

OPINION NO. 90-091**Syllabus:**

1. The authority granted to townships and municipal corporations by R.C. 505.431 and R.C. 737.041, respectively, coupled with the sheriff's and his deputies' authority under R.C. 311.07 and R.C. 2935.03(A), to provide police protection throughout the territory of the county, empowers a county and various townships and municipal corporations located within that county to provide additional police protection to each other, if the participating townships and municipal corporations authorize, by appropriate resolutions, the provision of such additional police protection by their police departments.
2. Since a county sheriff and his deputies are authorized, pursuant to R.C. 311.07 and R.C. 2935.03(A), to provide police protection throughout the territory of the county in which they are appointed or elected, and the townships and municipal corporations located within that county are empowered under R.C. 505.431 and R.C. 737.041, respectively, to provide, by resolution, additional police protection to any county, township, or municipal corporation of this state, these same political subdivisions may form, pursuant to R.C. 167.01, a regional council of governments to provide additional police protection throughout the entire territory encompassed by the regional council, provided that each member township and municipal corporation adopt an appropriate resolution.

To: Robert D. Horowitz, Stark County Prosecuting Attorney, Canton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 27, 1990

I have before me your request for my opinion concerning the formation of a regional council of governments for the purpose of providing police protection throughout the entire territory encompassed by that regional council of governments. According to information provided, Stark County and various political subdivisions located within Stark County have formed a regional council of governments to create and operate a metropolitan narcotics unit (METRO) and a crime lab within Stark County. METRO is comprised of peace officers who are appointed, employed, or elected by the various political subdivisions which are members of the regional council. Accordingly, you have asked that I address the following: "May a county, cities, villages, and townships located within that county form a regional council of government[s] to provide police protection¹ throughout

¹ I note that additional information provided indicates that METRO does not provide all the police protection in the territory encompassed by the regional council of governments. Rather, METRO supplements and provides additional resources to those law enforcement agencies primarily charged with the duty of providing police protection to individual political subdivisions. Consequently, I will address only the situation in which a regional council is responsible for providing additional police protection to its member subdivisions.

the territory encompassed by that regional council of government[s.]" (Footnote added.)

Regional councils are provided for in R.C. Chapter 167. Pursuant to the provisions of this chapter, the

governing bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may enter into an agreement with each other, or with the governing bodies of any counties, municipal corporations, townships, special districts, school districts or other political subdivisions of any other state to the extent that laws of such other state permit, for establishment of a regional council consisting of such political subdivisions.

R.C. 167.01. The powers of a regional council of governments include the studying of area governmental problems, the promoting of cooperative arrangements and coordinating of action among its member subdivisions, the making of recommendations for review and action to the members and other public agencies that perform functions within the region, and the promoting of cooperative agreements and contracts among its members or other governmental agencies and private parties. R.C. 167.03. A regional council, however, has no express statutory authority to provide police protection to its member subdivisions. *See generally* 1986 Op. Att'y Gen. No. 86-068 (syllabus, paragraph one) ("[a] regional council of governments may not appoint and commission persons as law enforcement officers of the council with full police powers throughout the territory of the member subdivisions").

Nevertheless, R.C. 167.03(C) authorizes a regional council of governments, "by appropriate action of the governing bodies of the members, [to] perform such other functions and duties as are performed or capable of performance by the members and necessary or desirable for dealing with problems of mutual concern." *See, e.g.*, 1989 Op. Att'y Gen. No. 89-063 (a regional council may under certain conditions, directly operate an inpatient adolescent mental health center on behalf of its member community mental health boards); 1969 Op. Att'y Gen. No. 69-013 (a regional council may perform joint purchasing on behalf of its members, subject to competitive bidding requirements). "The language of R.C. 167.03(C) authorizing a council to perform the functions and duties as are performed or capable of performance by the members of the council has been consistently interpreted as permitting a regional council of governments to perform only those governmental functions that might otherwise be performed by the council's individual members." 1986 Op. Att'y Gen. No. 86-084 at 2-474; *accord* Op. No. 89-063 at 2-274 ("a regional council of governments is permitted to perform only those governmental functions that might otherwise be performed by the council's individual members"); Op. No. 86-068 at 2-376 ("[a]s is specified in the statutory provisions themselves, such a council may, pursuant to R.C. 167.03(C)...perform only such functions as its member subdivisions are authorized to perform or as contracting political subdivisions may perform and authorize the council to perform on their behalf"); 1982 Op. Att'y Gen. No. 82-103 at 2-283 ("[u]nder R.C. 167.03(C)...a regional council of governments may perform functions and duties on behalf of a member political subdivision only within the statutory constraints which define the manner in which that subdivision could perform the same functions and duties"); 1979 Op. Att'y Gen. No. 79-018 at 2-57 ("[a] political subdivision may authorize a [regional council of governments] to perform only such functions and duties as the political subdivision is capable of performing"); 1971 Op. Att'y Gen. No. 71-010 at 2-22 ("a [regional] council...is given no 'governmental powers' that are not provided to its members"); Op. No. 69-013 at 2-16 (a regional council "is limited to performing on behalf of its [member] subdivisions just those functions which the subdivision itself is able to perform"). Hence, a regional council's authority to act on behalf of its member subdivisions under R.C. 167.03(C) "is derived from its members and cannot exceed the authority which the members have," and "[i]f a member political subdivision is restricted in carrying out a particular activity by requirements imposed by statute, the council's ability to act on behalf of the subdivision must be similarly restricted." Op. No. 82-103 at 2-283; *accord* Op. No. 89-063 at 2-275; Op. No. 86-084 at 2-474; Op. No. 86-068 at 2-376; *see also* Op. No. 69-013 (syllabus, paragraph two)

