

**OPINION NO. 86-105****Syllabus:**

1. A county sheriff is not authorized to contract under R.C. 311.29 in order to receive jail services from another county.
2. The sheriff of a county not having a sufficient jail or staff may, pursuant to R.C. 341.12, remove a person sentenced to imprisonment in the county jail or in custody upon civil process to a jail in another county. The sheriff receiving the prisoner shall charge the fees provided for in R.C. 341.13, and, if he is the sheriff of an adjoining county, he shall also charge the fee specified in R.C. 341.14. The board of commissioners of the county from which the prisoner was removed must allow payment of the fees properly charged by the sheriff under R.C. 341.13 and R.C. 341.14.

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**To: Robert N. Rosenberger, Pike County Prosecuting Attorney, Waverly, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 10, 1986**

I have before me your letter in which you ask my opinion concerning the incarceration of prisoners outside the county of

their arrest and conviction. Pursuant to a telephone conversation with a member of my staff, you have indicated that the board of county commissioners has entered into no contracts for the incarceration of county prisoners outside of Pike County, but has received bills for the costs of incarcerating prisoners in jails outside the county. The board is concerned about its obligation to pay these bills. Based upon these facts, I have rephrased your questions as follows:

1. Is a county sheriff authorized under R.C. 311.29 to contract with other counties for the incarceration of prisoners arrested and convicted in his county?
2. Under what circumstances is a board of county commissioners obligated to allow the payment of expenses of incarcerating prisoners who are housed in the jail of another county?

I will first address the ability of the sheriff to contract for jail services. A county sheriff, as a public officer, has only those powers which are expressly provided by statute and those necessarily implied therefrom. See 1986 Op. Att'y Gen. No. 86-023. See also Burkholder v. Lauber, 6 Ohio Misc. 152, 216 N.E.2d 909 (C.P. Fulton County 1965) (the power to contract on behalf of the county is vested in the board of county commissioners, and no other officer can bind the county by contract without express provision of law). R.C. 311.29(B) does provide a county sheriff limited power to contract:

The sheriff may, from time to time, enter into contracts with any municipal corporation, township, port authority, water or sewer district, school district, library district, health district, park district, soil and water conservation district, water conservancy district, or other taxing district or with the board of county commissioners of any contiguous county with the concurrence of the sheriff of such other county, and such subdivisions, authorities, and counties may enter into agreements with the sheriff whereby the sheriff undertakes and is authorized by the contracting subdivision, authority, or county to perform any police function, exercise any police power, or render any police service in behalf of the contracting subdivision, authority, or county, or its legislative authority, which such subdivision, authority, or county, or its legislative authority, may perform, exercise, or render. (Emphasis added.)

As discussed more fully below, the legislature has specifically provided in R.C. 341.12-.14 a means whereby a county sheriff may provide jail services to another county. Thus, I find it unlikely that the legislature intended that the general language of R.C. 311.29 empowering a sheriff to "perform any police function, exercise any police power, or render any police service" on behalf of another public authority be interpreted as authorizing the sheriff to provide jail services for another county or other political subdivision. See 1981 Op. Att'y Gen. No. 81-042 at 2-170, n. 1 ("I am not aware of any Ohio statute other than R.C. 341.13 which authorizes the sheriff of a county to receive into the jail of his county prisoners of another county").<sup>1</sup> It is,

<sup>1</sup> R.C. 311.29 was enacted in 1961 Ohio Laws 1362 (Am. H.B. 381, eff. Aug. 18, 1961), and, thus, was in existence when 1981 Op. Att'y Gen. No. 81-042 was rendered.

however, unnecessary for me to decide this matter for purposes of this opinion, in light of my opinion that R.C. 311.29 does not authorize a sheriff to contract under the circumstances you have described, regardless of whether the provision of jail services may be considered a police power, police function, or police service, for purposes of that statute.

R.C. 311.29 does not empower a sheriff to contract with the board of county commissioners of another county in order to receive services from that county. Rather, it empowers a sheriff to contract with the board of county commissioners in order to provide services to that county. Thus, even if R.C. 311.29 encompasses the provision of jail services, a county sheriff has no authority thereunder to contract with another county or other entity in order to receive jail services from that county or entity.

I turn now to your second question concerning the circumstances under which the board of county commissioners may allow claims against the county for the costs of incarcerating a prisoner housed in the jail of another county. R.C. 307.55 provides as follows:

No claims against the county shall be paid otherwise than upon the allowance of the board of county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the auditor upon the proper certificate of the person or tribunal allowing the claim.

See R.C. 319.16 (the county auditor "shall not issue a warrant for the payment of any claim against the county, unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal so authorized by law"); 1986 Op. Att'y Gen. No. 86-024; 1985 Op. Att'y Gen. No. 85-066. As stated in 1949 Op. Att'y Gen. No. 807, p. 492, 496: "in allowing a claim, it becomes the duty of the county commissioners to be sure that the claim is based upon some statute or rises out of the performance of some authorized contract and is not a mere demand unsupported by law." See Jones v. Commissioners, 57 Ohio St. 189, 48 N.E. 882 (1897); Op. No. 81-042.

