

September 25, 2017

The Honorable Dennis Watkins  
Trumbull County Prosecuting Attorney  
160 High Street N.W., 4th Floor  
Warren, Ohio 44481-1092

SYLLABUS:

2017-030

1. A county court has no authority to enter into a contract with a county sheriff whereby the county court pays the county sheriff for the transportation of persons between the county court and the jails in which those persons are being held after the persons have been arrested and presented to a court or magistrate and during the time period in which those persons are awaiting disposition of the crime or crimes for which they were arrested.
2. A municipal court has no authority to enter into a contract with a county sheriff whereby the municipal court pays the county sheriff for the transportation of persons between the municipal court and the jails in which those persons are being held after the persons have been arrested and presented to a court or magistrate and during the time period in which those persons are awaiting disposition of the crime or crimes for which they were arrested.
3. A municipal court may not order a deputy sheriff to perform the duties of an ex officio bailiff pursuant to R.C. 1901.32(A)(5), even if the county sheriff has entered into a contract pursuant to R.C. 311.29 or R.C. 505.50 with a township that is located within the territorial jurisdiction of a municipal court whereby the county sheriff assigns the deputy sheriff to provide police services to the township.
4. A county sheriff has no duty to transport a person between a municipal court and a jail in which the person is being held after the person has been arrested by a deputy sheriff and presented to a court or magistrate and during the time in which the person is awaiting disposition of the crime or

crimes for which he was arrested. (2010 Op. Att'y Gen. No. 2010-018  
(syllabus, paragraph 1), approved and followed.)



# MIKE DEWINE

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September 25, 2017

OPINION NO. 2017-030

The Honorable Dennis Watkins  
Trumbull County Prosecuting Attorney  
160 High Street N.W., 4th Floor  
Warren, Ohio 44481-1092

Dear Prosecutor Watkins:

We have received your request regarding the authority of a county or municipal court to enter into a contract with a county sheriff pursuant to the terms of which the county or municipal court pays the sheriff for the transportation of persons between the county or municipal court and the jail in which those persons are being held.<sup>1</sup> You ask the following specific questions:<sup>2</sup>

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<sup>1</sup> Various statutes and procedural rules require an arresting officer to bring a person before a court or magistrate upon the person's initial arrest. *See, e.g.*, R.C. 2935.05 (an officer that has arrested a person without a warrant is required to "take the person arrested before a court or magistrate having jurisdiction of the offense"); R.C. 2935.13 ("[u]pon the arrest of any person pursuant to warrant, he shall forthwith be taken before the court or magistrate issuing the same"); R.C. 5503.02(C) ("[a]ny person who is arrested by the superintendent or a state highway patrol trooper shall be taken before any court or magistrate having jurisdiction of the offense with which the person is charged"); Ohio R. Crim. P. 4(E). *See also* 1991 Op. Att'y Gen. No. 91-047, at 2-246 ("upon arrest a peace officer is required to take an individual arrested by him before a court or magistrate"); 1979 Op. Att'y Gen. No. 79-106 (syllabus, paragraph 1) ("Ohio R. Crim. P. 4(E) requires the arresting officer to deliver an accused to the initial appearance before the court in the case of all warrantless arrests and in the case of arrests made pursuant to a warrant in the county from which the warrant issued or an adjoining county"). R.C. 2949.08(A) governs the responsibility of a county sheriff or township constable to transport persons who have been sentenced by a judge "to a community residential sanction in a community-based correctional facility" or "to a term of imprisonment in a jail." Your questions concern the transportation to and from a county or municipal court of persons who have been arrested and presented to a court or magistrate and are awaiting dispositions of the crime or crimes for which the persons have been arrested. In other words, your questions concern the time period after the point at which a person is presented to a court by an arresting officer and before the point at which the person is either released or sentenced.

1. May a county court that has appointed a bailiff pursuant to R.C. 1907.53(A)(1) enter into a contract with a county sheriff whereby the county court pays the county sheriff to transport persons between the county court and the jail in which those persons are being held?
2. If such a contract is permitted, which public officer or entity may execute the contract on behalf of both parties?
3. If such a contract is permitted, may the county court pay the money owed to the county sheriff under the terms of the contract from its probations services fund or special projects fund?
4. May a municipal court enter into a contract with a county sheriff whereby the municipal court pays the county sheriff to transport persons between the municipal court and the jail in which those persons are being held?
5. If such a contract is permitted, which public officer or entity may execute the contract on behalf of both parties?
6. If a county sheriff has entered into a contract pursuant to R.C. 311.29 or R.C. 505.50 with a township that is located within the territorial jurisdiction of a municipal court whereby the county sheriff provides police services to the township, may the municipal court order the deputy sheriffs assigned by the county sheriff to provide police services to the township to perform the duties of an ex officio bailiff pursuant to R.C. 1901.32(A)(5)?
7. If a person is arrested for an offense by a deputy sheriff in the territorial jurisdiction of a municipal court, does the county sheriff have a duty to transport the person between the municipal court and the jail in which the person is being held?