(a regional council "may not jointly purchase items without competitive bids on behalf of its members, the cost of which to each political subdivision would exceed the statutory amount for which competitive bidding is required"). In order to answer your specific question, therefore, it is necessary to determine whether each of the participating member subdivisions of the regional council about which you ask, has the authority to provide additional police protection to all the other member subdivisions of that regional council. *See generally* 1990 Op. Att'y Gen. No. 90-012 (since no statute expressly or impliedly authorizes the various political subdivisions of a regional council of governments to form a cooperative agreement under which the peace officers of the police departments of such subdivisions exercise their police powers throughout the entire territory encompassed by a regional council, the member subdivisions of a regional council may not form such a cooperative agreement to expand the police jurisdiction of each member subdivision to the boundaries of the regional council).²

Information provided indicates that a county and various townships and municipal corporations³ located within that county participate as members of the regional council in question. I will examine, accordingly, the authority of a county and various townships and municipal corporations located within that county to provide additional police protection to each other.

I note initially that a sheriff elected, pursuant to R.C. 311.01(A), and his deputies appointed under R.C. 311.04 are the chief law enforcement officers of a county. *See In re Sulzmann*, 125 Ohio St. 594, 597, 183 N.E. 531, 532 (1932) (per curiam); *State v. Rouse*, 53 Ohio App. 3d 48, 52, 557 N.E.2d 1227, 1231 (Franklin County 1988); 1984 Op. Att'y Gen. No. 84-028 at 2-82; 1962 Op. Att'y Gen. No. 3109, p. 514 (syllabus, paragraph two); 1941 Op. Att'y Gen. No. 3633, p. 216 at 218. *See generally* R.C. 3.06(A) ("[a] deputy, when duly qualified, may perform any duties of his principal"). As the chief law enforcement officers of a county, the sheriff and his deputies are generally deemed, pursuant to R.C. 311.07, to have "jurisdiction coextensive with the county, including all municipalities and townships." *In re Sulzmann*, 125 Ohio St. at 597, 183 N.E. at 532; *accord State v. Rouse*, 53 Ohio App. 3d at 52, 557 N.E.2d at 1231; 1989 Op. Att'y Gen. No. 89-074 at 2-342 and 2-343; 1962 Op. No. 3109 at 518; 1941 Op. No. 3633 at 218; *see also* 1960 Op. Att'y Gen. No. 1309, p. 310 at 312 ("[t]he 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"). Additionally, a sheriff and his deputies, as elected and appointed peace officers of a county, are vested with the power to "arrest and detain until a warrant can be obtained a person found violating, within the limits of the [county appointing or electing them], a law of this state or an ordinance of a municipal corporation." R.C. 2935.03(A); *see In re Sulzmann*, 125 Ohio St. at 597, 183 N.E. at 532; 1960 Op. No. 1309 at 312. In view of the foregoing, it is apparent that a sheriff and his deputies are authorized under R.C. 311.07 and R.C. 2935.03(A) to provide police protection throughout the county in which they have been elected or appointed.

Since the only political subdivisions participating in the regional council in question are a county and various townships and municipal corporations located

² 1990 Op. Att'y Gen. No. 90-012 determined that it was inappropriate for all the different types of political subdivisions set forth in R.C. 167.02 to use a cooperative agreement to expand the police jurisdiction of all such subdivisions to the entire territory encompassed by a regional council. The opinion, however, specifically noted that various provisions set forth in the Revised Code authorize one political subdivision to provide police protection to another political subdivision, *see, e.g.*, R.C. 311.29; R.C. 505.43; R.C. 505.431; R.C. 505.50; R.C. 737.04; R.C. 737.041, and that where appropriate, the individual member subdivisions of a regional council could utilize such provisions so as to expand the territory in which their peace officers could exercise their police powers.

³ Pursuant to Ohio Const. art. XVIII, § 1, municipal corporations are classified as cities and villages. *See also* R.C. 703.01.

within that county, the territorial boundaries of the regional council coincide with those of the county participating in the regional council. Consequently, the sheriff and deputy sheriffs of the county participating in that regional council, by virtue of R.C. 311.07 and R.C. 2935.03(A), are authorized to provide police protection to all the participating member subdivisions of the regional council in question.

