September 30, 2024

The Honorable Aaron E. Haslam
Adams County Prosecuting Attorney
110 West Main Street, Room 112
Courthouse
West Union, Ohio 45693

SYLLABUS: 2024-005

1. It is a criminal offense for a person to knowingly enter and occupy another's residence without any legal right or permission of the owner or lawful tenant. This conduct, commonly known as "squatting," would constitute criminal trespass or a more serious offense based on trespass and related acts, depending on the perpetrator's actions and intent.

2. At the request of the owner or lawful tenant of a residence, a law enforcement officer may enter onto the property and arrest the trespasser when there is probable cause for the arrest, although in some cases an officer may need to obtain an arrest warrant.

3. If property rights are reasonably in dispute or the law enforcement officer lacks probable cause for an arrest, the property owner may need to file an action for eviction, in which case law enforcement officers must wait for a court to grant a writ of execution to remove the occupant.

4. Absent probable cause for arrest or a court order to remove the occupant, a law enforcement officer could incur liability under federal or state law for acting without legal authority to do so. If such an action should arise, a court would determine whether the officer's actions qualify for civil immunity.

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OPINION NO. 2024-005

The Honorable Aaron E. Haslam
Adams County Prosecuting Attorney
110 West Main Street, Room 112
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West Union, Ohio 45693

Dear Prosecutor Haslam:

You have requested an opinion regarding the authority of law enforcement officers to remove "squatters" from residential property. Specifically, you have termed as "squatting" the following conduct:

> the act of a person who is neither the owner nor a lawful tenant of a residential property, who without the permission of the owner or the lawful tenant, physically enters the residence and continues to wrongfully occupy the residence to the exclusion of the owner or the owner's lawful tenant.

Based on that description of the conduct at issue, I have framed your questions as follows:

1. Is "squatting," as defined above, a criminal offense under Ohio law?

2. At the request of the owner or lawful tenant of a residence, may a law enforcement officer forcibly remove a squatter who has invaded and continues to occupy the residence of the owner or lawful tenant?

3. Is a court order required before a law enforcement officer may remove a squatter from another's residence?

4. Does a law enforcement officer incur liability for physically removing a squatter at the owner or lawful tenant's request?

I

You have requested a formal opinion so that you may properly advise county law enforcement officials. The following analysis is applicable to law enforcement officers with arrest authority under R.C. Chapter 2935 but is not intended as legal advice for private citizens.

The term "squatting" does not appear in Ohio law, but it can be broadly defined as settling on property without any legal claim or title. *See* Black's Law Dictionary (11th Ed. 2019). However, your questions pertain to the more specific conduct that you have described

above. Consequently, this opinion does not address the legal rights or liabilities of a holdover tenant following eviction or a former resident of foreclosed property.

II

Your first question is whether "squatting" is a criminal offense under Ohio law. Squatting is a type of trespass. Trespass can result in either civil or criminal liability to the trespasser or both. The common law tort in trespass exists when a person, without authority or privilege, physically invades another's private premises and damages ensue, no matter how slight. The act may be intentional or negligent. *See Apel v. Katz*, 83 Ohio St.3d 11, 19 (1998); *Linley v. DeMoss*, 83 Ohio App.3d 594, 598 (10th Dist. 1992). Because your concern relates to the duties of law enforcement officers, it is not necessary here to consider the ability of a private property owner to bring a civil action for trespass. *See* 2002 Ohio Atty.Gen.Ops. No. 2002-017, at 2-98, fn. 2.

A person's conduct is criminal only if it fits the elements of a crime contained in statute, including a culpable mental state. *See* R.C. 2901.21 and 2901.22; *State v. Hohman*, 14 Ohio App.3d 142 (12th Dist. 1983); *State v. Larason*, 143 N.E.2d 502 (C.P. 1956). For conduct to be a criminal offense, it must be defined as an offense in the Revised Code and include both a prohibition or specific duty and a penalty for violating the prohibition or failing to meet that duty. R.C.

2901.03; *See State v. Cimpritz*, 158 Ohio St. 490, 492 (1953) ("In Ohio, all crimes are statutory. The elements necessary to constitute a crime must be gathered wholly from the statute").

To determine whether a squatter commits a criminal trespass, one must look to the elements of the statutory offense. R.C. 2911.21 includes three prohibitions particularly relevant here. The statute provides:

> (A) No person, without privilege to do so, shall do any of the following:
>
> (1) Knowingly enter or remain on the land or premises of another;
>
> …
>
> (3) Recklessly enter or remain on the land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access;

> (4) Being on the land or premises of another, negligently fail or refuse to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or servant of either.

