

Note from the Attorney General's Office:

1968 Op. Att'y Gen. No. 68-021 was overruled in part by
1989 Op. Att'y Gen. No. 89-098.

OPINION NO. 68-021**Syllabus:**

1. Townships are entitled to distribution under Section 4513.35, Revised Code, when apprehensions or arrests are made by sheriff's deputies performing police duties under a contract with the township in accordance with Section 311.29, Revised Code.

2. Section 4513.35, Revised Code, requires the county treasurer to pay fifty percent of the fines and forfeitures discussed therein to the township whose "police officers" made the arrests or apprehensions and the remaining fifty percent is distributed one-half of fifty percent to the highway maintenance and repair fund and one-half of fifty percent to the county law library association with the twelve hundred dollar maximum limitation.

3. A township receiving moneys under Section 4513.35, Revised Code, is not required to make any payment from these moneys to the county law library association.

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio
By: William B. Saxbe, Attorney General, January 25, 1968

I have before me your letter of October 19, 1967, wherein you request my opinion on the following questions:

"1. Under the provisions of Section 4513.35, Ohio Revised Code, as amended in May 1967, are townships entitled to distribution thereunder when apprehensions or arrests are made by sheriff's deputies performing police duties under a contract with the township for police protection, in accordance with Section 311.29, Ohio Revised Code?

"2. Does Section 4513.35, Ohio Revised Code,

as amended in May 1967, require the county treasurer to pay fifty percent of the fines and forfeitures discussed therein to the county law library association, and fifty percent of those fines and forfeitures to the township whose police officers made the apprehensions or arrests or is the county treasurer required to place one-half of fifty percent in the highway maintenance and repair fund and give one-half of fifty percent to the law library association, and give the remaining fifty percent to the appropriate township?

"3. Is a township receiving distribution under Section 4513.35 required to make any payment from these monies to the county law library association?"

Section 4513.35, Revised Code, provides as follows:

"All fines collected under sections 4511.01 to 4511.78, inclusive, 4511.99, and 4513.01 to 4513.37, inclusive, of the Revised Code shall be paid into the county treasury and, with the exception of that portion distributed under section 3375.53 of the Revised Code, shall be placed to the credit of the fund for the maintenance and repair of the highways within such county, provided that all fines collected from, or moneys arising from bonds forfeited by, persons apprehended or arrested by state highway patrolmen shall be distributed as provided in section 5503.04 of the Revised Code and provided that one-half of all fines collected from, and one-half of all moneys arising from bonds forfeited by, persons apprehended or arrested by a township constable or other township police officer shall be paid to the township treasury to be placed to the credit of the general fund."

(Emphasis added)

The underlined portion of the above quoted statute indicates the recent amendment to that section; and, it further indicates a legislative intent to provide a source of revenue, for the township general fund. In order for this amended provision to apply, the arrest or apprehension must be made by a "township constable or other township police officer".

Where the sheriff and a township enter into a contract to provide additional police protection, the question arises whether a sheriff's deputies are considered "other township police officers" as that term is used in Section 4513.35, supra.

A contract, such as described above, is made pursuant to Section 311.29, Revised Code, which provides, in part, as follows:

"The sheriff may enter into contracts with any township whereby the sheriff undertakes and is authorized to perform any police function, exercise any police power, or render any police service in behalf of the [township] * * * which such [township] * * * may perform,

exercise, or render * * * the sheriff may exercise the same powers as the [township] possesses * * * as amply as such powers are possessed by the [township]* * *:

" * * * The number of deputies regularly assigned to such policing shall be in addition to and an enlargement of the sheriff's regular number of deputies."

The language of the foregoing section is inescapably clear. The sheriff, under such an agreement, hires additional deputies to perform "in behalf of" the township any policing which the township may perform. This language clearly places the assigned deputy in the same position as if he were a township police officer with the same power and duties thereof.

It is in this light that the additional deputies must be viewed for purposes of Section 4513.35, *supra*. To hold otherwise would create undue hardship for an ill-equipped township which later contracts for additional police protection in order to better meet its responsibilities. It is my opinion that sheriff's deputies, performing pursuant to such contracts, are to be considered as "other township police officer" under Section 4513.35, *supra*.

The amended provision required one half of all the moneys arising from fines and bond forfeitures to be paid into the township general fund where the arrest or apprehension is made by a "township police officer." Thus in following the court's reasoning in *State ex rel. Bd. of Trustees v. Vogel*, 169 Ohio St. 243, 159 NE 2d 220, 8 Ohio Opinions, 2d 249, these moneys must be treated separately. That is, one-half of all the moneys must be paid into the township treasury, first. Your question requires consideration of the remaining one-half and the application of Section 3375.53, Revised Code, which reads as follows:

"In each county, fifty per cent of all moneys arising from fines and penalties and from forfeited deposits and forfeited bail bonds and recognizances taken for appearances on account of offenses brought for prosecution in any court in such county under Chapters 4301. and 4303. of the Revised Code and the state traffic laws shall be paid monthly by the treasurer of the county or municipal corporation to the board of trustees of the law library association in such county, but the sum so paid to such board by each treasurer shall not exceed twelve hundred dollars per annum under Chapters 4301. and 4303. of the Revised Code, and when that amount has been so paid to such board in accordance with this section, then no further payments shall be required thereunder in that calendar year from such treasurers."

Prior to the present amendment, one-half of all the moneys collected was placed in the highway maintenance and repair fund and one-half was paid to the law library association pursuant to the above quoted statutory provision. It was clearly not the

legislative intent to disturb this part of the statute but rather to provide that before the application a payment of one-half the moneys should be paid to the township treasury. The remaining fifty percent is distributed in accordance with the general provision with one-half of the fifty percent going to the highway maintenance and repair fund and one-half of the fifty percent going to the law library association with the twelve hundred dollar maximum limitation.

There is nothing in Section 4513.35, supra, or in Section 3375.53, supra, imposing any duty upon the township to pay moneys to the law library association. Section 3375.53, supra, requires payments to be made by the treasurer of the county or municipal corporation but no such requirements devolve upon a township.

Therefore, it is my opinion and you are advised as follows:

1. Townships are entitled to distribution under Section 4513.35, Revised Code, when apprehensions or arrests are made by sheriff's deputies performing police duties under a contract with the township in accordance with Section 311.29, Revised Code.
2. Section 4513.35, Revised Code, requires the county treasurer to pay fifty percent of the fines and forfeitures discussed therein to the township whose "police officers" made the arrests or apprehensions and the remaining fifty percent is distributed one-half of fifty percent to the highway maintenance and repair fund and one-half of fifty percent to the county law library association with the twelve hundred dollar maximum limitation.
3. A township receiving moneys under Section 4513.35, Revised Code, is not required to make any payment from these moneys to the county law library association.