

November 9, 2018

The Honorable Michael T. Gmoser
Butler County Prosecuting Attorney
Government Services Center, 11th Floor
P.O. Box 515, 315 High Street
Hamilton, Ohio 45012-0515

SYLLABUS:

2018-028

1. A county sheriff may create, train, and operate specialized rescue teams if the county sheriff deems it reasonably necessary to aid him in carrying out his duty to preserve the public peace under R.C. 311.07(A) or any other duties and powers conferred upon the county sheriff by statute.
2. A board of county commissioners may, but is not required to, appropriate county moneys to a county sheriff for the purpose of paying for the training and operation of specialized rescue teams designed to aid the county sheriff in carrying out the duties and powers conferred upon him by statute, so long as the board's determination is made in the exercise of reasonable discretion.



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OPINION NO. 2018-028

The Honorable Michael T. Gmoser
Butler County Prosecuting Attorney
Government Services Center, 11th Floor
P.O. Box 515, 315 High Street
Hamilton, Ohio 45012-0515

Dear Prosecutor Gmoser:

We have received your request regarding the authority of a county sheriff to create and train specialized rescue teams for the purpose of conducting and participating in rescue operations within the county. The Butler County Sheriff has established several types of technical rescue teams, including a formal water rescue team. The sheriff's rescue teams have participated in several rescues within the county, including the rescue of a man from a grain silo. You ask whether a county sheriff possesses the authority to establish and operate specialized rescue teams and, if so, whether the board of county commissioners is required to use county moneys to pay the costs of training and operating these teams.¹

The Authority of a County Sheriff to Create, Train, and Operate Rescue Teams

A county sheriff is a creature of statute and therefore possesses only those powers expressly provided by statute and "other powers reasonably necessary to make the express power effective." *Clayton v. Ohio Bd. of Nursing*, 147 Ohio St. 3d 114, 2016-Ohio-643, 62 N.E.3d 132, at ¶133; *see also* 2017 Op. Att'y Gen. No. 2017-018, at 2-195. A county sheriff is the chief law enforcement officer of the county. 2015 Op. Att'y Gen. No. 2015-032, at 2-314. The primary duty of a county sheriff is set forth in R.C. 311.07(A) which states, in part, that

[e]ach sheriff shall preserve the public peace and cause all persons guilty of any breach of the peace, within the sheriff's knowledge or view, to enter into recognizance with sureties to keep the peace and to appear at the succeeding term

¹ For the purpose of this opinion, we do not consider whether a county sheriff may operate specialized rescue teams pursuant to a contract for the provision of police services under R.C. 311.29(B) or R.C. 505.43.

of the court of common pleas, and the sheriff shall commit such persons to jail in case they refuse to do so.

See also Geauga Cnty. Bd. of Cnty. Comm'rs v. Geauga Cnty. Sheriff, Geauga App. No. 2002-G-2484, 2003-Ohio-7201, at ¶35 (“the primary duties of a county sheriff are set forth in R.C. 311.07(A)”).

A county sheriff also is required to “execute all warrants, writs, and other process” and “attend upon the court of common pleas and the court of appeals during their sessions.” R.C. 311.07(A); *see also* R.C. 311.08(A) (requiring a county sheriff to “execute every summons, order, or other process directed to him ..., make return thereof, and exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law”). R.C. 311.07(A) further provides that “[i]n the execution of official duties of the sheriff, the sheriff may call to the sheriff’s aid such persons or power of the county as is necessary.”

No statute explicitly authorizes a county sheriff to provide rescue services or otherwise participate in rescue operations. Therefore, you ask whether the authority to provide rescue services is encompassed within a county sheriff’s duty to “preserve the public peace” under R.C. 311.07(A). The phrase, “preserve the public peace,” as used in R.C. 311.07(A), is not defined by statute. Therefore, we accord the phrase its common meaning. *See* R.C. 1.42.

The term “preserve” means “to keep from harm, damage, danger, evil, etc.; protect; save.” *Webster’s New World College Dictionary* 1152 (5th ed. 2014). “Public” means “[r]elating or belonging to an entire community, state, or nation” or “[o]pen or available for all to use, share, or enjoy.” *Black’s Law Dictionary* 1242 (7th ed. 1999). The term “peace” is defined as “freedom from public disturbance or disorder; public security; law and order.” *Webster’s New World College Dictionary* 1073. Accordingly, the phrase, “preserve the public peace,” as used in R.C. 311.07(A), confers responsibility upon a county sheriff to protect the community from harm, damage, danger, or evil that causes or has the potential to cause public disturbance or disorder.

