

**OPINION NO. 86-065****Syllabus:**

1. Pursuant to R.C. 2935.03, a municipal police officer may pursue, arrest, and detain until a warrant can be obtained, a misdemeanor offender outside the limits of the municipality that appointed the officer if the officer is authorized under R.C. 2935.03(A) or (B) to arrest and detain the offender without a warrant within the jurisdiction that appointed the officer, if the pursuit is initiated within the officer's jurisdiction without unreasonable delay after the offense is committed, and if the offense is a first degree misdemeanor or a violation of a substantially equivalent municipal ordinance, a second degree misdemeanor or a violation of a substantially equivalent municipal ordinance, or any offense for which points are chargeable under R.C. 4507.021(G). (1974 Op. Att'y Gen. No. 74-094 overruled in part.)
2. A municipal police officer who is a member of a police task force that, by the terms of a contract under R.C. 737.04 includes several municipalities and provides for general police services, has the same authority to make

warrantless arrests of misdemeanor offenders within the territory of the contracting municipalities that he has within the municipality that appointed him. (1968 Op. Att'y Gen. No. 68-155 approved and followed.)

To: John T. Corrigan, Cuyahoga County Prosecuting Attorney, Cleveland, Ohio  
By: Anthony J. Celebrezze, Jr., Attorney General, September 12, 1986

You have requested an opinion concerning the authority of police officers under R.C. 2935.03. In light of recent legislative changes, see note 1, infra, and pursuant to communications with your office, your question may be phrased as follows:

If a municipal police officer is a member of a task force that, by contract, includes several municipalities, under what circumstances may that officer arrest misdemeanor offenders in the contracting municipalities without a warrant?

Before answering your question I must examine the relationship between the municipal police officer and the county prosecutor. The powers and duties of a county prosecutor are discussed in R.C. 309.08, which states in pertinent part:

The prosecuting attorney may inquire into the commission of crimes within the county. The prosecuting attorney shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party, except for those required to be prosecuted by a special prosecutor pursuant to section 177.03 of the Revised Code or by the attorney general pursuant to section 109.83 of the Revised Code, and such other suits, matters, and controversies as he is required to prosecute within or outside the county, in the probate court, court of common pleas, and court of appeals.

See R.C. 2931.03 ("[t]he court of common pleas has original jurisdiction of all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas"); State ex rel. Coss v. Hoddinott, 16 Ohio St. 2d 163, 164, 243 N.E.2d 59, 60 (1968)("[i]n the absence of an express provision to the contrary, the Court of Common Pleas has jurisdiction over misdemeanors"); Small v. State, 128 Ohio St. 548, 192 N.E. 790 (1934)(discussing G.C. 13422-5, now R.C. 2931.03); 1966 Op. Att'y Gen. No. 66-001 (common pleas courts and municipal courts have concurrent jurisdiction in cases of violations of Ohio liquor laws); 1963 Op. Att'y Gen. No. 397, p. 433 (syllabus, paragraph two)("[t]he grant of jurisdiction to county courts under [R.C. 1907.012] does not oust a common pleas court of its original concurrent jurisdiction in misdemeanor cases"). A county prosecutor may, therefore, be in a position of prosecuting cases involving misdemeanor offenses against state statutes in instances in which arrests were made by municipal police. See also R.C. 1901.34 (discussing instances in which county prosecuting attorney is responsible for prosecuting cases in municipal courts); R.C. 1907.012 (providing that county court has jurisdiction in all misdemeanor cases); 1981 Op. Att'y Gen. No. 81-094 (syllabus)("[b]oth a county prosecutor and a city law director are, pursuant to R.C.

2938.13, under an obligation to either present the case for the state in a criminal prosecution in county court involving the violation of a state statute or ensure that the prosecutorial responsibility is otherwise carried out"). In the event that an arrest made by a member of a task force that, by contract, includes several municipalities within the county, results in the prosecution of an offender by the county prosecutor, the prosecutor must be able to ascertain the legality of the arrest. It is, thus, clear that you have an interest in ascertaining the arrest powers of municipal police, and that I am authorized to advise you on this subject. See R.C. 109.14.

Your question concerns the authority of a municipal police officer to arrest misdemeanor offenders outside the territory of the municipality that appointed the police officer. See generally R.C. Chapter 737. It is a general rule that the authority of a police officer to make warrantless extraterritorial arrests must come specifically from the legislature. See generally City of Kettering v. Hollen, 64 Ohio St. 2d 232, 416 N.E.2d 598 (1980); City of Cincinnati v. Alexander, 54 Ohio St. 2d 248, 375 N.E.2d 1241 (1978); State v. Wallace, 50 Ohio App. 2d 78, 361 N.E.2d 516 (Franklin County 1976); 1974 Op. Att'y Gen. No. 74-094; 1968 Op. Att'y Gen. No. 68-155. Thus, a municipal police officer may make a warrantless arrest outside the territory of the jurisdiction that appointed him only as provided by statute. See generally Ohio R. Crim. P. 4, 4.1.