**Authority of a County Court to Enter into a Contract with a County Sheriff for the Transportation of Persons between a Jail and the County Court**

Your first question asks whether a county court that has appointed a bailiff pursuant to R.C. 1907.53(A)(1) may enter into a contract with a county sheriff whereby the county court

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<sup>2</sup> Your letter requesting an opinion of the Attorney General asks several questions relating to the authority of a county court to enter into a contract with a county sheriff for the transportation of persons being held in jail to and from the county court. In a second letter, you ask similar questions about the contracting authority of a municipal court. We have supplemented your original request with the questions in your second letter.

pays the county sheriff to transport persons between the county court and the jail in which those persons are being held.

A county court is created by statute “in each county of the state, in which the territorial jurisdiction of a municipal court or municipal courts is not coextensive with the boundaries of the county.” R.C. 1907.01; *see also* 1991 Op. Att’y Gen. No. 91-010, at 2-50 (under the provisions of R.C. Chapter 1907, “a county court is created whenever the territorial jurisdiction of a municipal court or municipal courts located within a county is not coextensive with the boundaries of that county”). A county court possesses and exercises judicial and administrative powers. 2012 Op. Att’y Gen. No. 2012-039, at 2-339; *see also* Ohio Const. art. IV, § 1 (“[t]he judicial power of the state is vested in a supreme court ... and such other courts inferior to the supreme court as may from time to time be established by law”). When acting in an administrative capacity, a county court has only those powers expressly delegated by the General Assembly and any powers necessarily implied thereby. 2012 Op. Att’y Gen. No. 2012-039, at 2-340; 1965 Op. Att’y Gen. No. 65-048, at 2-91 (“county courts are creatures of statute, and thus, have only the powers as are vested in them by the enabling legislation”). *Cf.* 2015 Op. Att’y Gen. No. 2015-015, at 2-162 (“[w]hen exercising its administrative authority, a court of common pleas is a creature of statute” and “has only “such power as is expressly delegated by the General Assembly together with such implied power as is necessary to carry into effect the power expressly delegated”” (quoting 2011 Op. Att’y Gen. No. 2011-047, at 2-381 (quoting 1938 Op. Att’y Gen. No. 2308, vol. II, p. 821, at 824))). *See generally* *Stump v. Sparkman*, 435 U.S. 349, 362 (1978) (“the factors determining whether an act by a judge is a ‘judicial’ one relate to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity”); 1985 Op. Att’y Gen. No. 85-060, at 2-223 (“the act of appointing a peace officer does not constitute a judicial function”).

“A county court must have clear and distinct authority to act in financial transactions.” 2012 Op. Att’y Gen. No. 2012-039, at 2-340. “[A]ny doubt regarding a financial expenditure of a county court must be resolved ‘in favor of the public and against the grant of power.’” *Id.* (quoting *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917) (syllabus, paragraph 3)). Thus, a county court that has appointed a bailiff pursuant to R.C. 1907.53(A)(1) may enter into a contract with a county sheriff whereby the county court pays the county sheriff to transport persons to and from the county court only if the General Assembly has conferred clear and distinct authority upon the county court to do so.

A judge or judges of a county court are elected as prescribed in R.C. 1907.11 and R.C. 1907.13. *See* 1991 Op. Att’y Gen. No. 91-010, at 2-50 (“[j]udges of a county court are elected by the electors of a county court district”). A county court judge has a variety of powers, including the authority to administer oaths, R.C. 1907.18(A)(1); issue subpoenas, R.C. 1907.18(A)(3); try actions against other county court judges for various offenses, R.C. 1907.18(A)(5); and perform marriage ceremonies, R.C. 1907.18(C)(1). *See generally* 1991 Op. Att’y Gen. No. 91-010, at 2-50 (“county court judges are vested with those powers traditionally granted to judges”). R.C. 1907.18(B) confers authority upon a county court judge to “exercise

powers necessary to give effect to the jurisdiction of the court and to enforce its judgments, orders, and decrees, as provided in this chapter or ... in a manner authorized by the Revised Code or common law for the judges of the courts of common pleas.” A county court judge also has the authority to appoint employees of the court, including, but not limited to, probation officers, court aides, and bailiffs. R.C. 1907.201; R.C. 1907.53(A)(1).

The appointment of a county court bailiff is governed by R.C. 1907.53. R.C. 1907.53(A)(1) authorizes “[e]ach judge of a county court” to “appoint a bailiff on a full-time or part-time basis.” *See also* 2005 Op. Att’y Gen. No. 2005-045, at 2-488 (“[a] county court bailiff is appointed by a county court judge”). A bailiff’s compensation is “prescribed by the appointing judge, and ... payable in semimonthly installments from the treasury of the county or other authorized fund.” R.C. 1907.53(A)(1). R.C. 1907.53(A)(2) authorizes “[t]he board of county commissioners” to “purchase motor vehicles for the use of the bailiff that the court determines necessary to perform the duties of the office,” and pay other costs and expenses incurred by a bailiff in operating public or private motor vehicles as part of the bailiff’s official duties.

