

**Note from the Attorney General's Office:**

The syllabus paragraph 1 of 2010 Op. Att'y Gen. No. 2010-018 was approved and followed by 2017 Op. Att'y Gen. No. 2017-030.

**OPINION NO. 2010-018****Syllabus:**

2010-018

1. Except as provided in R.C. 2949.08(A), a county sheriff is not responsible for transporting between the county jail and a municipal court within the county a person arrested for a misdemeanor and confined in the county jail. (1987 Op. Att’y Gen. No. 87-091 (syllabus, paragraph 1) and 1978 Op. Att’y Gen. No. 78-019 (syllabus, paragraph 2), approved and followed.)
2. Pursuant to R.C. 1901.32(A)(6), a person arrested for a misdemeanor and confined in the county jail is to be transported between the county jail and a municipal court within the county by a bailiff or deputy bailiff of the court unless R.C. 2949.08(A) applies. (1987 Op. Att’y Gen. No. 87-091 (syllabus, paragraph 2) and 1962 Op. Att’y Gen. No. 3420, p. 925, approved and followed.)
3. Pursuant to R.C. 1901.32(A)(5), when a municipal court requires it, a person arrested for a misdemeanor and confined in the county jail may be transported between the county jail and the court by a police officer of a municipal corporation or constable of a township located within the territory of the court, as an ex officio deputy bailiff of the court, unless R.C. 2949.08(A) applies. (1987 Op. Att’y Gen. No. 87-091 (syllabus, paragraph 3) and 1962 Op. Att’y Gen. No. 3420, p. 925, approved and followed.)

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**To: Charles S. Howland, Morrow County Prosecuting Attorney, Mt. Gilead, Ohio**

**By: Richard Cordray, Ohio Attorney General, July 7, 2010**

You have requested an opinion whether a county sheriff is responsible for transporting between the county jail and a municipal court within the county a person arrested for a misdemeanor and confined in the county jail.

Three prior opinions of the Attorney General have concluded that, except as provided in R.C. 2949.08(A), which requires a county sheriff to transport to a jail a person who is convicted of, or pleads guilty to, a misdemeanor,<sup>1</sup> a county sheriff is not required to transport between the county jail and a municipal court within the county a person arrested for a misdemeanor and confined in the county jail. First,

<sup>1</sup> R.C. 2949.08(A), provides, in part:

[W]hen a person who is convicted of or pleads guilty to . . . a misdemeanor is sentenced to a term of imprisonment in a jail, the judge or magistrate shall order the person into the custody of the sheriff or constable, and the sheriff or constable shall deliver the person with the record of the person’s conviction to the jailer,

the second syllabus paragraph of 1978 Op. Att’y Gen. No. 78-019 advised that “[a] county sheriff does not have a duty to accompany municipal court prisoners to court during trials and hearings prior to conviction.” Next, the first syllabus paragraph of 1987 Op. Att’y Gen. No. 87-091, which approved and followed 1978 Op. Att’y Gen. No. 78-019 (syllabus, paragraph 2), advised that “[a] county sheriff has no duty to transport prisoners from the jail to the municipal court before the prisoners have been convicted and sentenced.” And, finally, 1962 Op. Att’y Gen. No. 3420, p. 925 at 928 stated:

It appears to me that the responsibility of transporting prisoners has less to do with the arresting agency or the place of arrest or incarceration as suggested by your question, than with the court under whose jurisdiction the prisoner is held. Where the common pleas court has jurisdiction or orders the transfer, the responsibility lies with the criminal bailiff under the control of the sheriff. Where the prisoner to be transferred is held under the jurisdiction of a municipal court, and with the exception as to convicted prisoners previously noted, the responsibility falls on such bailiff or deputy bailiff as that court shall prescribe.

In rendering their advice, these opinions found that, except as provided in R.C. 2949.08(A), a bailiff or deputy bailiff of a municipal court or a police officer of a municipal corporation or constable of a township located within the territory of the court, as an ex officio deputy bailiff of the court, is required by R.C. 1901.32 to transport between the county jail and a municipal court within the county a person arrested for a misdemeanor and confined in the county jail. As explained in these opinions, R.C. 1901.32(A)(6) requires a bailiff or deputy bailiff of a municipal court to perform for the court services similar to those performed by the county sheriff for the court of common pleas.<sup>2</sup> R.C. 311.07(A) and R.C. 2301.15, in turn, require the county sheriff to attend upon the court of common pleas and transport prisoners between the county jail and the court of common pleas.<sup>3</sup> In light of the clear and unequivocal language of R.C. 311.07(A), R.C. 1901.32(A)(6), and R.C. 2301.15,

administrator, or keeper, in whose custody the person shall remain until the term of imprisonment expires or the person is otherwise legally discharged.

<sup>2</sup> R.C. 1901.32(A)(6) provides that “[t]he bailiff and deputy bailiffs [of a municipal court] shall perform for the court services similar to those performed by the sheriff for the court of common pleas.”

