

OPINION NO. 68-155

Syllabus:

1. A township or municipal police officer may make a lawful arrest within another jurisdiction with which such officer's township or municipality has contracted for police protection pursuant to Sections 505.441 or 737.04, Revised Code.

2. An oath of office need not be administered to a township or municipal police officer by authorities of another jurisdiction when the performance of the officer's duties within such other jurisdiction are pursuant to police protection contracts authorized by Sections 505.441 and 737.04, Revised Code.

To: Gene Henry, Geauga County Pros. Atty., Chardon, Ohio
By: William B. Saxbe, Attorney General, November 14, 1968

I have before me your request for my opinion which asks two questions:

(1) Would a township or municipal police officer acting pursuant to a police protection contract be able to make a lawful arrest within the jurisdiction with whom the police officer's township or municipality has contracted?

(2) Would these non resident police officers have to be sworn by authorities of both contracting jurisdictions?

It is well established that a township police officer may not arrest outside the limits of his township in the absence of legislative authority. Opinion No. 1863, Opinions of the Attorney General for 1938. Similarly, the powers of a municipal corporation cannot be exercised beyond the territorial limits of the corporation in the absence of statutory authority for such purpose. Prudential Coop Realty Co. vs. Youngstown, 118 Ohio St. 204. Thus, arrest by either a township or municipal police officer in another jurisdiction would be invalid per se without affirmative state legislative support.

Section 505.441, Revised Code, reads:

"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.

"Section 701.02 of the Revised Code, so far as it is applicable to the operation of police departments, applies to the contracting political subdivisions and police department members when such members are rendering service outside their own subdivision pursuant to such contract.

"Police department members acting outside the subdivision in which they are employed may participate in any pension or indemnity fund established by their employer to the same extent as while acting within the employing subdivision, and are entitled to all the rights and benefits of sections 4123.01 to 4123.94, inclusive, of the Revised Code, to the same extent as while performing service within the subdivision.

"Such contract may provide for a fixed annual charge to be paid at the time agreed upon and stipulated in the contract."

Section 737.04, Revised Code, reads:

"Any municipal corporation may, in order to obtain police protection or to obtain additional police protection, enter into contracts for a period not to exceed three years, with one or more municipal corporations, upon such terms as are agreed upon for services of police departments or the use of police equipment or for the interchange of such service or equipment within the several territories of the contracting subdivisions. Such contract shall first be authorized by the respective legislative authorities.

"Section 701.02 of the Revised Code, so far as it applies to the operation of police departments, shall apply to the contracting political subdivisions and to the police department members when they are rendering service outside their own subdivisions, pursuant to such contracts.

"Police department members acting outside the subdivision in which they are employed, pursuant to such contracts, shall be entitled to, if the rules of the board of trustees of the policemen's pension or indemnity fund provide therefore, participate in any pension or indemnity fund established by their employer to the same extent as while acting within the employing subdivision. Such members shall be entitled to all the rights and benefits of sections 4123.01

to 4123.94, inclusive, of the Revised Code, to the same extent as while performing service within the subdivision.

"Such contracts may provide for:

"(A) A fixed annual charge to be paid at the times agreed upon and stipulated therein;

"(B) Compensation based upon:

"(1) A stipulated price for each call or emergency;

"(2) The number of members or pieces of equipment employed;

"(3) The elapsed time of service required in such call or emergency;

"(C) Compensation for loss or damage to equipment while engaged outside the limits of the subdivision owning and furnishing the equipment;

"(D) Reimbursement of the subdivision in which the police department members are employed for any pension or indemnity award or premium contribution assessed against the employing subdivision for workmen's compensation benefits for injuries or death of its police department members occurring while engaged in rendering such service."

Sections 505.441 and 737.04, supra, require the conclusion that a police officer pursuing his official duty to another jurisdiction pursuant to a mutual police protection contract may make lawful arrests as an inherent part of the duties and responsibilities of his position. Sections 505.441 and 737.04, supra, make provision for workmen's compensation and negligence coverage, which lends additional emphasis to the belief that the legislative intent was that such officers should perform completely their official functions while in another jurisdiction pursuant to a police protection contract.

I tacitly assumed this conclusion in Opinion No. 66-179, Opinions of the Attorney General for 1966, page 385, when I noted that a police officer was entitled to disability payments after being injured while acting pursuant to a mutual protection contract in another jurisdiction, while performing his official duty. "Official duty" was defined as having some direct connection with duties, responsibilities, and authority of the police department with which the officer was affiliated. Opinion No. 66-179, supra, page 384. Arrest in the proper circumstances would most assuredly be one of the "official duties" of a police officer acting pursuant to Sections 505.441 or 737.04, supra, in another contracting jurisdiction.

Since a police officer may be given extra jurisdictional authority by a contract made pursuant to Sections 505.441 or 737.04, supra, his oath of office administered by his own township or municipality suffices for all "official duty" of his

unit's police department. "Official duty" includes all police work performed pursuant to the terms of police protection contract.

Therefore, it is my opinion and you are advised that:

1. A township or municipal police officer may make a lawful arrest within another jurisdiction with which such officer's township or municipality has contracted for police protection pursuant to Sections 505.441 or 737.04, Revised Code.
2. An oath of office need not be administered to a township or municipal police officer by authorities of another jurisdiction when the performance of the officer's duties within such other jurisdiction are pursuant to police protection contracts authorized by Sections 505.441 and 737.04, Revised Code.