A bailiff is required to “perform for the county court services similar to those performed by the sheriff for the court of common pleas” and “any other duties that are required by rule of court.” R.C. 1907.53(C)(1). Several opinions of the Attorney General have recognized that a county sheriff or criminal bailiff, acting on the sheriff’s behalf, is responsible for transporting a person between the court of common pleas and the jail in which the person is being held. *See* R.C. 2301.15; *see also* 2010 Op. Att’y Gen. No. 2010-018, at 2-111 (“R.C. 311.07(A) and R.C. 2301.15, in turn, require the county sheriff to attend upon the court of common pleas and transport prisoners between the county jail and the court of common pleas”); 2005 Op. Att’y Gen. No. 2005-045, at 2-489 (“[a] county sheriff ... is responsible for ... transporting prisoners between the court of common pleas and jail”); 2004 Op. Att’y Gen. No. 2004-024, at 2-217 (recognizing and adopting the analysis in 1987 Op. Att’y Gen. No. 87-091 that “the county sheriff and criminal bailiff are required to transport persons between the county jail and the court of common pleas”); 1962 Op. Att’y Gen. No. 3420, p. 925, at 926 (“responsibility for transportation of prisoners between the county jail and the common pleas court lies in the sheriff and a special officer under his direction, the criminal bailiff”). Thus, pursuant to R.C. 1907.53(C)(1), a county court bailiff is responsible for transporting a person between a county court and the jail in which the person is being held.<sup>3</sup> *Cf.* 2010 Op. Att’y Gen. No. 2010-018

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<sup>3</sup> In 1991 Op. Att’y Gen. No. 91-047, at 2-249, the Attorney General concluded that a county sheriff and a township constable within the territorial jurisdiction of a county court are “available for the delivery of prisoners to and from the county court[.]” At the time the Attorney General issued 1991 Op. Att’y Gen. No. 91-047, R.C. 1907.53(A) stated that the county sheriff and the constables of townships within the territorial jurisdiction of the county court were “ministerial officers of the county court in all ... criminal cases in which the county court has jurisdiction.” 1991 Op. Att’y Gen. No. 91-047, at 2-248 (quoting former R.C. 1907.53(A)). The General Assembly later amended R.C. 1907.53 to provide for the appointment

(syllabus, paragraphs 2 and 3) (relying on similar language in the statute governing the duties of a municipal court bailiff to conclude that a municipal court bailiff has a duty to transport persons between a municipal court and the jails in which those persons are being held); 2004 Op. Att’y Gen. No. 2004-024, at 2-217 to 2-219 (same).

You ask whether a county court that has appointed a bailiff pursuant to R.C. 1907.53(A)(1) may enter into a contract with a county sheriff whereby the county court pays the county sheriff to transport persons between the county court and the jail in addition to, or in lieu of, the bailiff. No provision in R.C. Chapter 1907 or anywhere else in the Revised Code provides express authority to a county court to enter into such a contract. Nor may this authority be necessarily implied by any of the county court’s express powers. The General Assembly has authorized a county court to appoint a bailiff pursuant to R.C. 1907.53(A)(1). A bailiff is responsible for the transportation of persons between the county court and the jail in which those persons are being held. *See* R.C. 1907.53(C)(1) (“[a] bailiff ... shall perform for the county court services similar to those performed by the sheriff for the court of common pleas”); 2010 Op. Att’y Gen. No. 2010-018, at 2-111 (“R.C. 311.07(A) and R.C. 2301.15, in turn, require the county sheriff to attend upon the court of common pleas and transport prisoners between the county jail and the court of common pleas”). Therefore, if a county court wishes to provide for the transportation of persons between the county court and the jails in which these persons are being held, the county court may appoint a bailiff as provided for in R.C. 1907.53(A)(1). *See generally Akron Transp. Co. v. Glander*, 155 Ohio St. 471, 480, 99 N.E.2d 493 (1951) (“when a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner”).

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of county court bailiffs. 1995-1996 Ohio Laws, Part III, 4823 (Am. Sub. H.B. 438, eff. July 1, 1997). The amendment to the statute removed the language describing the county sheriff and township constables as ministerial officers of the county court. *Id.* Therefore, it is now the duty of the county court bailiff, not a county sheriff or township constable, to transport prisoners between the county court and the jails in which the prisoners are being held.

Although R.C. 1907.53(B)(2) continues to provide that “a deputy sheriff or constable shall attend the county court while a trial is in progress” upon the request of a county court judge, this language means that upon a judge’s request, a deputy sheriff or constable “shall provide a minimum level of security” to the court. 2015 Op. Att’y Gen. No. 2015-015, at 2-168 (interpreting this same language for the purpose of R.C. 311.07); *see also* 2001 Op. Att’y Gen. No. 2001-006, at 2-40 (“R.C. 311.07(A) imposes a duty upon the county sheriff to ‘attend upon the court of common pleas and the court of appeals during their sessions....’ Accordingly, pursuant to R.C. 311.07(A), a county sheriff is responsible for providing for the court of common pleas’ security”). This language does not confer upon a county court judge the authority to require a deputy sheriff or a township constable to transport persons between the county court and the jails in which those persons are being held.

