

OPINION NO. 91-047**Syllabus:**

1. A trooper of the State Highway Patrol is not required to transport between a regional jail facility, established under R.C. 307.93, and a court of common pleas, municipal court or county court an individual who is arrested for a misdemeanor by him, with or without a warrant, and incarcerated in the regional jail facility, provided the trooper has taken the individual before a court or magistrate, and, if arrested without a warrant, filed or caused to be filed an affidavit describing the offense for which the individual was arrested. *See* R.C. 2935.05; R.C. 2935.13; R.C. 5503.02(C); R. Crim. P. 4(E).
2. The State Highway Patrol is not required to pay for the cost of the medical treatment provided to individuals arrested by its troopers and incarcerated, pursuant to R.C. 2937.32, in a regional jail facility established under R.C. 307.93.

To: Charles D. Shipley, Director, Department of Highway Safety, Columbus, Ohio

By: Lee Fisher, Attorney General, November 13, 1991

I have before me your predecessor's request for an opinion concerning the transportation and medical treatment of individuals incarcerated in a regional jail facility. According to that letter, a municipal corporation and five counties have established, pursuant to R.C. 307.93,¹ a regional jail facility. Regional jail facilities provide for the custody of individuals arrested within the territory of the municipal corporation and counties that have established such a facility, including custody of individuals arrested by troopers of the State Highway Patrol. A question, thus, exists as to whether the State Highway Patrol is required to provide transportation between the regional jail facility and the various courts served by the facility, and to pay for the cost of the medical treatment provided to individuals arrested for a misdemeanor by the troopers of the State Highway Patrol and incarcerated in the regional jail facility.²

I. Duty to Transport Incarcerated Individuals between a Regional Jail Facility and a Court

A. Custody of Incarcerated Individuals

I turn now to an examination of the provisions of law providing for the custody and transportation of individuals arrested by troopers of the State Highway

¹ R.C. 307.93 sets forth provisions concerning the establishment of multicounty, municipal-county, and multicounty-municipal correctional centers. Under division (A) of this section,

[t]he boards of county commissioners of two or more adjacent counties may contract for the joint establishment of a multicounty correctional center, and the board of county commissioners of a county or the boards of two or more counties may contract with any municipal corporation or municipal corporations located in that county or those counties for the joint establishment of a municipal-county or multicounty-municipal correctional center.

² Telephone conversations between members of our respective staffs reveal that you are concerned with the State Highway Patrol's duty to transport between a regional jail facility and the various courts served by that facility individuals arrested by the troopers of the State Highway Patrol for misdemeanors. I shall, therefore, limit my analysis to the transportation of individuals arrested for misdemeanors.

Patrol. I note, initially, that upon arrest a peace officer is required to take an individual arrested by him before a court or magistrate. R.C. 2935.05; R.C. 2935.13; R. Crim. P. 4(E); *see also* 1979 Op. Att'y Gen. No. 79-106 (an arresting officer has a duty to bring an accused before a court having jurisdiction of the offense without unnecessary delay). More specifically, division (C) of R.C. 5503.02, which sets forth the powers and duties of the State Highway Patrol, provides:

Any 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. Any person who is arrested or apprehended within the limits of a municipal corporation shall be brought before the municipal court or other tribunal of the municipal corporation. (Emphasis added.)

In addition, if the arrest is made without a warrant, a trooper is also required to "file or cause to be filed an affidavit describing the offense for which the person was arrested." R.C. 2935.05. *See generally* 1961 Op. Att'y Gen. No. 2214, p. 261 (syllabus, paragraph one) ("where a highway patrolman arrests a person found violating a law of this state, for which violation he is authorized to arrest, he must follow the procedure prescribed by Sections 2935.03, 2935.05, 2935.08, and 2935.13, Revised Code"). A trooper of the State Highway Patrol, thus, is statutorily required to take an individual arrested by him before a court or magistrate, and if the arrest is made without a warrant, to file or cause to be filed an affidavit describing the offense. R.C. 2935.05; R.C. 2935.13; R.C. 5503.02(C); R. Crim. P. 4(E).

