

Note from the Attorney General's Office:

1974 Op. Att'y Gen. No. 74-094 was overruled in part by
1986 Op. Att'y Gen. No. 86-065.

OPINION NO. 74-094

Syllabus:

1. An off-duty municipal police officer may arrest and detain another person whom he has reasonable cause to believe is guilty of a felony until a warrant can be obtained, as may any other citizen, pursuant to R.C. 2935.04.

2. An off-duty municipal police officer may, pursuant to R.C. 2935.03, arrest for a misdemeanor without a warrant only within the territorial jurisdiction in which he is appointed, which is the corporate limits of the municipality.

To: Daniel T. Spitler, Wood County Pros. Atty., Bowling Green, Ohio
By: William J. Brown, Attorney General, November 15, 1974

I have before me your request for my opinion, which poses the following question:

"May full time police officers of a municipal corporation while employed on a part time basis during their off duty hours as security guards in business establishments outside of the corporate limits of their departments municipal jurisdiction, but while in full police uniform including weapons, make arrests for offenses, especially misdemeanor offenses committed in their presence or for which they have obtained the necessary probable cause."

R.C. 2935.04, which provides for arrest by any person in case of felony, reads as follows:

"When a felony has been committed, or there is reasonable ground to believe that a felony has been committed, any person without a warrant may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained."

Thus an off-duty municipal police officer, like any other person, is authorized to arrest and detain another person whom he has reasonable cause to believe is guilty of a felony, until a warrant can be obtained.

However, R.C. 2935.04 has no application where the offense committed was a misdemeanor. As a general rule a peace officer has no authority to make an arrest for a misdemeanor without a warrant outside of the territorial jurisdiction in which he is appointed, unless specifically otherwise authorized by law. State v. Elder, 67 Ohio L. Abs. 385 (1953); Opinion No. 1076, Opinions of the Attorney General for 1939, page 1547. Opinion No. 66-179, Opinions of

the Attorney General for 1966, states that "*** it offends common sense to assume that every police officer of every Ohio municipality has unlimited police jurisdiction throughout the state." See also Fairborn v. Munkus, 28 Ohio St. 2d 207 (1971), in which the court held that a municipal police officer may make an arrest for a violation of a municipal ordinance, upon a properly issued warrant, anywhere within the jurisdictional limits of the issuing court. That case can be distinguished from the facts in the instant situation, however, since the arrest in that case was made pursuant to a warrant.

R.C. 2935.03, which provides for an arrest by a peace officer without a warrant for a misdemeanor, reads as follows:

"A sheriff, deputy sheriff, marshal, deputy marshal, or police officer 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."

"Where there is reasonable ground to believe that an offense of violence, or a theft offense as defined in section 2913.01 of the Revised Code, has been committed, a sheriff, deputy sheriff, marshal, deputy marshal, or police officer may arrest without a warrant any person whom he has reasonable cause to believe is guilty of the violation, and detain him until a warrant can be obtained.

"A constable within limits of the township in which said constable has been appointed or elected, shall arrest and detain a person found by him in the commission of a misdemeanor, either in violation of a law of this state or an ordinance of a village, until a warrant can be obtained."

(Emphasis added.)

This language appears to place no limitation on the jurisdiction of police officers, sheriffs, deputy sheriffs, and marshals to arrest misdemeanants without a warrant. But neither does it specify that such jurisdiction is statewide. In the absence of a clear indication to expand the jurisdiction of such officials beyond its ordinary limits, I hesitate to impose so unreasonable a construction on the statute. See R.C. 1.47(C).

The fact that R.C. 2935.03 expressly limits the jurisdiction of township constables but not that of the other peace officers mentioned does not necessarily indicate a legislative intent to impose no limitation on the jurisdiction of the other officers. For most purposes, the jurisdiction of township constables is county-wide. Dayton v. Brennan, 64 Ohio L. Abs. 525 (1952). The express limitation of township constables' jurisdiction in R.C. 2935.03 was necessary to limit it geographically for certain purposes. There was no such necessity in the case of police officers, sheriffs and deputy sheriffs, and marshals, if the General Assembly did not wish to change their ordinary jurisdiction.

I conclude, then, that R.C. 2935.03 was not intended to confer state-wide jurisdiction on police officers for the arrest of misdemeanants without a warrant, and that their jurisdiction is limited to the municipality.

In specific answer to your question, it is my opinion and you are so advised, that:

1. An off-duty municipal police officer may arrest and detain another person whom he has reasonable cause to believe is guilty of a felony until a warrant can be obtained, as may any other citizen, pursuant to R.C. 2935.04.

2. An off-duty municipal police officer may, pursuant to R.C. 2935.03, arrest for a misdemeanor without a warrant only within the territorial jurisdiction in which he is appointed, which is the corporate limits of the municipality.