

Note from the Attorney General's Office:

1979 Op. Att'y Gen. No. 79-008 was overruled in part by 1986 Op. Att'y Gen. No. 86-003.

1979 Op. Att'y Gen. No. 79-008 was modified in part by 2004 Op. Att'y Gen. No. 2004-024.

OPINION NO. 79-008**Syllabus:**

1. A municipal court may select either the bailiff of such court or the sheriff, in its discretion, to serve criminal warrants in any area of the county in which such court has jurisdiction.
2. A sheriff has a duty to serve criminal warrants issued to him by a municipal court in any area of the county in which such court has jurisdiction. (1959 Op. Att'y Gen. No. 103, paragraph 2 of the Syllabus, overruled.)
3. The county is charged with the duty to house a prisoner charged with a misdemeanor under state law, both prior to and after conviction.

To: Richard B. Hauser, Huron County Pros. Atty., Norwalk, Ohio
By: William J. Brown, Attorney General, March 12, 1979

I have before me your request for my opinion which reads as follows:

The Norwalk Municipal Court was created in 1976. It differs from most city municipal courts in that it has county-wide jurisdiction. Since its creation, a series of questions have arisen with respect to the obligations of the Norwalk Police Department, the Huron County Sheriff and the court's bailiff pursuant to R.C. 1901.32. There are no constables in Huron County.

Which of the three has the primary obligation of serving criminal warrants for failure to appear in the unincorporated areas of the county?

Does the Sheriff have a duty to serve criminal warrants of a municipal court in the unincorporated areas of the county?

Which one of the two law enforcement agencies is responsible for housing municipal court prisoners charged with misdemeanors under state law both prior and subsequent to conviction?

R.C. 1901.23, which provides for the issuance of writs and process of a municipal court, provides as follows:

Writs and process in a municipal court shall be served, returned, and publication made in the manner provided for service, return, and publication of summons, writs, and process in the court of common pleas.

In any civil action or proceeding at law in which the subject matter of the action or proceeding is located within the territory or a defendant resides or is served with summons within said territory, the court may issue summons, orders of interpleader, all other writs, and mesne and final process, including executions necessary or proper for the complete adjudication of the issues and determination of the action, to the bailiff for service in the county or counties in which the court is situated and to the sheriff of any other county against one or more of the remaining defendants.

All warrants, executions, subpoenas, writs, and processes in all criminal and quasi-criminal cases may be issued to the

bailiff of the court, a police officer of the appropriate municipal corporation, or to the sheriff of the appropriate county.

In any civil action in which the bailiff is a party, or is interested, writs and process shall be directed to the sheriff. If both these officers are interested, the writs and process shall be directed to and executed by a person appointed by the court or a judge thereof, and such person shall have the same power to execute such process or order which the bailiff has. The return of such appointee must be verified by affidavit and he shall be entitled to the fees allowed to the bailiff for similar service. (Emphasis added.)

In order to answer your first question, it is first necessary to determine whether the three officers you mention have any obligation to serve warrants issued by a municipal court in an unincorporated area of a county. A police officer of a municipal corporation is not empowered to serve criminal warrants outside the territorial limits of the city in which he serves. Generally, the responsibility of a police department does not extend beyond the corporate limits of the municipality which supports it. See, 1959 Op. Att'y. Gen. No. 50. R.C. 1901.23 recognizes this limitation, by permitting service of criminal warrants by police officers "of the appropriate municipal corporation". This language restricts police service of warrants to situations wherein service can be obtained within the territorial confines of the police officer's municipality. Therefore, a police officer of a municipality may not serve a criminal warrant, pursuant to R.C. 1901.23, in an unincorporated area of a county.

A bailiff of a municipal court, however, is not so limited. His responsibility extends as far as does the jurisdiction of the municipal court that appointed him. Accordingly, a municipal court bailiff may serve a warrant issued him by the municipal court within the court's jurisdiction, whether service is to be within or without municipal boundaries.

R.C. 311.08 provides, in pertinent part, as follows:

The sheriff shall execute every summons, order, or other process, make return thereof, and exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law.
(Emphasis added.)

R.C. 1901.23 provides that warrants may be issued ". . . to the sheriff of the appropriate county" for service. The question of whether or not a sheriff may serve such a warrant in an unincorporated part of the county in which he serves which is under the jurisdiction of the municipal court issuing the warrant turns upon the interpretation of the above-quoted phrase. In 1959 Op. Att'y. Gen. No. 103, my predecessor observed that:

The final paragraph of Section 1901.23, supra, provides for the issuance of process in criminal and quasi-criminal cases "to the sheriff of the appropriate county." From the context of Sections 1901.23 and 1901.32, Revised Code, the "sheriff of the appropriate county" has reference to the sheriff of any county situate outside the county or counties in which the particular municipal court is located.

However, I am constrained to disagree. The second paragraph of R.C. 1901.23, which provides for the service in civil actions, permits a municipal court to:

. . . issue summons, orders of interpleader, all other writs, and mesne and final process, including executions necessary or proper for the complete adjudication of the issues and determination of the action, to the bailiff for service in the county or counties in which the court is situated and to the sheriff of any other county against one or more of the remaining defendants. (Emphasis added.)

The section specifically limits the issuance of process to a sheriff in civil actions to the sheriffs of counties other than the county or counties in which the issuing municipal court is located. Such a limitation is not placed upon a municipal court when it issues criminal warrants. Accordingly, I must conclude that the language of R.C. 1901.23 authorizes a municipal court to issue criminal warrants to the sheriff of the county in which such court has jurisdiction.

A sheriff or a municipal court bailiff may serve criminal warrants issued by a municipal court in areas of the county in which such court has jurisdiction. However, R.C. 1901.23 does not establish a primary obligation for such service. Accordingly, it is my opinion that a municipal court judge may select either the bailiff of such court or the sheriff, in its discretion, to serve criminal warrants in any area of the county in which such court has jurisdiction.

Your second inquiry poses the question of whether the sheriff has a duty to serve criminal warrants of a municipal court in the unincorporated areas of the county in which such court has jurisdiction. For the reasons stated in my answer to your previous question, I find that a sheriff has a duty to serve criminal warrants issued to him by a municipal court in any area of the county in which such court has jurisdiction.

In the last question, you ask which one "of the two law enforcement agencies" is responsible for housing municipal court prisoners charged with misdemeanors under state law. I must assume that by the reference to "two law enforcement agencies", you mean a municipal police department and a county sheriff. The question, however, ultimately concerns which governmental body, either a municipality or a county, has such responsibility.

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 1962 Op. Att'y. Gen. No. 1133. 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.

Therefore, it is my opinion, and you are so advised, that:

1. A municipal court may select either the bailiff of such court or the sheriff, in its discretion, to serve criminal warrants in any area of the county in which such court has jurisdiction.
2. A sheriff has a duty to serve criminal warrants issued to him by a municipal court in any area of the county in which such court has jurisdiction. (1959 Op. Att'y Gen. No. 103, paragraph 2 of the Syllabus, overruled.)
3. The county is charged with the duty to house a prisoner charged with a misdemeanor under state law, both prior to and after conviction.