require a township that is served by a public safety answering point operated by the county sheriff to pay a portion of the costs associated with operating the public safety answering point through an addendum approved by a majority of a 9-1-1 planning committee, provided the addendum does not change the source of funding as between the alternatives set forth in R.C. 4931.43(B)(5).

4. Pursuant to R.C. 4931.45(B), an amendment to a county's final 9-1-1 plan that changes the source of funding for a county sheriff's public safety answering point as between the alternatives set forth in R.C. 4931.43(B)(5) must be made in accordance with the procedures set forth in R.C. 4931.42-.44.

Respectfully,

RICHARD CORDRAY
Ohio Attorney General