R.C. 1907.53 also governs the designation of ex officio bailiffs in the absence of an appointment of a bailiff by a county court under R.C. 1907.53(A)(1). R.C. 1907.53(B)(1) provides, in this regard:

In a county court district in which no bailiff is appointed pursuant to division (A)(1) of this section, every deputy sheriff of the county, every police officer of a municipal corporation within the jurisdiction of the court, every member of a township or joint police district police force, and every police constable of a township within the county court district is ex officio a bailiff of the court in and for the county, municipal corporation, or township within which the deputy sheriff, police officer, police force member, or police constable is commissioned and shall perform, in respect to cases within that jurisdiction and without additional compensation, any duties that are required by a judge of the court or by the clerk of the court.

R.C. 1907.53(C)(1) states that “an ex officio bailiff shall perform for the county court services similar to those performed by the sheriff for the court of common pleas and ... any other duties that are required by rule of court.” Thus, in the absence of an appointed bailiff, an ex officio bailiff, as identified in R.C. 1907.53(B)(1), is responsible for transporting a person between the county court and the jail in which the person is being held.

As set forth above, when acting in its administrative capacity, a county court may exercise only those powers expressly conferred upon the county court by the General Assembly or necessarily implied thereby. *See, e.g.*, 1974 Op. Att’y Gen. No. 74-041, at 2-178 (because there was no authority permitting a county court judge to appoint a special constable pursuant to R.C. 1907.201 to protect property which lies outside the jurisdiction of the county court, “such an appointment may not be made”); 1965 Op. Att’y Gen. No. 65-048 (syllabus) (“[a] county court has no authority to provide, by rule of court, that a defendant in a misdemeanor case who requests a jury trial, must first deposit or secure the costs for subpoena and empaneling a jury”). A bailiff appointed by a county court under R.C. 1907.53(A)(1) has a duty to transport persons between the county court and the jails in which those persons are being held. No provision in the Revised Code authorizes a county court to enter into a contract with a county sheriff whereby the county court pays the county sheriff for the transportation of persons in addition to, or in lieu, of the county court bailiff.<sup>4</sup>

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<sup>4</sup> Also, it is questionable whether a county sheriff has the authority to enter into a contract with a county court whereby the county sheriff charges the court for the provision of transportation services. “A county sheriff ... has only those powers which are expressly provided by statute and those necessarily implied therefrom.” 1986 Op. Att’y Gen. No. 86-105, at 2-575. “[A] county sheriff may not charge a fee for services provided by his office unless the sheriff has express statutory authorization to do so or authority implied from an express power.” 2010 Op. Att’y Gen. No. 2010-021, at 2-145. The General Assembly has authorized a county



Accordingly, we conclude that a county court has no authority to enter into a contract with a county sheriff whereby the county court pays the county sheriff for the transportation of persons between the county court and the jails in which those persons are being held after the persons have been arrested and presented to a court or magistrate and during the time period in which those persons are awaiting disposition of the crime or crimes for which they were arrested. In light of this conclusion, it is unnecessary to address your second and third questions.

**Authority of a Municipal Court to Enter into a Contract with a County Sheriff for the Transportation of Persons between a Jail and the Municipal Court**

Your fourth question asks whether a municipal court may enter into a contract with a county sheriff whereby the municipal court pays the county sheriff to transport persons between the municipal court and the jails in which those persons are being held.

The General Assembly has established, by statute, various municipal courts throughout Ohio. R.C. 1901.01. R.C. 1901.01 establishes four municipal courts within Trumbull County: the Warren municipal court, the Girard municipal court, the Newton Falls municipal court, and the Niles municipal court.<sup>5</sup> As a creature of statute, a municipal court has only those

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sheriff to enter into contracts in well-defined circumstances for the purpose of providing police services by his office. *See, e.g.*, R.C. 311.29; R.C. 505.43; R.C. 737.04. No provision in the Revised Code authorizes a county sheriff to enter into a contract with a county court for the purpose of having the county sheriff transport persons from jail to the county court and charge a fee therefor. *Cf.* 2000 Op. Att’y Gen. No. 2000-024, at 2-165 (“[n]o statute authorizes either the county sheriff or the board of county commissioners to enter into a contract with a private agency for the transportation of prisoners between the county jail and the jail of another county or state”).

<sup>5</sup> None of the municipal courts established in Trumbull County are “county-operated municipal courts,” as defined in R.C. 1901.03(F). *See* R.C. 1901.03(F) (“[c]ounty-operated municipal court’ means the Auglaize county, Brown county, Carroll county, Columbiana county, Crawford county, Darke county, Erie county, Hamilton county, Hocking county, Holmes county, Jackson county, Lawrence county, Madison county, Miami county, Montgomery county, Morrow county, Ottawa county, Portage county, Putnam county, or Wayne county municipal court and, effective January 1, 2013, also includes the Sandusky county municipal court”); *see also* 1994 Op. Att’y Gen. No. 94-043, at 2-222 (recognizing that the political subdivision or political subdivisions responsible for funding a municipal court depends upon whether the municipal court is county-operated). Accordingly, in answering your question, references in this opinion to the powers and duties of a municipal court do not include the powers and duties of a county-operated municipal court. This opinion does not address the authority of a county-operated municipal court to enter into a contract with a county sheriff for the transportation of prisoners to and from the court.

administrative “powers conferred by statute, either expressly or by necessary implication.” 2003 Op. Att’y Gen. No. 2003-020, at 2-157.

