May 26, 2011

The Honorable Brent W. Yager
Marion County Prosecuting Attorney
134 East Center Street
Marion, Ohio 43302

SYLLABUS: 2011-016

1. Properties that are not within the territorial boundaries of and not owned by a municipal corporation are not within the municipal corporation's jurisdiction for purposes of law enforcement, firefighting, or fire protection services.

2. A county sheriff is required to provide law enforcement to properties located within the unincorporated territory of a county.

3. A joint fire district created pursuant to R.C. 505.371 is required to provide firefighting and fire protection services to properties situated within the fire district.

MIKE DEWINE
OHIO ATTORNEY GENERAL

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

May 26, 2011

OPINION NO. 2011-016

The Honorable Brent W. Yager
Marion County Prosecuting Attorney
134 East Center Street
Marion, Ohio 43302

Dear Prosecutor Yager:

You have requested an opinion concerning the status, for purposes of law enforcement, firefighting, and fire protection services, of real property previously owned by the City of Marion Municipal Airport that was subdivided into three parcels and sold to three separate private businesses. The properties are located in Marion County, but not within the City of Marion. You ask us to address the following questions about these properties:

1. Are these properties still considered to be within the City jurisdiction because they were once part of the City of Marion Municipal Airport?

2. Who is obligated to provide law enforcement and fire protection to these businesses now: the Marion County Sheriff or the Marion City Police Department; and the Marion City Fire Department or the First Consolidated Fire District?

3. Do city and county law enforcement agencies and firefighting entities have concurrent jurisdiction with respect to these several properties?

We begin with an overview of the general authority and jurisdiction of county and municipal law enforcement and firefighting agencies. A county sheriff is responsible for providing law enforcement throughout the county. Pursuant to R.C. 311.07(A), "[e]ach [county] sheriff shall preserve the public peace," and under R.C. 2935.03(A)(1), "[a] sheriff … shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the political subdivision, … a law of this state." *See also In re Sulzmann*, 125 Ohio St. 594, 597, 183 N.E. 531 (1932) ("[t]he sheriff is the chief law enforcement officer in the county"); *Lorain County Deputies Ass'n v. Vasi*, No. 92-CA-005337, 1992 Ohio App. LEXIS 6392, at *5 (Lorain County Dec. 16, 1992) ("[t]he legislative mandate to 'preserve the peace' … requires that a sheriff respond to calls and bring to justice those the Sheriff knows to have committed illegal acts"). Thus, responsibility for law enforcement within a county is vested in a county sheriff pursuant to R.C. 311.07 and R.C. 2935.03.

A county sheriff may exercise the authority expressly conferred upon him by statute or as may be necessarily implied in order to fully effect the exercise of an express power. *See Geauga County Bd. of Comm'rs v. Munn Rd. Sand & Gravel*, 67 Ohio St. 3d 579, 582, 621 N.E.2d 696 (1993); 1999 Op. Att'y Gen. No. 99-012, at 2-101. A sheriff is authorized by R.C. 311.07(A) to preserve the public peace, but the actions he may undertake in so acting are not amenable to precise definition or enumeration. 2007 Op. Att'y Gen. No. 2007-029, at 2-310 n.8; 1986 Op. Att'y Gen. No. 86-023, at 2-121. Thus, a sheriff may exercise reasonable discretion in determining the manner in which he will exercise the power to preserve the public peace. 2007 Op. Att'y Gen. No. 2007-029, at 2-310 n.8; 1986 Op. Att'y Gen. No. 86-023, at 2-121. Further, the Ohio Supreme Court has held that a sheriff's jurisdiction is "coextensive with the county, including all municipalities and townships." *In re Sulzmann*, 125 Ohio St. at 597. Consequently, a sheriff may exercise his law enforcement authority within a municipal corporation insofar as that municipal corporation is within the sheriff's county.[1]

Unlike a county, which derives its authority from enactments of the General Assembly, *see* R.C. Title 3, a municipal corporation draws its primary authority and power from the local self-government (*i.e.*, home rule) provisions of the Ohio Constitution. Ohio Const. art. XVIII, § 3 ("[m]unicipalities shall have authority to exercise all powers of local self-government"); § 7 (adoption of municipal charter); *Vill. of Perrysburg v. Ridgway*, 108 Ohio St. 245, 140 N.E. 595 (1923) (syllabus, paragraph 1) ("all municipalities derive all their 'powers of local self-government' from the Constitution direct, by virtue of Section 3, Article XVIII, thereof"); 1988 Op. Att'y Gen. No. 88-039, at 2-189. Yet a municipal corporation is authorized to regulate only those activities that occur within its territorial boundaries. *See Prudential Coop. Realty Co. v. City of Youngstown*, 118 Ohio St. 204, 207, 160 N.E. 695 (1928) (municipal corporations have no inherent authority to regulate beyond their territorial boundaries).