The first element of criminal trespass is to enter or remain on another's property *without privilege to do so*. R.C. 2901.01(A)(12) defines "privilege" as "an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity." *See, e.g.,* 2002 Ohio Atty.Gen.Ops. No. 2002-017, at 2-99; 1980 Ohio Atty.Gen.Ops. No. 80-093. As an essential element of the offense, the state must prove the absence of privilege beyond a reasonable doubt. *See State v. Hirtzinger,* 124 Ohio App.3d 40, 44-45 (2d Dist. 1997). One's privilege to be on another's premises can be revoked; even if a person entered as a guest, the person no longer has a right to remain there if the property owner asks that person to leave. *See State v. Helman*, 2004-Ohio-4867, ¶10 (7th Dist.). The defense of necessity is not applicable to a squatter unless the person trespassed to avoid an imminent danger of harm from natural forces, such as a tornado or flood. *See State v. Mankin*, 2020-Ohio-5317, ¶39 (10th Dist.), citing *Kettering v. Berry*, 57 Ohio App.3d 66, 68 (2d Dist. 1990).

The second necessary element is a culpable mental state. *See generally* R.C. 2901.21. To be guilty of criminal trespass under R.C. 2911.21(A)(1), a person must *knowingly* enter or remain on the land or premises of another. "A person acts *knowingly*, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature." R.C. 2901.22(B). Although an inadvertent though unprivileged intrusion on another's property is not criminal trespass, it is difficult to imagine a situation where a person would enter another's home, occupy it without permission or privilege to do so, and not be aware of their actions.

Even a person who innocently enters onto another's property may be liable for trespass after ignoring signage, fencing, or any other notice of restricted access. R.C. 2911.21(A)(3) and (4). The owner or a lawful occupant of the land or premises, such as a tenant, may demand that the trespasser leave the premises. If a squatter was not already aware of another's right to the property, the demand to leave constitutes notice and will result in criminal liability if the squatter does not leave. R.C. 2911.21(A)(4).

The offense of criminal trespass is a misdemeanor, but it is also an essential element of several felony offenses, including burglary, trespass in a habitation when a person is present or likely to be present, and breaking

and entering. *See* R.C. 2911.10, 2911.12, and 2911.13. The offense of burglary prohibits trespass by force, stealth, or deception in an occupied structure with purpose to commit another criminal offense in the building. R.C. 2911.12(A). The offense of breaking and entering is similar, except that it involves trespass in an unoccupied property with purpose to commit any theft offense or felony. R.C. 2911.13(A). The offense of trespass in a habitation when a person is present or likely to be present requires trespass by force, stealth, or deception, but does not require intent to commit any other offense. R.C. 2911.12(B).

For purposes of burglary, the definition of an "occupied structure" is not limited to dwellings that are currently inhabited, so long as the building is "maintained as a permanent or temporary dwelling, even though it is temporarily unoccupied and whether or not any person is actually present." *See* R.C. 2911.12(C) and 2909.01(C)(1); *State v. Johnson*, 188 Ohio App.3d 438, ¶20 (2d Dist. 2010) ("[t]he mere fact that a residence has no actual tenant or owner living in it does not establish that the structure is unoccupied within the meaning of the Revised Code"). Courts consider how long the residence has been unoccupied and whether it has been maintained in good condition. *See State v. Green,* 18 Ohio App.3d 69, 70 (10th Dist. 1984). Thus, a summer home where the owner is absent for part of the year could still be considered an "occupied structure." *Id.* On the other hand, a house that has been

left vacant and in disrepair for years is more likely to be considered "unoccupied." If the structure was unoccupied, the squatter may still be guilty of breaking and entering if the person trespassed by force, stealth, or deception with purpose to commit a theft offense or felony therein, such as drug trafficking or promoting prostitution. R.C. 2911.13.

In addition to trespass-related offenses, a squatter may be liable for other related criminal offenses. For example, squatters might resort to fraudulent tactics, such as a forged lease or title, to claim tenancy or ownership. R.C. 2913.31 prohibits forgery of any writing with purpose to defraud (or knowing that the person is facilitating a fraud). Forgery is a felony offense. R.C. 2913.31(C)(1). This would apply if a squatter forges a lease, property deed, or other title papers to falsely claim tenancy or ownership. *See, e.g., State v. Bergsmark*, 2004-Ohio-5753, ¶22-29 (6th Dist.). Furthermore, if a forgery is made to prevent, obstruct, or delay a law enforcement officer's arrest or investigation, the person could be guilty of obstructing official business, a second-degree misdemeanor. R.C. 2921.31. Finally, a squatter who damages another's residential property while occupying it could be guilty of committing vandalism, a felony offense. R.C. 2909.05.