A judge or judges of a municipal court are elected and serve terms of six years. R.C. 1901.07(A); *see also* R.C. 1901.08 (election of judges). A municipal court or a municipal court judge may, among other things, “issue process, preserve order, ... set aside a verdict, ... exercise any other powers that are necessary to give effect to the jurisdiction of the court to enforce its judgments, orders or decrees,” R.C. 1901.13(A)(1); “[i]ssue any necessary orders in any proceedings before and after judgment ... for which authority is conferred upon the courts of common pleas or a judge of the court of common pleas,” R.C. 1901.13(A)(2); and distribute, control, or sell property that has been seized by any legal process, R.C. 1901.13(A)(4). Additional powers of a municipal court judge include the authority to “perform any other duties that are conferred upon judges of county courts,” R.C. 1901.14(A)(1); “[t]o adopt, publish, and revise rules relating to the administration of the court,” R.C. 1901.14(A)(3); and to appoint various employees, R.C. 1901.141 (special constables); R.C. 1901.33(A) (interpreters, probation officers, court aides, typists, stenographers). R.C. 1901.32 addresses the appointment of bailiffs and deputy bailiffs in a municipal court.

R.C. 1901.32(A)(1) provides that “the court shall appoint a bailiff who shall receive the annual compensation that the court prescribes.” A municipal court may appoint “the chief of police of the municipal corporation or a member of the police force ... to be the bailiff of the court.” *Id.* A municipal court may appoint and pay deputy bailiffs who, when qualified, “may perform the duties pertaining to the office of chief bailiff of the court.” R.C. 1901.32(A)(2). The legislative authority of the municipal corporation in which the municipal court is located may provide bailiffs and deputy bailiffs with necessary motor vehicles and pay the expenses, maintenance, and upkeep of the vehicles. R.C. 1901.32(A)(4); *see also* R.C. 1901.03(B) (“[l]egislative authority’ means the legislative authority of the municipal corporation in which a municipal court, other than a county-operated municipal court, is located”).

Pursuant to R.C. 1901.32(A)(7), “[t]he bailiff and deputy bailiffs shall perform for the court services similar to those performed by the sheriff for the court of common pleas and ... any other duties that are requested by rule of court.” A county sheriff is responsible for transporting a person between the court of common pleas and the jail in which the person is being held. *See* R.C. 2301.15; *see also* 2010 Op. Att’y Gen. No. 2010-018, at 2-111; 2005 Op. Att’y Gen. No. 2005-045, at 2-489; 2004 Op. Att’y Gen. No. 2004-024, at 2-217. Thus, as recognized in opinions of the Attorney General, it is the duty of a municipal court bailiff or deputy bailiff, pursuant to R.C. 1901.32(A)(7),<sup>6</sup> to transport a person between a municipal court and the jail in which the person is being held. *See, e.g.*, 2010 Op. Att’y Gen. No. 2010-018 (syllabus, paragraph 2); 2004 Op. Att’y Gen. No. 2004-024, at 2-217 to 2-219; 1991 Op. Att’y Gen. No.

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<sup>6</sup> Prior to the General Assembly’s amendment of R.C. 1901.32 in Sub. H.B. No. 338, 128th Gen. A. (2009) (eff. Jan. 1, 2011), the language now found in R.C. 1901.32(A)(7) was codified in division (A)(6) of R.C. 1901.32.

91-047, at 2-248; 1987 Op. Att’y Gen. No. 87-091 (syllabus, paragraph 2); 1962 Op. Att’y Gen. No. 3420, p. 925.

R.C. 1901.32(A)(5) makes “[e]very police officer of any municipal corporation and police constable of a township within the territory of the court” an ex officio deputy bailiff of the municipal court.<sup>7</sup> An ex officio deputy bailiff “shall perform any duties in respect to cases within the officer’s or constable’s jurisdiction that are required by a judge of the court, or by the clerk or a bailiff or deputy bailiff of the court, without additional compensation.” *Id.* Therefore, when required by a municipal court, an ex officio deputy bailiff also shall transport a person between the court and the jail in which the person is being held. *See* 2010 Op. Att’y Gen. No. 2010-018 (syllabus, paragraph 3) (“[p]ursuant to R.C. 1901.32(A)(5), when a municipal court requires it, a person arrested for a misdemeanor and confined in the county jail may be transported between the county jail and the court by a police officer of a municipal corporation or constable of a township located within the territory of the court, as an ex officio deputy bailiff of the court”). In a county court district, the law enforcement officers identified in R.C. 1907.53(B)(1) become ex officio bailiffs only in the event a bailiff is not appointed under R.C. 1907.53(A)(1). However, in the case of a municipal court, the law enforcement officers identified in R.C. 1901.32(A)(5) are ex officio bailiffs regardless of whether a bailiff or deputy bailiff has been appointed pursuant to R.C. 1901.32(A)(1) or (A)(2).