A municipal corporation police department operates in accordance with the statutes creating and governing its form and duties. *See* 1994 Op. Att'y Gen. No. 94-081, at 2-403; 1990 Op. Att'y Gen. No. 90-086, at 2-370; *see, e.g.*, R.C. 737.05 (composition of city police department); R.C. 737.11 (general duties of municipal corporation police and fire protection forces); R.C. 737.15 (appointment of village marshal, designated chief of police); R.C. 737.16 (appointment of deputy marshals, police officers, night guards, and special police officers). A municipal police force generally is authorized to serve the municipality within its territorial boundaries. *See, e.g.*, R.C. 2935.03(A)(1) (a "municipal police officer … shall arrest and detain, until a warrant can be obtained, a person found violating, *within the limits of the political subdivision*, … a law of this state [or] an ordinance of a municipal corporation" (emphasis added)); *City of Cincinnati v. Alexander*, 54 Ohio St. 2d 248, 375 N.E.2d 1241 (1978) (syllabus) ("[t]he authority granted in R.C. 2935.03 to a police officer to 'arrest and detain a person found violating a law of this state' does not confer authority upon a municipal police officer to arrest without a warrant outside the geographical boundaries of his municipality for traffic offenses observed by the officer to have been committed outside such municipal limits"). *But see* R.C.

---

[1] The municipal corporation may exercise its authority within its boundaries, as explained below, concurrently with the sheriff. *See, e.g.*, 1994 Op. Att'y Gen. No. 94-081.

2935.03(E)(3) ("[a] police officer or village marshal appointed, elected, or employed by a municipal corporation may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in [R.C. 2935.03(E)(1)] on the portion of any street or highway that is located immediately adjacent to the boundaries of the municipal corporation in which the police officer or village marshal is appointed, elected, or employed"); *City of Heath v. Johnson*, 5th Dist. No. 04-C.A.-29, 2005-Ohio-485, 2005 Ohio App. LEXIS 508, at ¶17 (Feb. 3, 2005) (quoting and affirming the language of R.C. 2935.03(E)(3)).

Similarly, a municipal fire department generally is authorized to serve the municipality within its territorial boundaries. *See Wheeler v. City of Cincinnati*, 19 Ohio St. 19, 21 (1869) ("[t]he laws of this State have conferred upon its municipal corporations power to establish and organize fire companies, procure engines and other instruments necessary to extinguish fire, and preserve the buildings and property *within their limits* from conflagration" (emphasis added)); *In re Lariccia*, 40 Ohio App. 2d 250, 254, 318 N.E.2d 871 (Mahoning County 1973) (acknowledging, in an annexation dispute, that "confusion at times might develop as to whether the city … or … [t]ownship would have jurisdiction in case of a fire"). The General Assembly has granted authority, under R.C. 9.60(C) and R.C. 737.10, for example, to municipal firefighting entities to provide firefighting and fire protection services to areas outside the territorial boundaries of the municipal corporation. We thus infer that, absent application of one of these statutory provisions, a municipal firefighting entity generally is limited to serving the municipality within its territorial boundaries.

Several statutes provide exceptions to the jurisdictional limitations of municipal corporations with respect to the provision of police protection and firefighting services. Municipal police forces are authorized by R.C. 715.50, R.C. 737.04, R.C. 737.041, and R.C. 737.10, *inter alia*, to act outside a municipal corporation's territorial boundaries. *See* note 3, *infra*. Likewise, a municipal fire department may provide firefighting and fire protection services to areas outside the municipal corporation pursuant to R.C. 737.10, *inter alia*. *See* note 5, *infra*.

The Revised Code does not provide for a specific countywide fire protection entity. Rather, fire protection services for properties within a county may be established at the township level pursuant to R.C. 505.37, at the regional level pursuant to R.C. 505.371 or R.C. 505.375, or at the municipal level pursuant to R.C. 737.08. All governmental entities in Ohio also have the authority to contract with private corporations for fire protection services pursuant to R.C. 9.60(C).

