OPINION NO. 79-105

Syllabus:

R.C. 311.07 authorizes a county sheriff to serve process directed to him by "any proper and lawful authority," which term includes an authority of a state other than Ohio. Hence, the sheriff of an Ohio county may serve process directed to him by an officer of another state seeking, in a civil proceeding in that state, to exercise jurisdiction over a person found within Ohio.

To: Morris J. Turkelson, Warren County Pros. Atty., Lebanon, Ohio
By: William J. Brown, Attorney General, December 26, 1979

I have before me your request for my opinion concerning the authority of a county sheriff to serve out-of-state process within his or her county. This issue has arisen because many states, including Ohio, have enacted "long-arm statutes" to confer upon their courts jurisdiction over a non-resident defendant whose contacts with the state have precipitated a civil action in that state. See, e.g., R.C. 2307.382; Ohio R. Civ. P. 4.3(A). Such statutes are not uniform with respect to how service of process must be made. In Ohio, for example, the preferred method of out-of-state service is by certified mail. Ohio R. Civ. P. 4.3(B)(1). If a court orders personal service, it may also designate a person to make the service. Ohio R. Civ. P. 4.3(B)(2). Other states, however, require that the non-resident defendant be personally served with a copy of the summons by an officer authorized to serve process in the state where the defendant is served. See, e.g., Kan. Civ. Pro. Stat. Ann. Sec. 60-308(a)(2) (Vernon). In such states the implementation of "long-arm" jurisdiction depends in part on whether the state in which the non-resident

defendant is found authorizes any of its officers to serve out-of-state process. This type of situation underlies the issue you have raised.

Your specific question is whether a county sheriff is authorized to serve out-of-state process within his county. I shall assume, however, based upon the information included within your request, that your concern is limited to situations in which a summons has been issued by an out-of-state authority commanding a resident of this state to appear in a civil proceeding pending before an out-of-state officer or tribunal. For this reason, I shall not address the statutes or rules governing the issuance or service of process where criminal proceedings are pending in another state. See, e.g., R.C. 2939.26 (Uniform Attendance of Witnesses Act); R.C. 2963.32 (duty of sheriff to assist in implementation of Interstate Agreement on Detainers). Such statutes, which expressly provide for voluntary cooperation among states having similar legislation, have been enacted to guarantee the constitutional rights of the accused in criminal proceedings. Lancaster v. Green, 175 Ohio St. 203 (1963) (R.C. 2939.26 et seq. protects the right established by Ohio Const. art. I, §10, to compulsory process in criminal proceedings). These statutes are not, therefore, applicable to resolve questions regarding civil procedure. I shall also assume, for purposes of this opinion, that your request is limited to service of process directed to an Ohio sheriff by an authority of another state of the United States.

Authorization for service of process by the county sheriff is provided in R.C. 311.07, which states in pertinent part that "[the county sheriff] shall execute all warrants, writs and other process directed to him by any proper and lawful authority." In addition, R.C. 311.08 provides that "[t]he sheriff shall execute every summons, order, or other process, make return thereof, and exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law."

Initially, it is significant to note that these statutes neither expressly permit a county sheriff to serve out-of-state process nor expressly preclude him from doing so. It is also significant to note that R.C. 311.08 provides that the powers of the county sheriff are not limited to those delineated by statute. Pursuant to R.C. 311.08, the county sheriff possesses the powers conferred upon him by common law in addition to those powers conferred by statute. I am, however, unaware of any recognition in the common law that the county sheriff has the power to serve process issued by an out-of-state authority. Thus, the resolution of your question depends upon the sheriff's statutory authority to serve process, and, specifically, upon a determination as to whether the phrase "any proper and lawful authority" set forth in R.C. 311.07 encompasses out-of-state authorities.

Since there is no statute or common law rule construing the phrase "any proper and lawful authority," it is necessary to follow accepted rules of statutory construction to determine the intent of the General Assembly in using that language. The pertinent question is whether the General Assembly intended to limit the above phrase to authorities of the State of Ohio or to include authorities of other states.

It is a well established principle of statutory construction that the initial step in determining legislative intent is to look at the language of the statute itself. Provident Bank v. Wood, 36 Ohio St. 2d 101 (1973). Nothing may be read into a statute which is not evident from its face. It is clear that the term "any" is the only language modifying "proper and lawful authority." "Any" is defined as "no matter which" or "every." Webster's New World Dictionary 62 (2d college ed. 1972). In R.C. 311.07, therefore, "any" is a general term describing a group comprising every proper and lawful authority, no matter which one. As was stated in Wachendorf v. Shaver, 149 Ohio St. 231, 237 (1948):

> The Legislature will be presumed to have intended to make no limitations to a statute in which it has included by general language many subjects, persons or entities, without limitation.

Thus, the use of the word "any" in R.C. 311.07 and the absence of limiting language in the statute make it clear that the General Assembly did not intend that limitations to the statute should be implied.