In summary, squatting would constitute criminal trespass in most cases or even a more serious offense based

on trespass or related acts, depending on the perpetrator's actions and intent.

III

Your next question is whether, at the request of the owner or lawful tenant, a law enforcement officer may forcibly remove a squatter.

When a person has committed criminal trespass, the person may be arrested and removed from the premises of the owner or lawful tenant. As noted above, criminal trespass without aggravating circumstances is punishable as a misdemeanor. R.C. 2911.21(D). A warrantless arrest can be made for a misdemeanor if the misdemeanor is committed in the presence of the arresting officer. *See* R.C. 2935.03(A)(1) ("A sheriff . . . shall arrest and detain, until a warrant can be obtained, a person found violating . . . a law of this state"); *State v. Henderson*, 51 Ohio St.3d 54, 56 (1990); *Columbus v. Lenear*, 16 Ohio App.3d 466, 468 (10th Dist. 1984). "A warrantless arrest for a misdemeanor is valid if the arresting officer is able to reasonably conclude from the surrounding circumstances that an offense has been committed." *City of Cleveland v. Murad*, 84 Ohio App.3d 317, 320 (8th Dist. 1992).

Law enforcement officers must consider this legal standard to determine whether an alleged trespasser may be arrested without a warrant. Sufficient grounds

may exist if the property owner or tenant reports to law enforcement that a person is squatting on the property, the officer determines the owner or tenant's report to be reliable, and the officer finds the squatter to be present in the residence. *See State v. McLemore*, 2011-Ohio-243, ¶ 21-22 (2d Dist.). In other cases, an officer may have insufficient evidence of criminal trespass to arrest a squatter on sight and without an arrest warrant.

A private citizen who seeks to cause an arrest, having knowledge of the facts, may file an affidavit charging the offense with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney. R.C. 2935.09. If the offense charged is a misdemeanor, as in the case of criminal trespass, the judge, clerk, or magistrate may issue an arrest warrant or summons for the person charged to appear in court, which may be executed by any law enforcement officer with arrest authority under R.C. 2935.03. *See* R.C. 2935.10(B).

Under R.C. 2935.10(A), if the affidavit charges a felony, the judge, clerk, or magistrate with whom the affidavit is filed must issue a warrant for the arrest of the person charged in the affidavit unless the judge, clerk, or magistrate "has reason to believe that it was not filed in good faith, or the claim is not meritorious." Otherwise, the matter must be referred to the prosecuting attorney or other attorney

charged by law with prosecution for investigation prior to the issuance of warrant. R.C. 2935.10(A); *State ex rel. Boylen v. Harmon*, 2006-Ohio-7, ¶7.

A private citizen may also file a criminal complaint with the affidavit, in which case an officer of the court will review these items to determine whether probable cause exists to justify issuing an arrest warrant or summons. Crim.R. 3 and 4(A). Thus, a property owner or lawful tenant could file an affidavit and complaint charging another person with criminal trespass for entering or remaining on their premises. A complaint must state the essential facts constituting the offense charged, the numerical designation of the applicable statute or ordinance, and be made under oath. Crim.R. 3(A). The complainant may provide additional evidence, such as proof of ownership or lawful tenancy, but is not required to do so.

An officer (or even a private citizen) may arrest another without a warrant when a felony has been committed, or when there is reasonable ground to believe that a felony has been committed, and detain the offender until a warrant can be obtained. *See* R.C. 2935.04; *see generally* 2017 Ohio Atty.Gen.Ops. No. 2017-031 (concluding that "reasonable ground," as the term is used in similar statutes, constitutes "probable cause").

To arrest a trespasser, particularly a squatter, it may be necessary to enter the residential premises and physically remove the suspect. The Fourth Amendment of the U.S. Constitution prevents entrance into a house without a warrant, exigent circumstances, or consent of the property owner. *See Steagald v. United States*, 451 U.S. 204 (1981); *Payton v. New York*, 445 U.S. 573 (1980). Article I, Section 14 of the Ohio Constitution contains language that is almost identical to the Fourth Amendment. The consent of an owner or lawful tenant to enter the premises would be sufficient to allow entrance to the residence without a warrant because the trespassing offender has no reasonable expectation of privacy in another's home. *See Steagald* at 219; *Green v. Manross*, 2022 WL 4790412 (W.D. Pa. Sept. 30, 2022) (citing "various decisions holding that trespassers and squatters lack standing to assert Fourth Amendment claims relative to the property they occupy").