Your first question asks whether property located within the unincorporated territory of a county, that was once part of a municipal airport, but that has been sold to private owners, remains within the municipal corporation's jurisdiction for purposes of law enforcement, firefighting, and fire protection services. When property located within the unincorporated territory of a county is owned by a city as part of a municipal airport, R.C. 715.50 applies to grant the city authority to provide police protection services to the property. R.C. 715.50 declares that "[a] municipal corporation owning and using lands beyond its limits for a municipal purpose may provide, by ordinance or resolution, all needful police or sanitary regulations for the protection of such property and may prosecute violations thereof in the municipal court of such municipal corporation." A city has no authority under R.C.

715.50 to police property located in an unincorporated area of the county that the city does not own or use.

It is our understanding that the properties you are concerned with are not within the city and that the properties are no longer owned by the city. As we set forth above, a municipal corporation is authorized to regulate only within its territorial boundaries. If the properties in question are not within the territorial boundaries of the city, and the properties are not owned by the city, the properties are not within the city's jurisdiction, and the city is not required to provide law enforcement, firefighting, or fire protection services to the properties. Thus, in answer to your first question, properties that are not within the territorial boundaries of and not owned by a municipal corporation are not within the municipal corporation's jurisdiction for purposes of law enforcement, firefighting, or fire protection services.[2]

We now turn to your second question, which we will answer in two parts. We begin by considering who is required to provide law enforcement to property located within the unincorporated territory of a county. The Attorney General has previously found that "law enforcement officers of a county sheriff's office and municipal corporation police department are statutorily required to provide law enforcement assistance throughout the entire territory of the county and municipal corporation, respectively." 2009 Op. Att'y Gen. No. 2009-008, at 2-58. Thus, a county sheriff is responsible for providing law enforcement within his county.[3] Accordingly, in answer to the first part of your second

---

[2] There are statutory provisions by which a municipal corporation may be required or called upon to provide law enforcement or fire protection services to property not owned by and not within the territorial boundaries of the municipal corporation. These provisions are enumerated in notes 3 and 5, *infra*.

[3] Various provisions of the Revised Code may require a city to provide law enforcement to property located within the unincorporated territory of a county. *See, e.g.*, R.C. 311.07(B) (if the county sheriff requests a city to furnish law enforcement or fire protection services, "[s]uch aid *shall be furnished* to the sheriff requesting it, insofar as possible without withdrawing from the [city] the minimum police and fire protection appearing necessary under the circumstances" (emphasis added)); R.C. 737.041 (authorizing the police department of any municipal corporation to provide police protection services to any county, without a contract for such service, upon approval by resolution of the legislative authority of the municipal corporation and authorization by a specified officer or employee of the police department providing the police protection services). *But see* 1990 Op. Att'y Gen. No. 90-086, at 2-370 ("pursuant to R.C. 737.041 the police department of a municipal corporation may furnish or make available police protection, but it may not force such protection upon a governmental entity"). *See generally, e.g.*, R.C. 307.15(A)(1) ("the board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation … whereby the legislative authority of any municipal corporation undertakes, and is authorized by the board of county commissioners, to exercise any power, perform any function, or render any service, on behalf of the county or the board, that the county or the board may exercise, perform, or render").

question, a county sheriff is required to provide law enforcement to properties located within the unincorporated territory of a county. Thus, the Marion County Sheriff must provide police protection services to the properties you have identified.

The second part of your second question concerns firefighting and fire protection services for properties located within the unincorporated territory of a county. You state in your letter that the owners of these properties pay taxes to the First Consolidated Fire District.[4] You have informed us that the First Consolidated Fire District is a joint fire district created pursuant to R.C. 505.371. R.C. 505.371(A) describes the creation and composition of a joint fire district:

> The boards of township trustees of one or more townships and the legislative authorities of one or more municipal corporations, or the legislative authorities of two or more municipal corporations, or the boards of township trustees of two or more townships, may, by adoption of a joint resolution by a majority of the members of each board of township trustees and by a majority of the members of the legislative authority of each municipal corporation, create a joint fire district comprising the municipal corporations and all or any portions of the townships as are mutually agreed upon.

A joint fire district is authorized to levy a tax on real property situated in the district and must serve the territory that makes up the district. *See* R.C. 505.371(B); R.C. 5705.01; R.C. 5705.19(I).

Other statutes also permit agreements for police protection services or otherwise allow for counties, municipal corporations, and other political subdivisions to provide police protection services to and receive police protection services from one another. *See, e.g.*, R.C. 311.29(B) (county sheriff may enter into contracts with municipal corporations or townships, among other subdivisions, "to perform any police function, exercise any police power, or render any police service" on behalf of the contracting subdivision).

