

Note from the Attorney General's Office:

1976 Op. Att'y Gen. No. 76-012 was overruled in part by
2004 Op. Att'y Gen. No. 2004-024.

OPINION NO. 76-012

Syllabus:

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.

To: Gary F. McKinley, Union County Pros. Atty., Marysville, Ohio
By: William J. Brown, Attorney General, February 27, 1976

I have before me your request for my opinion as to the responsibility between a municipality and a county for the sustenance, medical care and hospitalization of prisoners who have been arrested or confined by municipal police officers or county sheriff's deputies. You inquire as to whether the responsibility for such sustenance and care turns upon which authority made the arrest (regardless of whether the charge is under a city ordinance or state statute) or upon whether the prisoner is charged with violating a municipal ordinance or state statute.

As you noted in your request my predecessors have had several occasions to address this issue. See 1952 Op. Att'y Gen. No. 1133, 1955 Op. Att'y Gen. No. 5561 and 1956 Op. Att'y Gen. No. 6768. The conclusions were that municipal prisoners are those charged with or sentenced for violation of a municipal ordinance and that county prisoners are those charged with or sentenced for violation of a state statute. This distinction was based on the fact that under R.C. 2935.03 an arrest shall be made by any of a number of different officers and even by private citizens pursuant to R.C. 2935.04.

Under the current version of R.C. 2935.03, a sheriff, deputy sheriff, marshal, deputy marshal, or police officer shall arrest and detain a person found violating a law of this state or an ordinance of a municipal corporation. R.C. 2935.04 further specifies that when a felony has been committed, or there is reasonable ground to believe a felony has been committed, any person without a warrant may arrest another whom he has reasonable cause to believe is guilty of an offense and detain him until a warrant can be obtained. It is worthy of note that a warrant, in these situations, will be sought on the basis of the offense--from the city involved if the offense is a violation of a municipal ordinance or from the county if the offense is a violation of state statute--not on the basis of who performed the arrest.

It is clear that the duties and power to arrest and detain as specified by R.C. 2935.03 and R.C. 2935.04 are not fragmented--the statutes do not indicate that a municipal officer shall arrest and detain only those violating a municipal ordinance nor that a county officer shall only arrest those violating state statutes. All of the officers listed in R.C. 2935.03 are charged with arresting and detaining any person found violating any law of the state or municipal ordinance. The distinction thus drawn in preceding opinions between county prisoners and municipal prisoners--based upon the offense involved--provides the only workable basis for classifying prisoners. Classifying prisoners on the basis of who made the arrest could lead to obviously absurd conclusions--for example, that a citizen making an arrest pursuant to R.C. 2935.04 was thereafter responsible for feeding and maintaining the person so detained. The only logical conclusion is, then, that the responsibility for sustenance and care of a prisoner rests on the nature of the offense involved not the character of the officer making the arrest.

As noted in your request, some of the language in University Hospitals v. City of Cleveland, 28 Ohio Misc. 134 (Common Pleas Court of Cuyahoga County 1971) in isolation appears to contradict the conclusion that responsibility for sustenance and care of a prisoner turns upon the nature of the offense with which he has been charged or for which he has been sentenced. ["It is nevertheless obvious, that if a person is arrested by a municipal officer and not released under bond, such person is a prisoner of the municipality and thus the municipality is responsible for his medical needs, including hospitalization. Similarly, all persons arrested by a county official, and not released under bond, are the responsibility of the sheriff and he must pay for their hospitalization." Id. at 138.]

A closer analysis of the case indicates, however, that implicit in the reference to bond is the assumption that appropriate warrants have been issued and that a person arrested by a municipal officer has been charged with violation of a municipal ordinance and that a person arrested by a county official has been charged with violation of a state statute. This makes it clear that the question under consideration in University Hospitals, supra, was not that of responsibility as between the county and the municipality. It involved, rather, a situation where an individual was found wounded and was taken by city police officers to a local hospital without arrest, where he remained in treatment for 21 days. Then he was taken into custody by the county and transferred to another hospital's prison ward, where the services rendered to him were paid by the county. The point here was that the individual involved was not confined, arrested or detained until after the first 21 days of hospitalization and the hospital which rendered services to him could not claim that the county or city was responsible for his care during that period, as he was not a prisoner at all during that time. This decision does not alter the basic concept that an individual is the prisoner of the political subdivision which has charged him with an offense or sentenced him for an offense and that it is the "charging" subdivision which has responsibility for the prisoner.

Accordingly, it is my opinion and you are advised 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.