The activities that may be included within the authority of a county sheriff “to preserve the public peace are not, as a general matter, amenable to precise definition.” 1987 Op. Att’y Gen. No. 87-099, at 2-658. Prior opinions of the Attorney General have recognized that the duty of a county sheriff to “preserve the public peace” confers broad authority upon the county sheriff to undertake any activities that, in the sheriff’s reasonable discretion, are necessary to protect the public from harm.² *See, e.g.*, 1997 Op. Att’y Gen. No. 97-015, at 2-88 (“the county sheriff may

² R.C. 311.07(A) states that a county sheriff “*shall* preserve the public peace.” (Emphasis added.) Ohio courts have recognized that a county sheriff’s duty to preserve the public peace imposes both a mandatory duty upon a county sheriff to respond to and stop a breach of the peace that “comes ‘within [the sheriff’s] knowledge or view,’” as well as the discretionary authority to undertake any activity that supports his efforts to preserve the public peace. *See*

... declare a snow emergency and temporarily close the state roads and municipal streets within his jurisdiction when such action is reasonably necessary for the preservation of the public peace”); 1987 Op. Att’y Gen. No. 87-099, at 2-658 (“the sheriff’s duty to ‘preserve the public peace’ under R.C. 311.07 permits him, in the appropriate circumstances, and in the exercise of a reasonable discretion, to take those actions reasonably necessary to protect the general public welfare”); 1958 Op. Att’y Gen. No. 3039, p. 676 at 677 (“[t]he use of the phrase ‘preserve the public peace’ is indicative of a legislative intent to confer authority broader than that given by the phrase ‘apprehend and bring to justice felons and disturbers of the peace’”). In 1987 Op. Att’y Gen. No. 87-099, for example, the Attorney General considered whether the duty of a county sheriff to preserve the public peace confers authority upon a county sheriff to order the evacuation of persons located in the vicinity of a hazardous materials accident. Determining that a county sheriff has such authority, the Attorney General recognized that “the responsibility of the sheriff to ‘preserve the public peace’ is, in one sense, synonymous with a concern for the health, safety, and welfare of the general public.” *Id.* at 2-659. The Attorney General explained:

The scope of the sheriff’s authority to preserve the public peace ... has been the subject of several Attorney General opinions, which, in turn, furnish some guidance in determining whether the power to evacuate may be implied therefrom. In 1958 Op. Att’y Gen. No. 3039, p. 676, for example, one of my predecessors noted that the sheriff’s power to preserve the public peace under R.C. 311.07 is quite broad, and authorizes the sheriff to keep the public highways free of damaged automobiles and remove injured and unconscious motorists and other persons from such highways. Similarly, in 1979 Op. Att’y Gen. No. 79-027 my predecessor concluded at 2-92 that the sheriff’s duty to preserve the public peace “permits him to participate in emergency rescue operations and to incur necessary transportation expenses related thereto.” More recently I concluded in 1986 Op. Att’y Gen. No. 86-023 (syllabus, paragraph one) that a sheriff may ... declare a snow emergency and temporarily close county and township roads within his jurisdiction when such action is reasonably necessary for the preservation of the public peace.

It is evident, therefore, that the sheriff’s duty to “preserve the public peace” under R.C. 311.07 permits him, in the appropriate circumstances, and in the exercise of a reasonable discretion, to take those actions reasonably necessary to protect the general public welfare.

State ex rel. Concord Twp. Bd. of Trs. v. Cunningham, No. 12-198, 1988 Ohio App. LEXIS 3730, at *5 (Lake County Sept. 16, 1988) (quoting R.C. 311.07(A)); *Geauga Cnty. Bd. of Cnty. Comm’rs v. Geauga Cnty. Sheriff*, Geauga App. No. 2002-G-2484, 2003-Ohio-7201, at ¶41 (“a board of county commissioners has the discretion to determine whether to use county funds for the purpose of allowing the sheriff’s department to patrol the county roads and perform other acts which, although broadly related to keeping the peace, do not fall within the narrow,” mandatory duty in R.C. 311.07(A)).