Similar to the statutes that govern the authority of a county court, no provision in R.C. Chapter 1901 or elsewhere in the Revised Code provides express authority to a municipal court to enter into a contract with a county sheriff whereby the municipal court pays the county sheriff to transport persons between the municipal court and the jail in which the persons are being held. The authority to enter into such a contract also may not be necessarily implied by any of the municipal court’s express powers. The General Assembly has authorized a municipal court, under R.C. 1901.32, to appoint a bailiff and deputy bailiffs for the transportation of persons between the municipal court and the jail in which the persons are being held. Further, pursuant to R.C. 1901.32(A)(5), “[e]very police officer of any municipal corporation and police constable of a township within the territory of the court” is an ex officio deputy bailiff and “shall perform any duties ... that are required by a judge of the court, or by the clerk or a bailiff or deputy bailiff of the court, without additional compensation.” Thus, if a municipal court wishes to provide for the transportation of persons between the municipal court and the jails in which these persons are being held, the municipal court may appoint a bailiff or deputy bailiffs as provided for in R.C. 1907.32 or require an officer or constable that is an ex officio deputy bailiff under R.C. 1901.32(A)(5) to provide such transportation. *See generally Glander*, 155 Ohio St. at 480 (“when a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner”).

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<sup>7</sup> R.C. 1901.32(A)(6) states that “[i]n Putnam county, ... every deputy sheriff of Putnam county is ex officio a deputy bailiff of the Putnam county municipal court.”

Accordingly, we conclude that a municipal court has no authority to enter into a contract with a county sheriff whereby the municipal court pays the county sheriff for the transportation of persons between the municipal court and the jails in which those persons are being held after the persons have been arrested and presented to a court or magistrate and during the time period in which those persons are awaiting disposition of the crime or crimes for which they were arrested. In light of this conclusion, it is unnecessary to address your fifth question.

**Authority of a Municipal Court to Assign the Duties of an Ex Officio Bailiff to a Deputy Sheriff Assigned to Provide Police Services to a Township Pursuant to R.C. 311.29 or R.C. 505.50**

Your sixth question asks whether a municipal court may order deputy sheriffs to perform the duties of an ex officio bailiff pursuant to R.C. 1901.32(A)(5) if the county sheriff has entered into a contract pursuant to R.C. 311.29 or R.C. 505.50 with a township that is located within the territorial jurisdiction of a municipal court, whereby the county sheriff provides police services to the township. R.C. 1901.32(A)(5) states, in pertinent part:

Every ... police constable of a township within the territory of the court is ex officio a deputy bailiff of the court in and for the ... township in which commissioned as a ... police constable, and shall perform any duties in respect to cases within the ... constable's jurisdiction that are required by a judge of the court, or by the clerk or a bailiff or deputy bailiff of the court, without additional compensation.

The answer to your question depends upon whether a deputy sheriff is a "police constable of a township" as described in R.C. 1901.32(A)(5) when the deputy sheriff provides police services to a township pursuant to the terms of a contract entered into under R.C. 311.29 or R.C. 505.50.

R.C. 509.01(B) authorizes a board of township trustees to appoint police constables and "pay each police constable, from the general funds of the township ... for the time actually spent in keeping the peace ... and performing duties as a police constable, including duties as an ex officio deputy bailiff of a municipal court pursuant to [R.C. 1901.32]." A police constable shall give bond as prescribed in R.C. 509.02 and perform the duties assigned to constables by the General Assembly. A police constable "shall serve and execute ... warrants, writs, precepts, executions, and other process," R.C. 509.05; and "apprehend ... and bring to justice, all felons, disturbers, and violators of the criminal laws of this state," R.C. 509.10.

A deputy sheriff is appointed by a county sheriff pursuant to R.C. 311.04(B). *See also* R.C. 325.17. The duties of a deputy sheriff are determined by the county sheriff as the chief law enforcement officer of the county. *See* 2014 Op. Att'y Gen. No. 2014-032, at 2-281 ("[a] county sheriff is responsible for determining the duties to be performed by an auxiliary deputy sheriff"); 1991 Op. Att'y Gen. No. 91-063, at 2-300 to 2-301. "A deputy sheriff may ... serve writs and orders ..., writs of attachment, and summons to jurors" and "may perform ordinary police functions, such as transporting prisoners ..., guarding prisoners in the county jail ..., and

exercising the general duties of a peace officer.” 1984 Op. Att’y Gen. No. 84-070, at 2-226 (quoting *In re Termination of Employment of Pratt*, 40 Ohio St. 2d 107, 114-15, 321 N.E.2d 603 (1974)).

R.C. 311.29 and R.C. 505.50 provide procedures by which a board of township trustees may enter into an agreement with a county sheriff or board of county commissioners for the provision of police services. R.C. 505.50 states that “[t]he board of trustees of a township ... may enter into a contract with ... the county sheriff upon any terms that are mutually agreed upon for the provision of police protection services.” R.C. 505.50 requires that the contract “be agreed to ... by the respective board ... of township trustees, [and] the board of county commissioners.”