<sup>3</sup> R.C. 311.07(A) states that “[t]he sheriff shall attend upon the court of common pleas.” R.C. 2301.15 provides, in relevant part:

The criminal bailiff shall act for the sheriff in criminal cases and matters of a criminal nature in the court of common pleas and the probate court of the county. Under the direction of the sheriff, he shall be present during trials of criminal cases in those courts and during such trials perform all the duties as are performed by the sheriff. The criminal bailiff shall conduct prisoners to and from the jail of the county and for that purpose shall have access to the jail and to the courtroom, whenever ordered by such courts, and have care and charge of such prisoners when so doing.

these opinions concluded that, insofar as the county sheriff is responsible for transporting a prisoner between the county jail and the court of common pleas and a municipal court bailiff or deputy bailiff performs for the municipal court services similar to those performed by the county sheriff for the court of common pleas, the duties of a municipal court bailiff or deputy bailiff must be construed to include the transportation of a prisoner between the county jail and a municipal court within the county unless R.C. 2949.08(A) applies.

In addition, the third syllabus paragraph of 1987 Op. Att'y Gen. No. 87-091, which approved and followed 1962 Op. Att'y Gen. No. 3420, p. 925, further advised that R.C. 1901.32(A)(5) requires the police officers of municipal corporations and the constables of townships located within the territory of a municipal court to serve as ex officio deputy bailiffs of the court and authorizes municipal court judges, clerks, bailiffs, and deputy bailiffs to require ex officio deputy bailiffs to transport prisoners between the county jail and a municipal court within the county unless R.C. 2949.08(A) applies.<sup>4</sup> Again, the prior opinions of the Attorney General found that, under the plain language of R.C. 1901.32(A)(5), a municipal court may require police officers of municipal corporations and constables of townships located within the territory of the court, as ex officio deputy bailiffs of the court, to transport a prisoner between the county jail and a municipal court within the county unless R.C. 2949.08(A) applies.

The current language of R.C. 311.07(A), R.C. 1901.32(A)(5), (6), and R.C. 2301.15 is similar to the language of these statutes interpreted in the prior opinions addressing the transportation of a prisoner between the county jail and a municipal court within the county. Moreover, we are not aware of any statute or court decision requiring us to alter or reconsider the advice rendered in these opinions. We therefore believe that the analysis and conclusions set forth in these prior opinions remain a correct statement of the law.

Accordingly, except as provided in R.C. 2949.08(A), a county sheriff is not responsible for transporting between the county jail and a municipal court within the county a person arrested for a misdemeanor and confined in the county jail. Instead, pursuant to R.C. 1901.32(A)(6), a person arrested for a misdemeanor and confined in the county jail is to be transported between the county jail and a municipal court within the county by a bailiff or deputy bailiff of the court unless R.C. 2949.08(A) applies. Or, pursuant to R.C. 1901.32(A)(5), when a municipal court requires it, a person arrested for a misdemeanor and confined in the county jail may be transported between the county jail and the court by a police officer of a municipi-

<sup>4</sup> R.C. 1901.32(A)(5) reads as follows:

Every police officer of any municipal corporation and police constable of a township within the territory of the court is ex officio a deputy bailiff of the court in and for the municipal corporation or township in which commissioned as a police officer or police constable, and shall perform any duties in respect to cases within the officer or constable's jurisdiction that are required by a judge of the court, or by the clerk or a bailiff or deputy bailiff of the court, without additional compensation.

pal corporation or constable of a township located within the territory of the court, as an ex officio deputy bailiff of the court, unless R.C. 2949.08(A) applies.

In conclusion, it is my opinion, and you are hereby advised as follows:

1. Except as provided in R.C. 2949.08(A), a county sheriff is not responsible for transporting between the county jail and a municipal court within the county a person arrested for a misdemeanor and confined in the county jail. (1987 Op. Att'y Gen. No. 87-091 (syllabus, paragraph 1) and 1978 Op. Att'y Gen. No. 78-019 (syllabus, paragraph 2), approved and followed.)
2. Pursuant to R.C. 1901.32(A)(6), a person arrested for a misdemeanor and confined in the county jail is to be transported between the county jail and a municipal court within the county by a bailiff or deputy bailiff of the court unless R.C. 2949.08(A) applies. (1987 Op. Att'y Gen. No. 87-091 (syllabus, paragraph 2) and 1962 Op. Att'y Gen. No. 3420, p. 925, approved and followed.)
3. Pursuant to R.C. 1901.32(A)(5), when a municipal court requires it, a person arrested for a misdemeanor and confined in the county jail may be transported between the county jail and the court by a police officer of a municipal corporation or constable of a township located within the territory of the court, as an ex officio deputy bailiff of the court, unless R.C. 2949.08(A) applies. (1987 Op. Att'y Gen. No. 87-091 (syllabus, paragraph 3) and 1962 Op. Att'y Gen. No. 3420, p. 925, approved and followed.)