1987 Op. Att’y Gen. No. 87-099, at 2-658.

Following the guidance of our prior opinions, therefore, we interpret a county sheriff’s duty to “preserve the public peace” under R.C. 311.07(A) as authorizing a county sheriff, in the exercise of reasonable discretion, to take actions reasonably necessary to protect the general public welfare. “In deciding to exercise this authority, however, the sheriff should bear in mind the admonition that he must act within the bounds of his statutory authority and in a reasonable fashion.” 1987 Op. Att’y Gen. No. 87-099, at 2-660. Whether the Butler County Sheriff has exercised reasonable discretion in determining that the creation and operation of specialized rescue teams are, in this instance, necessary to protect the general public welfare is a question of fact, not appropriate for determination by an opinion of the Attorney General. *See* 2018 Op. Att’y Gen. No. 2018-012, at 2-113. We are able to conclude, however, that pursuant to R.C. 311.07(A), a county sheriff may create, train, and operate specialized rescue teams if the county sheriff deems it reasonably necessary to aid him in carrying out his duty to preserve the public peace.³

Accordingly, in response to your first question, we conclude that a county sheriff may create, train, and operate specialized rescue teams if the county sheriff deems it reasonably necessary to aid him in carrying out his duty to preserve the public peace under R.C. 311.07(A) or any other duties and powers conferred upon the county sheriff by statute.

The Responsibility of a Board of County Commissioners to Appropriate County Moneys to a County Sheriff

If a county sheriff decides to create, train, and operate specialized rescue teams that are designed to aid the county sheriff in carrying out the duties and powers conferred upon him by statute, you ask whether a board of county commissioners is required to use county moneys to pay the costs of training and operating the rescue teams.

A board of county commissioners is the county’s taxing authority and is required to adopt an annual tax budget for the county each year. R.C. 5705.28(A); *see also* R.C. 5705.01(C); R.C. 5705.03. The county’s tax budget must include, among other things, each county agency’s “necessary current operating expenses for the ensuing fiscal year ... classified as to personal services and other expenses, and the fund from which such expenditures are to be made.” R.C. 5705.29(A)(1). To assist the board of county commissioners in compiling the tax budget, each

³ The General Assembly has expressly conferred the authority to provide rescue services upon fire departments and other firefighting agencies. *See, e.g.*, R.C. 9.60; R.C. 505.37; R.C. 505.39; R.C. 5705.19(I). *But see* R.C. 4765.37(B) (authorizing an emergency medical technician-basic to “provide light rescue services if an ambulance has not been accompanied by a specialized unit”). The fact that the General Assembly has conferred the authority to conduct rescue operations upon these entities does not prohibit a county sheriff from exercising similar powers.

county office, department, board, and commission—including the office of the county sheriff—files with the board of county commissioners “an estimate of contemplated revenue and expenditures for the ensuing fiscal year.” R.C. 5705.28(C)(1); *see also* 2014 Op. Att’y Gen. No. 2014-032, at 2-284 (“[t]o assist the board of county commissioners in preparing the county’s annual tax budget, the county sheriff files with the board of county commissioners an estimate of his office’s contemplated revenue and expenditures for the ensuing fiscal year”).

The board of county commissioners submits the county’s tax budget to the county auditor, who then submits the county’s tax budget to the county budget commission, along with the tax budgets of all other taxing authorities in the county. R.C. 5705.30; R.C. 5705.31; *see also* R.C. 5705.27. The county budget commission examines the budgets and ascertains “the total amount proposed to be raised in the county for the purposes of each subdivision.” R.C. 5705.31; *see also* R.C. 5705.32(A); R.C. 5705.341. The county budget commission may revise the estimates of balances and receipts available from all sources for each fund and is required to “determine the total appropriations that may be made therefrom.” R.C. 5705.32(A).

