

Note from the Attorney General's Office:

1960 Op. Att'y Gen. No. 60-1641 was overruled by
1981 Op. Att'y Gen. No. 81-091.

1641

DESIGNATION OF A COUNTY SHERIFF AS MINISTERIAL OFFICER OF COUNTY COURT DOES NOT AUTHORIZE SUCH SHERIFF TO ACCEPT CASH APPEARANCE BONDS— §§1907.511-2937.22, R.C.

SYLLABUS:

1. The designation of the county sheriff as ministerial officer of the county court, as found in Section 1907.511, Revised Code, does not authorize such sheriff to accept cash appearance bonds in misdemeanor cases coming within the jurisdiction of said court.
2. Section 2937.22, Revised Code, which designates what officials may receive bail, does not include the county sheriff as one of these officials and in the absence of such authority the sheriff may not accept cash appearance bonds in misdemeanor cases coming within the jurisdiction of the county court.

Columbus, Ohio, August 17, 1960

Hon. Edward D. Mosser, Prosecuting Attorney
Harrison County, Cadiz, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Harrison County is served by one County Court District.

“Section 1907.511 of the Revised Code provides:

“‘The county sheriff shall be the ministerial officer of the county court in all civil and criminal cases in which the county court has jurisdiction.’

“Your opinion is respectfully requested as to whether or not the county sheriff and/or his deputies as such ministerial officers, or otherwise, are authorized to accept cash appearance bonds in traffic violation cases, wild life cases, and other cases coming within the jurisdiction of the County Court. The question contemplates the acceptance of such bonds at times when the court is not in actual session.”

Regarding the acceptance of cash appearance bonds in the cases to which you refer, Section 2937.22, Revised Code, reads in part:

“Bail is security for the appearance of an accused to appear and answer to a specific criminal or quasi-criminal charge in any court or before any magistrate at a specific time or at any time to which a case may be continued, and not depart without leave. It may take any of the following forms:

“* * *

“All bail shall be received by the clerk of the court, deputy clerk of court, or by the magistrate, or by a special referee appointed by the supreme court pursuant to section 2937.46 of the Revised Code, and, except in cases of recognizances, receipt shall be given therefor by him.”

This section was enacted by Amended Senate Bill No. 73 of the 103rd General Assembly, effective January 1, 1960, which bill dealt mainly with the procedure in magistrate courts. A county court is a magistrate court (Sections 2931.01, 2937.01, Revised Code). It will be noted that the county sheriff is not one of the officials authorized to receive bail.

On reviewing the specific statutes pertaining to the county sheriff, I am unable to find any authorization for him to accept cash appearance bonds other than that contained in Section 311.07, Revised Code, and reading:

“Each sheriff shall preserve the public peace and cause all persons guilty of any breach of the peace, within his knowledge or view, to enter into recognizance with sureties to keep the peace and to appear at the succeeding term of the court of common pleas
* * *.”

This provision, however, is not relevant in the instant case in which the question involves actions in a county court.

It is true that Section 1907.511, Revised Code, provides that “the county sheriff shall be the ministerial officer of the county court in all civil and criminal cases in which the county court has jurisdiction.” I might note

that under Section 509.05, Revised Code, it is also provided that "In addition to the county sheriff, constables shall be ministerial officers of the county court." I do not believe, however, that the mere designation as "ministerial officer" gives the sheriff (or constable) the power to accept cash appearance bonds in traffic violation cases.

In the first place, as already seen, Section 2937.22, Revised Code, specifies what officers may accept bond, and the sheriff is not one of these. Also pertinent in this regard is Section 2935.13, Revised Code, which definitely implies that an arrested person must be taken before a magistrate, clerk, or deputy clerk of a court of record to be let to bail. This section reads as follows:

"Upon the arrest of any person pursuant to warrant, he shall forthwith be taken before the court or magistrate issuing the same, if such court be in session or such magistrate available, and proceedings had as provided in sections 2937.01 to 2937.46, inclusive, of the Revised Code. If such court be not in session and a misdemeanor or ordinance violation is charged, he shall be taken before the clerk or deputy clerk of the court and let to bail, as provided in sections 2937.22 to 2937.46, inclusive, of the Revised Code, if the magistrate be not available, or if the defendant is arrested in a county other than that of the issuing court or magistrate he shall forthwith be taken before the most convenient magistrate, clerk, or deputy clerk of a court of record, and there let to bail for his appearance before the issuing court or magistrate within a reasonable time to be set by such clerk."

Of further significance in this question is the fact that each county court has a clerk who under division (C) of Section 1907.101, Revised Code, is empowered to "receive and collect all costs, fees, penalties, *bail*, and other moneys payable to the office or to any officer of the court * * *." (Emphasis added). Thus, there is provision for posting of bail in a county court when the judge is not available.

Answering your specific question, therefore, it is my opinion and you are advised:

1. The designation of the county sheriff as ministerial officer of the county court, as found in Section 1907.511, Revised Code, does not authorize such sheriff to accept cash appearance bonds in misdemeanor cases coming within the jurisdiction of said court.

2. Section 2937.22, Revised Code, which designates what officials may receive bail, does not include the county sheriff as one of these officials

and in the absence of such authority the sheriff may not accept cash appearance bonds in misdemeanor cases coming within the jurisdiction of the county court.

Respectfully,

MARK MCELROY

Attorney General