R.C. 341.12 authorizes a sheriff in a county without a sufficient jail or jail staff to "convey any person charged with the commission of an offense, sentenced to imprisonment in the county jail, or in custody upon civil process, to a jail in any county which the sheriff considers most convenient and secure." R.C. 341.13 requires the sheriff of a county to which a prisoner has been removed under R.C. 341.12 to receive the prisoner into his custody upon being furnished a copy of the process or commitment. The statute also provides for the county from which the prisoner was removed to pay the sheriff receiving the prisoner for his services: "Such sheriff shall receive from the treasury of the county from which the prisoner was removed, such fees as are allowed in other cases." See Op. No. 81-042 (the reference in R.C. 341.13 to "fees as are allowed in other cases" is to the fees prescribed in R.C. 311.20). In addition, R.C. 341.14 provides that a sheriff of an adjoining county need not receive prisoners under R.C. 341.12 "unless there is deposited with him, in addition to all fees allowed him by law, fifty cents per week for the use of

the jail of such county for each prisoner so committed, and the same amount for a period of time less than one week." If the prisoner is discharged before the expiration of his jail term, the sheriff must refund the excess of the sum advanced. Id.

Because there are specific statutory requirements that a county sheriff charge another county fees for incarcerating a prisoner from such other county, the board of commissioners of the county from which the prisoner is removed must allow the payment of fees incurred pursuant to R.C. 341.13 and R.C. 341.14. See Op. No. 81-042 at 2-170 ("it is clear that where prisoners of one county who have been sentenced to imprisonment in jail are, thereafter, incarcerated in the jail of another county pursuant to R.C. 341.12 to R.C. 341.14, a claim by the incarcerating county would be authorized by law"). See also Op. No. 85-066 at 2-250 ("the purpose of requiring that claims against the county be allowed by the county commissioners [under R.C. 307.55 and R.C. 319.16] is to permit the commissioners to determine whether a particular claim is valid....Such a determination of validity has been found to consist of two parts: first, a determination as to whether the claim has a legal basis; and, second, a determination as to what amount should be paid" (citations omitted)). The payment of such fees is proper, regardless of the fact that no contract exists between the two counties for the incarceration of prisoners.<sup>2</sup> Op. No. 81-042. In sum, if the county sheriff removes a prisoner to the jail of another county pursuant to R.C. 341.12, the county sheriff receiving the prisoner must charge the fees provided for in R.C. 341.13, and, if he is the sheriff of an adjoining county, he must also charge the fee specified in R.C. 341.14. Consequently, the board of commissioners of the county from which the prisoner was removed shall allow, in the proper amount, the payment of these fees under R.C. 307.55.

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<sup>2</sup> Indeed, as is pointed out in Op. No. 81-042, because the fees to be charged when a prisoner is removed to the jail of another county under R.C. 341.12 are set by statute, there exists no authority under that section for the counties or officers thereof to contract with each other for the housing of prisoners in the county jail, and any contracts providing a rate of compensation other than that set by statute would be void. See also 1937 Op. Att'y Gen. No. 523, vol. I, p. 872, 875 (a county sheriff "has no authority to enter into contracts to receive and care for prisoners committed to the jail of the county under favor of [R.C. 341.12-.14]. The law makes specific provision for the fees the sheriff shall receive in such cases and I fail to see wherein any public purpose would be subserved on account of the existence of such contracts").

I note, however, that the situation in which a county sheriff removes an individual to the jail of another county under R.C. 341.12, where no contract is executed, must be distinguished from arrangements entered into pursuant to R.C. 307.15, which authorizes a board of county commissioners to enter into agreements with the legislative authority of other political subdivisions, including counties. Under such an agreement, the board of county commissioners may undertake "to exercise any power, perform any function, or render any service, in behalf of the contracting subdivision or its legislative authority, which such subdivision or legislative authority may exercise.

It is my understanding that your concern is the payment of fees for the incarceration of a prisoner in the county jail of another county. As discussed above, no contract need be executed in order for a sheriff to remove a prisoner to the county jail of another county. I note, however, that R.C. 341.23, R.C. 2947.18, and R.C. 2947.19 authorize a board of county commissioners to agree with a city or other authority having control over a workhouse to have persons convicted of misdemeanors maintained in such workhouse at the expense of the county. If the board of county commissioners has entered such an agreement, it may properly honor payment of such expenses incurred in keeping prisoners in the workhouse. See Op. No. 81-042; 1952 Op. Att'y Gen. No. 1139, p. 128. In the absence of such an agreement, however, the board of county commissioners may refuse to allow the payment of expenses incurred by the public authority in housing prisoners of the county in the workhouse. Op. No. 81-042; 1949 Op. No. 807.

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

1. A county sheriff is not authorized to contract under R.C. 311.29 in order to receive jail services from another county.
2. The sheriff of a county not having a sufficient jail or staff may, pursuant to R.C. 341.12, remove a person sentenced to imprisonment in the county jail or in custody upon civil process to a jail in another county. The sheriff receiving the prisoner shall charge the fees provided for in R.C. 341.13, and, if he is the sheriff of an adjoining county, he shall also charge the fee specified in R.C. 341.14. The board of commissioners of the county from which the prisoner was removed must allow payment of the fees properly charged by the sheriff under R.C. 341.13 and R.C. 341.14.

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perform, or render." Thus, pursuant to R.C. 307.15, a board of county commissioners may contract with another board of county commissioners in order to perform any power, function, or service with regard to the jail of the contracting county, which the contracting county may perform. Under 307.16, any agreement entered into pursuant to R.C. 307.15 must provide for any payments to be made to the county in consideration for the performance of the agreement. See State ex rel. Ranz v. City of Youngstown, 140 Ohio St. 477, 45 N.E.2d 767 (1942)(syllabus, paragraph 9)(R.C. 307.16 "does not prescribe a mandatory form requiring payments to be made by the contracting subdivision into the county treasury. It does prescribe a mandatory form to be followed in case the agreement provides for such payments" (emphasis in original)).