The county budget commission certifies its work on the tax budgets to each taxing authority within the county. R.C. 5705.34. The county budget commission’s certification to the board of county commissioners shows the receipts and unencumbered balances for each county fund and the total appropriations that may be made therefrom. R.C. 5705.35(A). The board of county commissioners is required to revise the county’s tax budget before the end of the year so that the total estimate of expenditures from any fund will not exceed the total appropriations that may be made from the fund, as shown in the county budget commission’s certification. *Id.* The revised budget then serves as the basis for the county commissioners’ annual appropriation measure. *Id.*

At the beginning of the fiscal year, the board of commissioners is required to pass an appropriation measure, which sets forth “the amounts appropriated for each office, department, and division, and, within each, the amount appropriated for personal services.” R.C. 5705.38(C). The total appropriations made from any county fund may not exceed the amount set forth as available for expenditure in the official certificate of estimated resources.⁴ R.C. 5705.36(A)(5); *see also* R.C. 5705.39. The county auditor is required to file with the board of commissioners a certificate that the total appropriations from each fund do not exceed the official certificate of estimated resources before the appropriation measure can become effective, R.C. 5705.39, and the county may expend no money unless the money has been appropriated pursuant to R.C. Chapter 5705. R.C. 5705.41(B).

A board of county commissioners has the discretion to appropriate county moneys in any way the board deems reasonable, except when a statute requires the board to provide county

⁴ Pursuant to the circumstances set forth in R.C. 5705.36(A)(2), the county budget commission may certify an amended official certificate that amends the amounts available for expenditure.

moneys for a particular item or purpose, or in a particular amount. *See* 2006 Op. Att’y Gen. No. 2006-013, at 2-109 to 2-110; *Geauga*, 2003-Ohio-7201, at ¶46. Various statutes require a board of county commissioners to appropriate county moneys to pay the expenses related to the office of the county sheriff, including the salary of the county sheriff and his employees and deputies. R.C. 325.06(A); R.C. 325.18; R.C. 325.17; *see also* R.C. 325.071. A board of county commissioners also is required to provide an office to the county sheriff “when, in [the board’s] judgment,” an office is needed, and to “also provide equipment, stationery, and postage, as it considers reasonably necessary for the proper and convenient conduct of” the office. R.C. 307.01(A).

Significantly, however, no statute requires a board of county commissioners to appropriate county moneys to a county sheriff for the training and operation of specialized rescue teams designed to aid the county sheriff in carrying out the duties and powers conferred upon the county sheriff by statute. *See Geauga*, 2003-Ohio-7201, at ¶49 (“the determination of funding for the Geauga County Sheriff lies solely within [the board of county commissioners’] sound discretion”). Where no statute mandates a particular appropriation, a board of county commissioners has broad discretion to establish the amount of a county office’s appropriation, subject to an abuse of discretion standard. *See State ex rel. Trussell v. Bd. of Cnty. Comm’rs*, 155 Ohio App. 3d 230, 2003-Ohio-6084, 800 N.E.2d 381, at ¶12 (“[t]he board [of county commissioners] has the final authority to determine the sheriff’s budget, absent an abuse of its discretion”); 2006 Op. Att’y Gen. No. 2006-013, at 2-110. Accordingly, a board of county commissioners may determine whether to appropriate county moneys to a county sheriff to pay for the training and operation of specialized rescue teams designed to aid the county sheriff in carrying out the duties and powers conferred upon him by statute, so long as the board’s determination is made in the exercise of reasonable discretion. A decision by a board of county commissioners to not appropriate county moneys for such a purpose will only be reversed by a court if the board’s decision is arbitrary, unreasonable, or unconscionable. *See Trussell*, 2003-Ohio-6084, at ¶15.

Accordingly, in response to your second question, we conclude that a board of county commissioners may, but is not required to, appropriate county moneys to a county sheriff for the purpose of paying for the training and operation of specialized rescue teams designed to aid the county sheriff in carrying out the duties and powers conferred upon him by statute, so long as the board’s determination is made in the exercise of reasonable discretion.

Conclusions

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

1. A county sheriff may create, train, and operate specialized rescue teams if the county sheriff deems it reasonably necessary to aid him in carrying out his duty to preserve the public peace under R.C. 311.07(A) or any other duties and powers conferred upon the county sheriff by statute.

2. A board of county commissioners may, but is not required to, appropriate county moneys to a county sheriff for the purpose of paying for the training and operation of specialized rescue teams designed to aid the county sheriff in carrying out the duties and powers conferred upon him by statute, so long as the board's determination is made in the exercise of reasonable discretion.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General