Further, several Revised Code sections authorize the provision of additional police protection pursuant to a contract, *see, e.g.*, R.C. 505.43; R.C. 737.04, or without a contract, *see, e.g.*, R.C. 505.431; R.C. 737.041, by a township or municipal corporation. Since you have stated that no contract for police protection exists between the political subdivisions in question, I will address a township's or municipal corporation's authority to provide police protection to another political subdivision without a contract.

Pursuant to R.C. 505.431:

The police department of any township or township police district may provide police protection to any county, municipal corporation, or township of this state or to a governmental entity of an adjoining state without a contract to provide police protection, upon the approval, by resolution, of the board of township trustees of the township in which the department is located and upon authorization by an officer or employee of the police department providing the police protection who is designated by title of office or position, pursuant to the resolution of the board of township trustees, to give such authorization.

A township, thus, pursuant to R.C. 505.431, may provide additional police protection, without a contract, to the county in which it is located and to other townships and municipal corporations located within that county, if the board of township trustees adopts an appropriate resolution authorizing the provision of such additional police protection by its police department.

Similarly, R.C. 737.041 provides, in relevant part, that:

The police department of any municipal corporation may provide police protection to any county, municipal corporation, or township of this state or to a governmental entity of an adjoining state without a contract to provide police protection, upon the approval, by resolution, of the legislative authority of the municipal corporation in which the department is located and upon authorization by an officer or employee of the police department providing the police protection who is designated by title of office or position, pursuant to the resolution of the legislative authority of the municipal corporation, to give such authorization.

A municipal corporation, like a township, is similarly empowered to provide, by an appropriate resolution, additional police protection to other political subdivisions of this state.

Thus, the authority granted to townships and municipal corporations by R.C. 505.431 and R.C. 737.041, respectively, coupled with the sheriff's and his deputies' authority under R.C. 311.07 and R.C. 2935.03(A) to provide police protection throughout the territory of the county, reveals that a county and various townships and municipal corporations located within that county may provide additional police protection to each other, if the participating townships and municipal corporations authorize, by appropriate resolutions, the provision of such additional police protection by their police departments. *See generally* 1990 Op. Att'y Gen. No. 90-086, slip op. at 4 ("R.C. 737.041 permits the police department of a municipal corporation to make police protection available to any county, municipal corporation or township of this state...without a contract to provide such police protection upon the approval of the legislative authority of the municipal corporation in which the department is located and the authorization by the appropriate officer or employee

of the police department, and upon the assent of the governmental entity receiving such police protection").⁴

Moreover, a regional council, as stated above, has the authority to perform those governmental functions that may be performed by its individual members.

Since a county sheriff and his deputies are authorized, pursuant to R.C. 311.07 and R.C. 2935.03(A), to provide police protection throughout the territory of the county in which they are appointed or elected, and the townships and municipal corporations located within that county are empowered under R.C. 505.431 and R.C. 737.041, respectively, to provide, by resolution, additional police protection to any county, township, or municipal corporation of this state, these same political subdivisions may form, pursuant to R.C. 167.01, a regional council of governments to perform this function. The regional council, however, must comply with the statutory constraints imposed upon its member subdivisions. *See* R.C. 167.03(C). As such, pursuant to R.C. 505.431 and R.C. 737.041, each member township and municipal corporation of that regional council must adopt an appropriate resolution.

Based upon the foregoing, it is my opinion and you are hereby advised that:

1. The authority granted to townships and municipal corporations by R.C. 505.431 and R.C. 737.041, respectively, coupled with the sheriff's and his deputies' authority under R.C. 311.07 and R.C. 2935.03(A), to provide police protection throughout the territory of the county, empowers a county and various townships and municipal corporations located within that county to provide additional police protection to each other, if the participating townships and municipal corporations authorize, by appropriate resolutions, the provision of such additional police protection by their police departments.
2. Since a county sheriff and his deputies are authorized, pursuant to R.C. 311.07 and R.C. 2935.03(A), to provide police protection throughout the territory of the county in which they are appointed or elected, and the townships and municipal corporations located within that county are empowered under R.C. 505.431 and R.C. 737.041, respectively, to provide, by resolution, additional police protection to any county, township, or municipal corporation of this state, these same political subdivisions may form, pursuant to R.C. 167.01, a regional council of governments to provide additional police protection throughout the entire territory encompassed by the regional council, provided that each member township and municipal corporation adopt an appropriate resolution.

⁴ I note that 1990 Op. Att'y Gen. No. 90-086 determined that it was necessary to receive the assent of the political subdivision receiving, pursuant to R.C. 737.041, police protection from a municipal corporation. For purposes of this opinion, however, I assume that in a situation where the political subdivisions of a county seek to provide additional police protection to each other, the political subdivisions have assented to receiving the additional police protection.