R.C. 311.29(B) authorizes a county sheriff to “enter into contracts with any ... township,” among other subdivisions, “pursuant to which the sheriff undertakes and is authorized by the” township “to perform any police function, exercise any police power, or render any police service in behalf of the” township “that the [township] ... or its legislative authority, may perform, exercise, or render.” An agreement entered into by the county sheriff pursuant to R.C. 311.29(B) “shall not suspend the possession by a [township] of any police power performed or exercised or police service rendered in pursuance to the agreement nor limit the authority of the sheriff.” *Id.* R.C. 311.29(D) provides that “[c]ontracts entered into under division ... (B) ... of this section shall provide for the reimbursement of the county for the costs incurred by the sheriff for such policing including, but not limited to, the salaries of deputy sheriffs assigned to such policing.” R.C. 311.29(D) also provides that all deputy sheriffs assigned by the county sheriff to provide the services contracted for under R.C. 311.29(B) “*shall have the same powers and duties, the same qualifications, and be appointed and paid and receive the same benefits and provisions and be governed by the same laws as all other deputy sheriffs.*” (Emphasis added.)

A deputy sheriff that is assigned by a county sheriff to provide police services to a township pursuant to the terms of a contract entered into under R.C. 311.29 or R.C. 505.50 is not a township constable, as that office is described in R.C. 509.01 and referred to in R.C. 1901.32(A)(5). As recognized in R.C. 311.29(D), a deputy sheriff that performs police services for a township pursuant to a contract under that statute has the same powers and duties and is governed by the same laws as all other deputy sheriffs. Further, the designation of a township constable as an ex officio deputy bailiff under R.C. 1901.32(A)(5) is made by the General Assembly, not the board of township trustees. Therefore, a board of township trustees has no authority, pursuant to the contracting authority conferred upon it by R.C. 505.50 and R.C. 311.29, to expand the type of law enforcement officers identified as ex officio deputy bailiffs in R.C. 1901.32(A)(5).

A deputy sheriff is not a “police constable of a township” for the purpose of R.C. 1901.32(A)(5) when the deputy sheriff is assigned by a county sheriff to provide police services to a township pursuant to the terms of a contract entered into under R.C. 311.29 or R.C. 505.50. Accordingly, we conclude that a municipal court may not order deputy sheriffs to perform the duties of an ex officio bailiff pursuant to R.C. 1901.32(A)(5), even if the county sheriff has

entered into a contract pursuant to R.C. 311.29 or R.C. 505.50 with a township that is located within the territorial jurisdiction of a municipal court whereby the county sheriff assigns the deputy sheriff to provide police services to the township.

### **The Duty to Transport Persons between a Municipal Court and a Jail**

Your seventh question asks whether a county sheriff has a duty to transport a person between a municipal court and a jail in which that person is being held if the person's initial arrest is performed by a deputy sheriff,<sup>8</sup> and you ask us to analyze the conclusions in 2010 Op. Att'y Gen. No. 2010-018.

In 2010 Op. Att'y Gen. No. 2010-018, the Attorney General advised that, "[e]xcept as provided in R.C. 2949.08(A),<sup>9</sup> a county sheriff is not responsible for transporting between the county jail and a municipal court within the county a person arrested for a misdemeanor and confined in the county jail." 2010 Op. Att'y Gen. No. 2010-018 (syllabus, paragraph 1) (footnoted added); *accord* 1987 Op. Att'y Gen. No. 87-091 (syllabus, paragraph 1); 1978 Op. Att'y Gen. No. 78-019 (syllabus, paragraph 2). The Attorney General further concluded that the duty to transport between a county jail and a municipal court a person arrested for a misdemeanor and confined in the county jail is conferred by R.C. 1901.32(A)(6) upon a

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<sup>8</sup> For the purpose of answering your question, we presume that the person arrested is arrested for a violation of law, ordinance, or resolution, over which the municipal court has jurisdiction. *See* R.C. 1901.02(A) (municipal courts "have jurisdiction within the corporate limits of their respective municipal corporations"); R.C. 1901.182 ("a municipal court has jurisdiction over violations of township resolutions adopted pursuant to [R.C. 503.52] or [R.C. 503.53] or [R.C. Chapter 504]"); R.C. 1901.183(H) (the environmental division of a municipal court has "[c]oncurrent jurisdiction with the court of common pleas of all criminal actions or proceedings related to the pollution of the air, ground, or water within the territory of the environmental division of the municipal court, for which a sentence of death cannot be imposed"); R.C. 1901.20(B) ("[t]he municipal court has jurisdiction to hear felony cases committed within its territory").

<sup>9</sup> R.C. 2949.08(A) states:

When a person who is convicted of or pleads guilty to a felony is sentenced to a community residential sanction in a community-based correctional facility pursuant to [R.C. 2929.16] or when a person who is convicted of or pleads guilty to a felony or a misdemeanor is sentenced to a term of imprisonment in a jail, the judge or magistrate shall order the person into the custody of the sheriff or constable, and the sheriff or constable shall deliver the person with the record of the person's conviction to the jailer, administrator, or keeper, in whose custody the person shall remain until the term of imprisonment expires or the person is otherwise legally discharged.

municipal court bailiff or deputy bailiff, and, when required by the municipal court, an ex officio deputy bailiff, as designated in R.C. 1901.32(A)(5). 2010 Op. Att’y Gen. No. 2010-018 (syllabus, paragraphs 2 and 3); *accord* 1987 Op. Att’y Gen. No. 87-091 (syllabus, paragraphs 2 and 3); 1962 Op. Att’y Gen. No. 3420, p. 925.