IV

The third question asks whether a court order is required before a law enforcement officer may remove a squatter from another's residence.

This question has largely been answered in response to the second question. If a law enforcement officer lacks probable cause to arrest a squatter for criminal trespass or any other criminal offense, or to obtain an

arrest warrant from the court, it may be necessary for the property owner to obtain a writ of execution before the occupant can be removed. *See* R.C. 1923.02(A)(5) (permitting a forcible detainer action when the defendant is "an occupier of lands or tenements, without color of title, and the complainant has the right of possession to them").

R.C. Chapter 1923 includes certain requirements particular to a landlord expelling a tenant. However, landlord-tenant protections apply only to persons "entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others." R.C. 5321.01(A); *see also* R.C. 1923.01(C). Ohio courts generally do not extend such protections to persons, such as squatters, without a lease agreement. *See, e.g., Tillimon v. Timmons*, 2016-Ohio-7424, ¶23-24 (6th Dist.).

To bring an action under the forcible entry and detainer statute, the property owner must first notify the squatter to leave the premises. R.C. 1923.04. The complaint for eviction must particularly describe the premises and allege either: (1) an unlawful and forcible entry and detention, or (2) an unlawful and forcible detention after a peaceable or lawful entry of the premises. In other words, the complaint must state that the defendant either never had the right to the premises or remained on the premises after losing the right to stay there. R.C. 1923.05.

When a court enters a judgment of restitution in an eviction action, at the request of the plaintiff, that court must issue a writ of execution on the judgment. R.C. 1923.13(A). Within ten days after receiving a writ of execution, a sheriff, police officer, constable, or bailiff must restore the property owner to possession of the premises. This writ authorizes the law enforcement officer to forcibly remove the unlawful occupant and that occupant's personal property from the premises. *See* 1933 Ohio Atty.Gen.Ops. No. 1933-1913, at 1809 (following a judicial sale, county sheriff has a duty to serve the writ of possession and remove unlawful occupants and personal property).

V

Finally, you ask whether a law enforcement officer could incur liability for physically removing a squatter from another's residence, at the owner or lawful tenant's request. This question is substantially answered by the analysis of the preceding questions regarding the legal procedures and authority for expelling a squatter.

Considering the wide variety of situations that might arise, the Attorney General cannot predict with certainty through a formal opinion what claims might be made by those who are arrested and removed. As in any situation where a law enforcement officer acts without legal authority, the officer and his employing

political subdivision may risk civil liability under tort law and under federal law, namely 42 U.S.C. §1983. *See, e.g., City of Canton v. Harris*, 489 U.S. 378 (1989). Certain defenses to claims of liability are available should such claims arise. Qualified immunity may be available to both the officer and the political subdivision, with the scope of immunity depending on the type of claim.

"The Attorney General is not empowered to provide authoritative interpretations of federal law. The Attorney General is authorized, however, to advise county prosecuting attorneys as to the extent of the official duties of county officials." 1989 Ohio Atty.Gen.Ops. No. 89-001, at 2-1, fn. 1. In the following two sections, I briefly review the standard of liability for governmental officials under both state and federal law to the extent relevant here.

A

If an alleged squatter contends that a law enforcement officer lacked legal authority to remove the person from the property, the person might claim a violation of the person's constitutional rights under federal law. *See* 42 U.S.C. §1983. Importantly, government officials performing discretionary functions generally are shielded from civil liability if their conduct does not violate clearly established statutory or constitutional

rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

As discussed in the analysis of the second and third questions, a squatter can be arrested upon probable cause that the person has committed a crime, but in some cases, where probable cause to arrest on sight is lacking or unclear, obtaining a warrant may be necessary. If a squatter is arrested without probable cause, the person may allege a violation of constitutional rights under the Fourth Amendment of the U.S. Constitution (as made applicable to the states by the Fourteenth Amendment). A reviewing court must assess the existence of probable cause "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Klein v. Long*, 275 F.3d 544, 550 (6th Cir. 2001) (internal citations omitted).

B

For claims under state law, "R.C. Chapter 2744 addresses political subdivision liability in tort actions and establishes civil immunities for political subdivisions and their officers and employees." 2004 Ohio Atty.Gen.Ops. No. 2004-032, at 2-298. A law enforcement officer employed by a political subdivision, including an elected or appointed official of the political subdivision, qualifies as an "employee" for purposes of qualified immunity. R.C. 2744.01(B). According to

R.C. 2744.03(A)(6), an employee of a political subdivision is immune from liability in a civil action unless:

> (a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;
>
> (b) The employee's acts or omissions were performed with malicious purpose, in bad faith, or in a wanton or reckless manner; or
>
> (c) Civil liability is expressly imposed by a section of the Revised Code.
>
> 2004 Ohio Atty.Gen.Ops. No. 2004-032, at 2-299.