Numerous statutes permit townships to provide police protection services to or receive police protection services from other political subdivisions. *See, e.g.*, R.C. 505.43 (township may enter into contract with municipal corporation for police protection); R.C. 505.431 (township may provide police protection to county property without a contract); R.C. 505.48(A) (township may "create a township police district comprised of all or a portion of the unincorporated territory of the township"); R.C. 505.49(E) (township may contract "to obtain all police protection for the township police district from one or more municipal corporations, county sheriffs, or other townships"); R.C. 505.50 (township may contract with municipal corporation or county sheriff, among others, "for the provision of police protection services or additional police protection services either on a regular basis or for additional protection in times of emergency").

[4] According to its website, First Consolidated Fire District serves Claridon, Scott, and Tully Townships and the Village of Caledonia, all in Marion County, as well as Canaan Township in Morrow County.

According to the information you have provided us and the statutory provisions governing joint fire districts, it appears that the properties you are concerned with are situated within the territory of the First Consolidated Fire District. This means that the First Consolidated Fire District is required to provide firefighting and fire protection services to those properties. *See generally* R.C. 505.37(C)(3) ("[a] board of township trustees may remove unincorporated territory of the township from the fire district upon the adoption of a resolution authorizing the removal. On the first day of July of the year following the adoption of the resolution, the unincorporated township territory described in the resolution ceases to be a part of the district, and the power of the fire district to levy a tax upon taxable property in that territory terminates"); 1987 Op. Att'y Gen. No. 87-040, at 2-266 to 2-267 ("if a political subdivision chooses to provide fire protection services … without the creation of a taxing district with a limited territorial area, the subdivision must provide such services to all the territory within the subdivision").[5] In answer to the second part of your second question, a joint fire district created pursuant to R.C. 505.371 is required to provide firefighting and fire protection services to properties situated within the fire district. Thus, First Consolidated Fire District is required to provide firefighting and fire protection services to these several properties.

Finally, you ask whether city and county law enforcement agencies and firefighting entities have concurrent jurisdiction with respect to these properties. For the reasons discussed above, if the properties are not within the territorial jurisdiction of a city and are not subject to R.C. 715.50, the city does not have law enforcement jurisdiction with respect to them. Unless the municipal police department is called upon by the county sheriff pursuant to R.C. 311.07(B), or an agreement has been entered into pursuant to another provision of the Revised Code, the city does not have law enforcement jurisdiction on property located outside, and not owned by, the city. Similarly, municipal

---

[5] Again, there are various provisions of the Revised Code that may require a city to provide fire protection services to property located within the unincorporated territory of a county or within the area comprising an established joint fire district. For example, a city may provide fire protection services to property located within the unincorporated territory of a county pursuant to the general authority granted in R.C. 9.60(C): "Any governmental entity in this state may contract with any firefighting agency, private fire company, or emergency medical service organization of this state or another jurisdiction to obtain fire protection or emergency medical services." *See also* R.C. 311.07(B) (if the county sheriff requests a city to furnish fire protection services, "[s]uch aid shall be furnished to the sheriff requesting it, insofar as possible without withdrawing from the [city] the minimum police and fire protection appearing necessary under the circumstances"); R.C. 737.10 ("[t]he mayor may call upon the sheriff of the county in which all or part of the municipal corporation lies or the sheriff of any adjoining county, the mayor or other chief executive of any municipal corporation in the same or any adjoining county, and the chairman of the board of township trustees of any township in the same or any adjoining county, to furnish such … fire protection personnel … together with appropriate equipment and apparatus, as may be necessary to preserve the public peace and protect persons and property in the requesting municipal corporation in the event of a riot. Such aid shall be furnished to the mayor requesting it, insofar as possible without withdrawing from the political subdivision furnishing such aid the minimum … fire protection appearing necessary under the circumstances").

fire departments do not have jurisdiction outside the territorial boundaries of the municipal corporation except pursuant to the relevant statutes authorizing such extended jurisdiction. Unless the municipal fire department has been called upon by the county sheriff pursuant to R.C. 311.07(B), or an agreement has been entered into pursuant to another provision of the Revised Code, the city does not have jurisdiction outside its territorial boundaries to provide firefighting and fire protection services to these properties.

In sum, it is my opinion, and you are hereby advised that:

1. Properties that are not within the territorial boundaries of and not owned by a municipal corporation are not within the municipal corporation's jurisdiction for purposes of law enforcement, firefighting, or fire protection services.

2. A county sheriff is required to provide law enforcement to properties located within the unincorporated territory of a county.

3. A joint fire district created pursuant to R.C. 505.371 is required to provide firefighting and fire protection services to properties situated within the fire district.

Respectfully,

MICHAEL DEWINE
Ohio Attorney General