In State v. Gates, 60 Ohio Misc. 35 (Akron Muni. Ct. 1979), the word "any" was considered as used in R.C. 4511.02(A), which states, "any public officer invested with the authority to direct. . .traffic." That language was held to dispense with jurisdictional requirements for police officers so long as the officer is invested with the requisite authority to direct traffic. Applying that reasoning in this instance, I find that "any" is an all-inclusive term, which dispenses with jurisdictional requirements for the issuance of process so long as the authorities issuing the process are proper and lawful. I conclude, therefore, that the county sheriff is required to serve process directed to him by a proper and lawful authority from outside the state.

My conclusion is supported by R.C. 1.47, which requires that certain presumptions operate in determining the intent of the General Assembly. It must be presumed that "[a] just and reasonable result is intended." R.C. 1.47(C). It would be a most unreasonable result, in my opinion, to construe R.C. 311.07 so that our sister states could not obtain personal service over defendants who reside in Ohio. The most reasonable interpretation is that the legislature intended to acknowledge the laws of other states and allow service of process issued outside the state to be made by an Ohio sheriff on Ohio residents. Cf. R.C. 3109.23(B) (allowing notice in child custody cases in a manner specified by law of state where defendant resides).

My conclusion is also consistent with established principles of comity. Comity can be defined simply as the willingness of the various states, motivated by deference and goodwill, to recognize the validity of judicial decrees and public acts of other states. Yoder v. Yoder, 24 Ohio App. 2d 71 (1970). The principle does not compel one state to recognize the laws of another state, but provides that if the law of one state does not conflict with the public policy of a second state, the second state may give recognition to the law of the first state. Kelly Kar Co. v. Finkler, 155 Ohio St. 541, 549 (1951). I find the principle of comity persuasive in determining the intent of the General Assembly in enacting R.C. 311.07. As applied in this instance, the principle of comity permits recognition of the statutes of other states which empower officers to issue process.

Since I have concluded that proper and lawful authorities from outside the state may direct process to Ohio county sheriffs for service, it is necessary to determine which officers and entities are "proper and lawful authorities." In Ohio Automatic Sprinkler Co. v. Fender, 108 Ohio St. 149, 167 (1923), the Ohio Supreme Court adopted the Webster's International Dictionary definition of "lawful" as being "[c]onstituted or authorized by law;. . .allowed by law. . . ." "Proper" is defined as "fit, suitable, appropriate." Black's Law Dictionary 1381 (4th ed. rev. 1968). "Authority" is defined as the right to command or act. Black's Law Dictionary, supra, at 169. Thus, the sheriff must serve process that is directed to him by an appropriate person who is authorized by law to act.

In concluding that R.C. 311.07 imposes on Ohio sheriffs the duty of serving process issued by authorities outside the state, it is appropriate to consider whether this conclusion exposes the sheriff to any risk. The common law rule regarding liability for improper service is stated in Henline v. Reese, 54 Ohio St. 599, 607 (1896), as follows:

> [T]he officer is entitled to protection in the execution of his writ when it is regular on its face; and. . .he is not. . .liable for acts done in its proper execution unless there is a want of jurisdiction to issue it which appears from the writ itself. (Emphasis added.)

The sheriff is not required to "inquire into the regularity of the proceedings of the tribunal from which it emanates." Wholesale Electric & Supply Co. v. Robusky, 22 Ohio St. 2d 181, 184 (1970) (quoting 49 Ohio Jur. 2d 85). The United

States Supreme Court has set forth the following criteria that should be considered by an officer directed to serve the process in examining the face of the process:

> [P]rocess may be said to be fair on its face which proceeds from a court, magistrate, or body having authority of law to issue process of that nature, and which is legal in form, and on its face contains nothing to notify or fairly apprise the officer that it is issued without authority. (Emphasis added.)

Bryan v. Ker, 222 U.S. 107, 113 (1911) (quoting Cooley on Torts, 3d ed., vol. 2, p. 883). Thus, although the sheriff is not required to inquire into the legality of the proceedings from which the process emanated, he is still required to assure himself that the court, officer, or public body issuing the process is authorized by law to do so.

In order to be certain that the process was issued by a proper and lawful authority, the sheriff needs to ascertain whether the law of the state from which the process was issued allows the person or entity to issue process. The sheriff might make that determination based on advice from the county prosecutor pursuant to R.C. 309.09, or he might look to the issuer himself to provide the sheriff with a copy of the relevant statutory authorization.

Accordingly, it is my opinion, and you are advised, that R.C. 311.07 authorizes a county sheriff to serve process directed to him by "any proper and lawful authority," which term includes an authority of a state other than Ohio. Hence, the sheriff of an Ohio county may serve process directed to him by an officer of another state seeking, in a civil proceeding in that state, to exercise jurisdiction over a person found within Ohio.