Ohio courts have found that even where a police officer's actions violate the arrestee's constitutional rights, the officer is not necessarily subject to tort liability. "Where the officer's conduct is 'not as thorough as it could have been,' his conduct is merely negligent and that is insufficient 'to remove the cloak of immunity.' *Boyd v. Village of Lexington*, 2002 Ohio 1285, 2002 WL 416016, at *6 (Ohio Ct. App. 2002)." *Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 316 (6th Cir. 2005). Thus, even a successful claim of civil liability under 42 U.S.C. §1983 does not necessarily determine an officer's liability under Ohio's tort law.

Generally, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property that is allegedly caused by an act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function. R.C. 2744.02(A) and 2744.03. Exceptions in R.C. 2744.02(B), not relevant here, permit a political subdivision to be found liable for acts or omissions relating to the operation of motor vehicles, the performance of proprietary functions, the repair and maintenance of roads and bridges, negligence in maintaining certain public buildings and grounds, and statutes expressly imposing civil liability.

The provision of police services and enforcement of law is a "governmental function." *See* R.C. 2744.01(C). Even if the political subdivision is immune from liability, the political subdivision must provide for the defense of an employee in a civil action for damages caused by an act or omission of the employee in connection with a governmental or proprietary function, provided that the act or omission occurred "while the employee was acting both in good faith and not manifestly outside the scope of employment or official responsibilities." 2004 Ohio Atty.Gen.Ops. No. 2004-032, at 2-300; R.C. 2744.07(A)(1).

A political subdivision is required to indemnify and hold harmless an employee in the amount of any judgment for damages (except a judgment for punitive or exemplary damages) caused by an act or omission in connection with a governmental or proprietary function, if at the time of the act or omission the employee was acting in good faith and within the scope of employment or official responsibilities. R.C. 2744.07(A)(2); *see* 1993 Ohio Atty.Gen.Ops. No. 93-001, at 2-7 to 2-8. Thus, a political subdivision employing a law enforcement officer must defend the officer in a civil action if sued by a person whom the officer arrested and removed, presuming the officer was on duty and acted in good faith.

Ultimately, the civil liability of a law enforcement officer for removing an alleged squatter would depend on questions of fact unique to each case. I can only outline the statutes, case law, and legal standards that a court would apply. As explained in 2004 Ohio Atty.Gen.Ops. No. 2004-032, at 2-300 to 2-301, "A court must ultimately determine whether a person was acting within (or not manifestly outside) the scope of employment for a political subdivision, and whether the action was performed without malicious purpose, bad faith, wantonness or recklessness, so as to leave the person entitled to immunity, defense, or indemnification under R.C. Chapter 2744." *See Fabrey v. McDonald Village Police Dep't*, 70 Ohio St.3d at 356 ("the issue of wanton misconduct is

normally a jury question"); *Hunter v. City of Columbus*, 139 Ohio App.3d 962, 970-71 (10th Dist. 2000) (whether acts were performed in a wanton or reckless manner so as to void immunity from liability under R.C. 2744.03(A)(6) was a question for the jury, to be evaluated on unique facts of the situation). The Attorney General cannot in a formal opinion "determine whether particular actions are within (or not manifestly outside) the scope of employment, or whether the actions are performed without malicious purpose, bad faith, wantonness or recklessness, so as to leave the actor entitled to immunity, defense, or indemnification under R.C. Chapter 2744." *Id.*

Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

1. It is a criminal offense for a person to knowingly enter and occupy another's residence without any legal right or permission of the owner or lawful tenant. This conduct, commonly known as "squatting," would constitute criminal trespass or a more serious offense based on trespass and related acts, depending on the perpetrator's actions and intent.

2. At the request of the owner or lawful tenant of a residence, a law enforcement officer may enter onto the property and arrest the trespasser when there is probable cause for the arrest, although in some cases an officer may need to obtain an arrest warrant.

3. If property rights are reasonably in dispute or the law enforcement officer lacks probable cause for an arrest, the property owner may need to file an action for eviction, in which case law enforcement officers must wait for a court to grant a writ of execution to remove the occupant.

4. Absent probable cause for arrest or a court order to remove the occupant, a law enforcement officer could incur liability under federal or state law for acting without legal authority to do so. If such an action should arise, a court would determine whether the officer's actions qualify for civil immunity.

Respectfully,

DAVE YOST
Ohio Attorney General