With respect to your specific inquiry, supplemental information indicates that after making an arrest, a trooper of the State Highway Patrol takes an arrested individual before a clerk or deputy clerk of court. At that time, the trooper files, if the arrest is made without a warrant, an affidavit describing the offense for which the individual was arrested. The clerk or deputy clerk, in addition to issuing a warrant when the arrest is made without a warrant, admits an individual arrested with or without a warrant to bail. Upon the posting of sufficient bail, the individual is released from custody. If the individual is not able to make bail, the clerk or deputy clerk commits the accused to the regional jail facility to await his preliminary examination before the court or magistrate.³

Since supplemental information provided indicates that the troopers in question take individuals arrested by them before a clerk or deputy clerk of court, it must be determined whether the taking of arrested individuals before a clerk of court comports with the intention of the General Assembly and the Ohio Supreme Court as expressed by the language of R.C. 2935.05, R.C. 2935.13, R.C. 5503.02(C), and R. Crim. P. 4(E).⁴ *See generally* *Carter v. Division of Water*, 146 Ohio St. 203, 65 N.E.2d 63 (1946) (syllabus, paragraph one) ("[i]n the construction of statutes the purpose in every instance is to ascertain and give effect to the legislative intent"). It is unclear from the face of R.C. 5503.02(C) and R. Crim. P. 4(E) alone whether the General Assembly and the Ohio Supreme Court intended the phrase "before any court" to include the taking of arrested individuals before clerks and deputy clerks of court. Where statutory ambiguity exists, "the rules of statutory interpretation may be invoked for the purpose of ascertaining the true intent of the General Assembly." *Wingate v. Hordge*, 60 Ohio St. 2d 55, 58, 396 N.E.2d 770, 772 (1979) (per curiam).

³ Pursuant to R.C. 2937.32, "[i]f an offense is not bailable or sufficient bail is not offered, the accused shall be committed to the jail of the county in which he is to be tried or, in the case of offense against a municipality, in the jail of said municipality if such there be." Since the regional jail facility is the jail of the counties and the municipal corporation that have established the facility, I assume that the individuals in question are committed under the authority of R.C. 2937.32. *See generally* 1988 Op. Att'y Gen. No. 88-060 at 2-303 (R.C. 2937.32 controls when there is a failure to make bail).

⁴ The Ohio Rules of Criminal Procedure are promulgated by the Ohio Supreme Court pursuant to Ohio Const. art. IV, §5(B).

It is a well-settled rule of statutory interpretation that "[s]tatutes relating to the same matter or subject, although passed at different times and making no reference to each other, are *in pari materia* and should be read together to ascertain and effectuate if possible the legislative intent." *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph two); *accord Hough v. Dayton Mfg. Co.*, 66 Ohio St. 427, 434, 64 N.E. 521, 523 (1902). It is axiomatic that the statutes and rules of criminal procedure concerning the arrest and detention of individuals are *in pari materia*, and therefore, recourse may be had to all such provisions in order to determine the intention of the General Assembly and the Ohio Supreme Court as to any specific provision.

Pursuant to R.C. 2935.08, upon the filing of an affidavit required by R.C. 2935.05, a "judge, clerk, or magistrate shall forthwith issue a warrant to the peace officer making the arrest." *accord* R. Crim. P. 4(A)(1). The purpose of requiring a warrant is set forth in R. Crim. P. 4(A)(1): "If it appears from ... an affidavit ... that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant, or a summons in lieu of a warrant, shall be issued by a judge, magistrate, clerk of court, or officer of the court designated by the judge." *See generally* U.S. Const. amend. IV ("no Warrants shall issue, but upon probable cause, supported by Oath or affirmation"); Ohio Const. art. I, §14 ("no warrant shall issue, but upon probable cause, supported by oath or affirmation"). The plain language of R.C. 2935.08 and R. Crim. P. 4 discloses that the General Assembly and the Ohio Supreme Court intended that individuals arrested without a warrant receive a post-arrest determination to ascertain whether the arresting officer had probable cause to make the arrest. *See generally Beck v. Ohio*, 379 U.S. 89, 96 (1964) ("[a]n arrest without a warrant bypasses the safeguards provided by an objective predetermination of probable cause, and substitutes instead the far less reliable procedure of an after-the-event justification for the arrest or search"). Reading R.C. 2935.05 and R.C. 5503.02(C) in conjunction with R.C. 2935.08 and R. Crim. P. 4 indicates that an individual must be taken "before a court" in order to determine whether a trooper of the State Highway Patrol had probable cause to make a warrantless arrest.