The only statute giving a police officer explicit authority to make a warrantless arrest of a misdemeanor offender outside the territory of the jurisdiction that appointed the officer is R.C. 2935.03,<sup>1</sup> which states:

(A) A sheriff, deputy sheriff, marshal, deputy marshal, police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, or state university law enforcement officer appointed under section 3345.04 of the Revised Code shall arrest and detain until a warrant can be obtained a person found violating, within the limits of the political subdivision, metropolitan housing authority housing project, college, or university in which the peace

---

<sup>1</sup> The version of R.C. 2935.03 quoted herein was enacted by Am. Sub. S.B. 356, 116th Gen. A. (1986)(eff., in part, Sept. 24, 1986), as an interim section, effective until December 31, 1987. The version set forth in Am. Sub. S.B. 356 to take effect December 31, 1987 omits all references to "member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code" and "metropolitan housing authority housing project." Earlier versions of both the interim section and the permanent section were enacted by 1983-1984 Ohio Laws, Part I, 2066-67, 2075-2076 (Sub. H.B. 129, eff., in part, April 12, 1985). Extensive amendments to both of those earlier versions were enacted by Sub. S.B. 33, 116th Gen. A. (1985)(eff., in part, Oct. 10, 1985), but were substantially repealed by Am. H.B. 284, 116th Gen. A. (1986) (eff., in part, March 6, 1986). The repealed portions of those amendments, which were referenced in your request, are not considered in this opinion.

officer is appointed, employed, or elected, a law of this state or an ordinance of a municipal corporation.

(B) When there is reasonable ground to believe that an offense of violence, the offense of criminal child enticement as defined in section 2905.05 of the Revised Code, the offense of public indecency as defined in section 2907.09 of the Revised Code, the offense of domestic violence as defined in section 2919.25 of the Revised Code, a theft offense as defined in section 2913.01 of the Revised Code, or a felony drug abuse offense as defined in section 2925.01 of the Revised Code, has been committed within the limits of the political subdivision, metropolitan housing authority housing project, college, or university in which the peace officer is appointed, employed, or elected, a sheriff, deputy sheriff, marshal, deputy marshal, police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, or state university law enforcement officer appointed under section 3345.04 of the Revised Code may arrest and detain until a warrant can be obtained any person whom he has reasonable cause to believe is guilty of the violation. For purposes of this division, the execution of a written statement by a person alleging that an alleged offender has committed the offense of domestic violence against the person or against a child of the person, constitutes reasonable ground to believe that the offense was committed and reasonable cause to believe that the person alleged to have committed the offense is guilty of the violation.

(C) A constable, within the limits of the township in which the constable is appointed or elected, shall arrest and detain until a warrant can be obtained a person found by him committing, within the limits of the township, a misdemeanor, either in violation of a law of this state or an ordinance of a village.

(D) If a sheriff, deputy sheriff, marshal, deputy marshal, police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, constable, or state university law enforcement officer appointed under section 3345.04 of the Revised Code is authorized by division (A), (B), or (C) of this section to arrest and detain, within the limits of the political subdivision, metropolitan housing authority housing project, college, or university in which he is appointed, employed, or elected, a person until a warrant can be obtained, the peace officer may, outside the limits of the political subdivision, metropolitan housing authority housing project, college, or university in which he is appointed, employed, or elected, pursue, arrest, and detain that person until a warrant can be obtained if all of the following apply:

(1) The pursuit takes place without unreasonable delay after the offense is committed;

(2) The pursuit is initiated within the limits of the political subdivision, metropolitan housing authority housing project, college, or university in which the peace officer is appointed, employed, or elected;

(3) The offense involved is a felony, a misdemeanor of the first degree or a substantially equivalent municipal ordinance, a misdemeanor of the second degree or a substantially equivalent municipal ordinance, or any offense for which points are chargeable pursuant to division (G) of section 4507.021 of the Revised Code.

This section is an interim section effective until December 31, 1987. (Emphasis added.)