You ask whether the conclusions in 2010 Op. Att’y Gen. No. 2010-018 control when the person being transported between the municipal court and the jail in which the person is being held is arrested by a deputy sheriff. We find the Attorney General’s advice in 1991 Op. Att’y Gen. No. 91-047 instructive in this regard.

In 1991 Op. Att’y Gen. No. 91-047, the Attorney General addressed whether a State Highway Patrol trooper was required to transport between a regional jail facility and various courts, including a municipal court, a person the trooper had arrested. The Attorney General noted that upon arrest, various state laws and procedural rules, including R.C. 5503.02(C), require a State Highway Patrol trooper to take the arrestee “before a court or magistrate.” 1991 Op. Att’y Gen. No. 91-047, at 2-246; *see also* R.C. 5503.02(C) (“[a]ny person who is arrested by the superintendent or a state highway patrol trooper shall be taken before any court or magistrate having jurisdiction of the offense with which the person is charged”). The Attorney General determined, however, that the duty of a State Highway Patrol trooper to take a person before a court after the person’s initial arrest did not include a duty to continue transporting that person between the court and the jail in which he was being held. 1991 Op. Att’y Gen. No. 91-047, at 2-248 to 2-249. The Attorney General acknowledged that “[t]he Revised Code delegates to various officers of a court, the duty to transport accused individuals between the court and the jail of the charging political subdivision.” *Id.* at 2-248. With respect to the transportation of accused persons between a jail and a municipal court, the Attorney General stated:

[O]ne of my predecessors concluded that “... bailiffs and deputy bailiffs of a municipal court have a mandatory duty to transport prisoners from the jail to the municipal court before the prisoners have been convicted and sentenced.” 1987 Op. Att’y Gen. No. 87-091 (syllabus, paragraph two); *accord* 1962 Op. Att’y Gen. No. 3420, p. 925. My predecessor based his conclusion on the premise that since the responsibility for the transportation of prisoners between the county jail and the court of common pleas is delegated to the sheriff and the criminal bailiff, and municipal court bailiffs perform for the municipal court “services similar to those performed by the sheriff for the court of common pleas,” ... the duties of the bailiffs must be construed to include the prisoner transportation duties of a criminal bailiff. Op. No. 87-091 at 2-601; *accord* 1962 Op. No. 3420. “[T]hese same duties may be required of municipal police officers or township police constables as ex officio deputy bailiffs under certain circumstances.” Op. No. 87-091 at 2-602; *accord* 1962 Op. No. 3420.

1991 Op. Att’y Gen. No. 91-047, at 2-248. Because the duty to transport an accused individual between a municipal court and the jail in which the individual is being held is delegated “to a municipal court’s bailiffs, deputy bailiffs and ex officio deputy bailiffs,” the Attorney General

concluded, in relevant part, that a State Highway Patrol trooper “does not have a duty to transport between a regional jail facility and a ... municipal court ... an individual who is arrested by him for a misdemeanor and incarcerated in that regional jail facility.” *Id.* at 2-249.

We draw from the principles set forth in 1991 Op. Att’y Gen. No. 91-047 to reach the same conclusion here. Even if a person is arrested by a deputy sheriff, it is the responsibility of a municipal court bailiff, deputy bailiff, or, when required by a municipal court, an ex officio deputy bailiff, to transport that person between the municipal court and the jail in which he is being held. *See* R.C. 1901.32(A)(5), (A)(7). The duty to transport an accused person between a municipal court and a jail is not dependent upon the identity or appointing jurisdiction of the law enforcement officer that effected the person’s arrest.

Accordingly, we conclude that a county sheriff has no duty to transport a person between a municipal court and a jail in which the person is being held after the person has been arrested by a deputy sheriff and presented to a court or magistrate and during the time in which the person is awaiting disposition of the crime or crimes for which he was arrested. (2010 Op. Att’y Gen. No. 2010-018 (syllabus, paragraph 1), approved and followed.)

### **Conclusions**

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

1. A county court has no authority to enter into a contract with a county sheriff whereby the county court pays the county sheriff for the transportation of persons between the county court and the jails in which those persons are being held after the persons have been arrested and presented to a court or magistrate and during the time period in which those persons are awaiting disposition of the crime or crimes for which they were arrested.
2. A municipal court has no authority to enter into a contract with a county sheriff whereby the municipal court pays the county sheriff for the transportation of persons between the municipal court and the jails in which those persons are being held after the persons have been arrested and presented to a court or magistrate and during the time period in which those persons are awaiting disposition of the crime or crimes for which they were arrested.
3. A municipal court may not order a deputy sheriff to perform the duties of an ex officio bailiff pursuant to R.C. 1901.32(A)(5), even if the county sheriff has entered into a contract pursuant to R.C. 311.29 or R.C. 505.50 with a township that is located within the territorial jurisdiction of a municipal court whereby the county sheriff assigns the deputy sheriff to provide police services to the township.



4. A county sheriff has no duty to transport a person between a municipal court and a jail in which the person is being held after the person has been arrested by a deputy sheriff and presented to a court or magistrate and during the time in which the person is awaiting disposition of the crime or crimes for which he was arrested. (2010 Op. Att'y Gen. No. 2010-018 (syllabus, paragraph 1), approved and followed.)

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE  
Ohio Attorney General