In addition, an individual arrested with or without a warrant

for a misdemeanor and not released pursuant to Crim. R. 4(F),⁵ shall be released by the clerk of court, or if the clerk is not available the officer in charge of the facility to which the person is brought, on his personal recognizance, or upon the execution of an unsecured appearance bond in the amount specified in the bail schedule established by the court.⁶ (Footnotes added.)

R. Crim. P. 46(D); *see also* 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 If such court be not in session and a misdemeanor ... is charged, he shall be taken before the clerk or deputy clerk of the court and let to bail, as provided in sections 2937.22 to 2937.46, inclusive, of the Revised Code"). *See generally* R.C. 2937.23(A) (authorizing a clerk of court in cases of misdemeanors to set bail). It is, thus, also clear that an individual arrested with or without a warrant for a misdemeanor must be taken "before a court" and afforded the opportunity to make bail. *See* R.C. 2935.13; R. Crim. P. 46.

⁵ R. Crim. P. 4(F) provides, in part:

In misdemeanor cases where a person has been arrested with or without a warrant, the arresting officer, the officer in charge of the detention facility to which the person is brought or the superior of either officer, without unnecessary delay, may release the arrested person by issuing a summons when issuance of a summons appears reasonably calculated to assure the person's appearance.

⁶ Pursuant to division (D) of R. Crim. P. 46, a court is required to "establish a bail schedule covering all misdemeanors."

Reading R.C. 2935.05, R.C. 2935.08, R.C. 2935.13, R.C. 5503.02(C), R. Crim. P. 4, and R. Crim. P. 46 *in pari materia* reveals that the General Assembly and the Ohio Supreme Court intended that individuals arrested with or without a warrant by troopers of the State Highway Patrol for a misdemeanor be taken before a court for purposes of determining whether probable cause for making a warrantless arrest existed *and* affording the individuals the opportunity to make bail. These sections and rules further disclose that a clerk or deputy clerk of court is authorized to issue warrants upon probable cause, R.C. 2935.08; R. Crim. P. 4; *see also State v. Fairbanks*, 32 Ohio St. 2d 34, 289 N.E.2d 352 (1972) (syllabus, paragraph three) ("[a] warrant of arrest issued, under favor of R.C. 2935.08, by the clerk of courts, a nonjudicial officer, does not violate a defendant's rights under the Fourth Amendment of the United States Constitution which guarantees that a warrant will not issue except upon probable cause"), and to set bail in cases of misdemeanors, R.C. 2935.13; R. Crim. P. 46; *see also* R.C. 2937.23(A). Since the General Assembly and the Ohio Supreme Court have expressly authorized clerks and deputy clerks to issue warrants upon probable cause and to set bail in cases of misdemeanors, it reasonably can be concluded that the General Assembly and the Ohio Supreme Court intended the phrase "before any court," whenever used in the portions of the Ohio Revised Code relating to the procedures to be followed upon arrest of an individual for a misdemeanor, including R.C. 5503.02(C), to include the taking of such individuals before a clerk or deputy clerk of court. Consequently, a trooper discharges his duty to "take before a court" an individual arrested by him for a misdemeanor, when he takes the individual before a clerk or deputy clerk of court.

B. Duty to Transport

The 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. Specifically, R.C. 311.07(A) requires the county sheriff to "attend upon the court of common pleas," and R.C. 2301.15 enumerates duties that the "criminal bailiff" of the court of common pleas performs on the sheriff's behalf:

The criminal bailiff shall act for the sheriff in criminal cases and matters of a criminal nature in the court of common pleas and the probate court of the county. Under the direction of the sheriff, he shall be present during trials of criminal cases in such courts and during such trials perform all the duties as are performed by the sheriff. *The criminal bailiff shall conduct prisoners to and from the jail of the county*, and for that purpose, shall have access to the jail and to the courtroom, whenever ordered by such courts, and have care and charge of such prisoners when so doing. (Emphasis added.)