Pursuant to R.C. 2935.03(D), a municipal police officer may, without a warrant, pursue, arrest, and detain until a warrant can be obtained, a misdemeanor offender outside the limits of the municipality that appointed the police officer only if certain conditions are satisfied. First, the officer must be authorized to arrest without a warrant under R.C. 2935.03(A) or (B).<sup>2</sup> Next, the pursuit must take place without unreasonable delay after the offense is committed. The pursuit must also start within the municipality that appointed the officer. Further, the offense involved must be one of those specified in R.C. 2935.03(D)(3). If all of these conditions are met, the pursuit, arrest, and detainment outside the limits of municipality that appointed the officer will be lawful pursuant to R.C. 2935.03.<sup>3</sup>

I note, however, that your question refers to a situation in which a number of municipalities have entered into a contract for cooperative police protection. It is my understanding that the contract in question was entered into pursuant to R.C. 737.04,<sup>4</sup> which states:

The legislative authority of any municipal corporation may, in order to obtain police protection or to obtain additional police protection, enter into contracts with one or more municipal corporations in this state, or with a contiguous municipal corporation in an adjoining state, 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.

Chapter 2744. of the Revised Code, insofar as it applies to the operation of police departments, shall

<sup>2</sup> R.C. 2935.03(C) applies only to township constables and not to municipal police officers.

<sup>3</sup> I note that a contrary conclusion was reached in 1974 Op. Att'y Gen. No. 74-094, on the basis of a version of R.C. 2935.03 which did not include any of the language currently appearing in R.C. 2935.03(D). See Op. No. 74-094 (syllabus, paragraph two)("[a]n off-duty municipal police officer may, pursuant to R.C. 2935.03, arrest for a misdemeanor without a warrant only within the territorial jurisdiction in which he is appointed, which is the corporate limits of the municipality"). I hereby overrule Op. No. 74-094 to the extent that it is inconsistent with this opinion.

<sup>4</sup> This opinion does not consider other types of arrangements by which municipalities may provide one another with police services. See, e.g., R.C. 737.041; R.C. 737.10.

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 participate in any 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 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 indemnity award or premium contribution assessed against the employing subdivision for workers' compensation benefits for injuries or death of its police department members occurring while engaged in rendering such service. (Emphasis added.)

One of my predecessors, in considering R.C. 737.04, reached "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." Op. No. 68-155 at 2-190. I concur in this conclusion. As noted in Op. No. 68-155, R.C. 737.04 provides that a police officer acting pursuant to a contract under that section is entitled to certain of the same benefits that the officer receives while working in the jurisdiction that appointed him. See R.C. 737.04 (referencing the right to participate in an indemnity fund established by the employer and the right to workers' compensation under R.C. Chapter 4123). R.C. 737.04 also provides that such a police officer is subject to R.C. Chapter 2744, which governs the tort liability of political subdivisions, to the same extent as when he renders services to his own subdivision. The essence of such an arrangement is that a contract under R.C. 737.04 serves to expand the official duties of the police officer, so that it becomes his duty to carry out functions in the territory which he serves pursuant to contract, in the same manner in which he carries out his duties within the jurisdiction that has appointed him, assuming, of course, that no limitations upon his authority are imposed by provision of contract. See Op. No. 68-155 at 2-190 ("the legislative intent was that such officers should perform completely their official functions while in another jurisdiction pursuant to a police protection contract"); cf. 1966 Op. Att'y Gen. No. 66-179 (concerning pensions and disability payments). See generally R.C. 311.07; 1971 Op. Att'y Gen. No. 71-076 at 2-259 ("it has been held that the authority of a [township] police officer performing his duties

pursuant to [a contract under R.C. 505.441] is identical to his authority in his home township"); 1970 Op. Att'y Gen. No. 70-120. It follows that, when a municipality contracts under R.C. 737.04 for the provision of general police services, the police officers of that municipality have the same authority to make warrantless arrests of misdemeanor offenders in the territory of contracting municipalities that they have within the territory of the municipality that appointed them.

Therefore, in answer to your question I draw the following conclusions, and you are so advised:

1. Pursuant to R.C. 2935.03, a municipal police officer may pursue, arrest, and detain until a warrant can be obtained, a misdemeanor offender outside the limits of the municipality that appointed the officer if the officer is authorized under R.C. 2935.03(A) or (B) to arrest and detain the offender without a warrant within the jurisdiction that appointed the officer, if the pursuit is initiated within the officer's jurisdiction without unreasonable delay after the offense is committed, and if the offense is a first degree misdemeanor or a violation of a substantially equivalent municipal ordinance, a second degree misdemeanor or a violation of a substantially equivalent municipal ordinance, or any offense for which points are chargeable under R.C. 4507.021(G). (1974 Op. Att'y Gen. No. 74-094 overruled in part.)
2. A municipal police officer who is a member of a police task force that, by the terms of a contract under R.C. 737.04 includes several municipalities and provides for general police services, has the same authority to make warrantless arrests of misdemeanor offenders within the territory of the contracting municipalities that he has within the municipality that appointed him. (1968 Op. Att'y Gen. No. 68-155 approved and followed.)