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COUNTY SHERIFF MAY MAKE A CONTRACT WITH TOWNSHIP TO PROVIDE POLICE PROTECTION FOR SAID TOWNSHIP. §505.441, R.C.

SYLLABUS:

Under the provisions of Section 505.441, Revised Code, a county sheriff may make a contract with a township to provide police protection for the township, and approval by the county commissioners of such a contract is not necessary; however, this section does not authorize such contracts for police protection between a municipal corporation and a county sheriff.

Columbus, Ohio, April 27, 1960

Hon. Calvin W. Hutchins, Prosecuting Attorney
Ashtabula County, Jefferson, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“The Sheriff of Ashtabula County wishes to know if he may make a contract with townships, and also municipalities, regarding police protection under Section 505.441 of the Revised Code of Ohio, or if Section 2935.03 of the Revised Code, governs which says, in part,

“ ‘A Sheriff, Deputy Sheriff, shall arrest and detain a person found violating a law of this State, or an Ordinance of a Municipal Corporation, until a Warrant can be obtained.’

“In other words, the question is, can a Sheriff make a contract to do something, with a township or municipality, for which he is already bound to do.

“If such a contract is allowable, must it be approved by the County Commissioners as well as by the Township Trustees or Village Council.”

The legislature has assigned to political townships a specific responsibility for law enforcement. Section 509.01, Revised Code, provides that the board of township trustees may appoint police constables; and Section 509.05, Revised Code, describes the duties of these police constables in the following manner :

“In addition to the county sheriff, constables shall be ministerial officers of the county court in all cases in their respective townships, and in criminal cases, they shall be such officers within the county. They shall apprehend and bring to justice felons and disturbers of the peace, suppress riots, and keep and preserve the peace within the county.

“* * *”

Section 509.10, Revised Code, which deals more specifically with law enforcement in the township, provides :

“Each constable shall apprehend, on view of warrant, and bring to justice, all felons, disturbers, and violators of the criminal laws of this state, and shall suppress all riots, affrays, and unlawful assemblies which come to his knowledge, and shall generally keep the peace in his township.”

It can thus be seen that to perform these duties a township may at varying times require a varying number of men and of police equipment. To equip the constable to perform his tasks, Section 509.01, Revised Code, provides in part :

“The board of township trustees * * * may provide such police constables, such automobiles, communication systems, uniforms, and police equipment as such board deems necessary.
* * *”

It will be noted that the board of trustees is not required to appoint police constables but may do so at its discretion. Another avenue open to the board for the furnishing of police protection is Section 505.441, Revised Code, reading in part:

“In order to obtain police protection, or to obtain additional police protection in times of emergency, *any township may enter into a contract with one or more townships, municipal corporations, or County Sheriffs* upon such terms as are agreed to by them, for services of police departments or use of police equipment, or the interchange of the service of police departments or use of police equipment within the several territories of the contracting subdivisions, if such contract is first authorized by respective boards of township trustees or other legislative bodies.

“* * *

“Such contract may provide for a fixed annual charge to be paid at the times agreed upon and stipulated in the contract.”
(Emphasis added)

Thus, a township may contract with a county sheriff for services or for the use of equipment and, conversely, a sheriff may so contract with a township.

It is true that according to Section 2935.03, Revised Code, as quoted in your letter, a sheriff is bound to arrest those he finds in violation of state law within a township even in the absence of a contract with a township, however, he is not necessarily bound to go out and discover the violations. It is one thing to “find” a person violating a law within a township and an entirely different, more intensive, thing to have specific duties within a specific township that arise from a special contract. The activities of a sheriff are limited by the amount of money appropriated by the county commissioners for his use. The contracts authorized by Section 505.441, Revised Code, will give him more money, and from a different source, to use for the specific area covered in the contract. The law enforcement duty of a sheriff is a general one extending throughout a county; the proposed contract would extend that duty specifically to a particular township.

The question arises as to whether such a contract must be approved by the county commissioners as well as by the township trustees. Section 505.441, Revised Code, provides that such contract must first be “authorized by *respective* boards of township trustees or other legislative bodies.” The use of the word “respective” implies that the legislative bodies (or township trustees) of both parties to the contract must authorize it; however,

this would be of no effect where one of the parties to the contract has no legislative body. That a county has no legislative body is clear. In 14 *Ohio Jurisprudence*, 2d, Section 52 at page 238, the following language appears:

“The county has no board vested with legislative powers; its officials must follow the procedure established by statute, and be guided in the administration of their duties only by legislative provisions.”

Therefore, because the county commissioners are not a law-making body their approval of such a contract by the county sheriff is not necessary.

You also ask whether sheriffs may make this kind of contract with municipal corporations. In this regard, Section 505.441, Revised Code, plainly states that these contracts are for *townships* who seek police protection. The words used are: “* * * any township may enter into a contract with * * * townships, municipal corporations, or county sheriffs * * *.” Further, Section 737.04, Revised Code, provides for contracts between municipal corporations for police protection. Thus, though municipal corporations may seek police protection, the section authorizing it authorizes only other municipal corporations to provide it.

Accordingly, it is my opinion and you are advised that under the provisions of Section 505.441, Revised Code, a county sheriff may make a contract with a township to provide police protection for the township, and approval by the county commissioners of such a contract is not necessary; however, this section does not authorize such contracts for police protection between a municipal corporation and a county sheriff.

Respectfully,

MARK McELROY

Attorney General