The county sheriff and criminal bailiff, thus, have a duty to transport accused individuals between the jail of the county and the court of common pleas.

With respect to the transportation of accused individuals to a municipal court, one of my predecessors concluded that "[p]ursuant to R.C. 1901.32(A)(6), 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," R.C. 1901.32(A)(6), 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; *see* R.C. 1901.32(A)(5).

Similarly, R.C. 1907.53(A) makes the county sheriff and the constables of townships within the territorial jurisdiction of the county court the "ministerial officers of the county court in all ... criminal cases in which the county court has jurisdiction." As a ministerial officer, a deputy sheriff or constable shall, at the request of a county court judge, attend the county court while a trial is in progress.

R.C. 1907.53(B). Consequently, it appears that the county sheriff and township constables within the territorial jurisdiction of a county court are "available for the delivery of prisoners to and from the county court[.]" 1959 Op. Att'y Gen. No. 1040, p. 721 at 723.

A review of the foregoing reveals that the duty to transport individuals between a court and the jail of the charging political subdivision is delegated to the county sheriff and the criminal baliff in the court of common pleas, to a municipal court's bailiffs, deputy bailiffs and ex officio deputy bailiffs, and to the county sheriff and township constables in a county court. I find, therefore, that a trooper of the State Highway Patrol does not have a duty to transport between a regional jail facility and a court of common pleas, municipal court or county court an individual who is arrested by him for a misdemeanor and incarcerated in that regional jail facility, when the trooper has taken the individual before a clerk or deputy clerk of court, and in the case of a warrantless arrest, filed or caused to be filed an affidavit describing the offense for which the individual was arrested.

II. Cost of Medical Treatment

The second part of your question asks whether the State Highway Patrol is required to pay for the cost of medical treatment provided to individuals arrested without a warrant by its troopers and incarcerated in a regional jail facility. In 1989 Op. Att'y Gen. No. 89-017, my predecessor had occasion to discuss the liability for payment of the cost of medical treatment provided to incarcerated individuals, and concluded in the syllabus, paragraph one: "The cost of medical treatment of a prisoner is the responsibility of the law enforcement agency in physical control of the prisoner." In reaching this conclusion, my predecessor relied on the general rule that "[t]he responsibility for the care and sustenance of a prisoner falls upon the one who exerts actual, physical dominion and control over the prisoner." *Cuyahoga County Hospital v. City of Cleveland*, 15 Ohio App. 3d 70, 71, 472 N.E.2d 757, 759 (Cuyahoga County 1984); accord *University Hospitals of Cleveland v. City of Cleveland*, 28 Ohio Misc. 134, 276 N.E.2d 273 (C.P. Cuyahoga County 1971); see 1985 Op. Att'y Gen. No. 85-054. Hence the State Highway Patrol is only responsible for the cost of medical treatment of individuals under the patrol's physical control. Since the regional jail facility has physical control of the individuals incarcerated therein, the State Highway Patrol does not have a duty to pay for the cost of the medical treatment provided to these individuals.

III. Conclusion

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

1. A trooper of the State Highway Patrol is not required to transport between a regional jail facility, established under R.C. 307.93, and a court of common pleas, municipal court or county court an individual who is arrested for a misdemeanor by him, with or without a warrant, and incarcerated in the regional jail facility, provided the trooper has taken the individual before a court or magistrate, and, if arrested without a warrant, filed or caused to be filed an affidavit describing the offense for which the individual was arrested. See R.C. 2935.05; R.C. 2935.13; R.C. 5503.02(C); R. Crim. P. 4(E).
2. The State Highway Patrol is not required to pay for the cost of the medical treatment provided to individuals arrested by its troopers and incarcerated, pursuant to R.C. 2937.32, in a regional jail facility established under R.C. 307.93.