

OPINION NO. 89-074**Syllabus:**

1. A county sheriff has no authority to enter into a contract with a non-profit corporation to provide security services at its wildlife preserve.
2. A county sheriff has no authority to receive by gift, devise or bequest money or other property.
3. A county, or the board of county commissioners, has the authority pursuant to R.C. 9.20 to receive by gift, devise or bequest money to be allocated to the sheriff's budget for employee compensation pursuant to R.C. 325.17. However, neither the county nor the board of county commissioners has the authority to receive a gift, devise or bequest for the specific purpose of hiring additional sheriff's deputies.
4. A county sheriff has no authority outside of his jurisdiction except as expressly provided by statute.

To: W. Allen Wolfe, Muskingum County Prosecuting Attorney, Zanesville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 7, 1989

I have before me your request for my opinion regarding the security measures to be undertaken at the International Center for the Preservation of Wild Animals, Inc., a non-profit Ohio corporation. The International Center for the Preservation of Wild Animals (hereinafter "the Center") has established as a wildlife preserve a site of more than 9,000 acres in Muskingum County. The Center plans to use the preserve for educational purposes as well as for the research and breeding of wild animals. The Center also expects to establish itself as a vacation destination with camping, fishing and other attractions.

Because the Center will work with rare and endangered animals, it is concerned about security and has sought your advice in this matter. On behalf of the Center, you have submitted several questions for my consideration. For purposes of analysis, I have rephrased your questions, with your approval, as follows:

1. Can the International Center, a non-profit corporation, contract with the Muskingum County Sheriff for security services at the wildlife preserve?
2. If the Center cannot or does not contract with the sheriff, can they legally make a donation to the general fund of the county or to the sheriff's budget in order to enable the sheriff to hire additional deputies?
3. Several years from now, the Center may expand into neighboring counties to cover approximately 20,000 acres. Is jurisdiction over those portions of the Center lying in neighboring counties limited to the sheriffs of those counties, or will Muskingum County deputies be able to exercise their authority in those areas as well? Will Muskingum County deputies have to be "deputized" by the respective sheriffs of the adjacent counties in order to exercise authority in those counties?¹

¹ Your third question concerns the jurisdiction of the county sheriff with respect to the Center's wildlife preserve. You have raised no questions regarding the specific police powers of the county sheriff and deputies with respect to the wildlife preserve, nor have you raised any question concerning the authority of the division of wildlife pursuant to R.C. Chapter 1531.

As a preliminary matter, I note that a county prosecutor is under no duty to advise a non-profit corporation. See R.C. 309.09. It follows that I am not generally able to advise a county prosecutor with respect to such a corporation. See R.C. 109.14. In the instant case, however, I find that your questions actually concern the powers and the duties of the county sheriff and the county commissioners, all of whom are county officers entitled to your legal counsel under R.C. 309.09. I find, therefore, that the questions raised in your request involve duties of your office about which I may, under R.C. 109.14, issue a formal legal opinion.

Your first question concerns the authority of the sheriff to contract with the Center for security services at the Center's wildlife preserve. You have provided me with the information that the Center would like to enter into a contract with the sheriff whereby the sheriff would provide deputies who would be exclusively assigned to the Center as their regular duty. The Center does not want to employ off-duty deputies to provide security for the wildlife preserve.

The answer to the first question depends upon the authority of the sheriff to enter into such a contract. The sheriff, as a public officer, has only those powers expressly provided by statute or necessarily implied therefrom. *Schultz v. Erie County Metropolitan Park District Board*, 26 Ohio Misc. 68, 269 N.E.2d 72 (1971); *United States v. Laub Baking Co.*, 283 F. Supp. 217 (N.D. Ohio 1968); see also 1986 Op. Att'y Gen. No. 86-023. The general authority of the sheriff is conferred by R.C. 311.07 and R.C. 311.08. These statutes mandate that the sheriff "preserve the public peace...." R.C. 311.07(A). This duty requires the sheriff to execute warrants, writs and other process, to attend upon the court of common pleas, and to "cause all persons guilty of any breach of the peace, within his knowledge or view, to enter into recognizance with sureties to keep the peace and to appear at the succeeding term of the court of common pleas...." *Id.* The sheriff is given the power to call upon other political subdivisions to provide law enforcement or fire protection personnel in order to preserve the public peace "in the event of riot, insurrection, or invasion." R.C. 311.07(B). The sheriff is also generally authorized to "exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law." R.C. 311.08(A).

Furthermore, R.C. 311.29 gives the sheriff the express power to enter into contracts whereby the sheriff may provide police services² on behalf of certain entities:

(B) The *sheriff may*, from time to time, *enter into contracts with* any municipal corporation, township, port authority, water or sewer district, school district, library district, health district, park district, soil and water conservation district, water conservancy district, or other taxing district or with the board of county commissioners of any contiguous county with the concurrence of the sheriff of such other county, and such subdivisions, authorities, and counties may enter into agreements with the sheriff whereby the sheriff undertakes and is authorized by the contracting subdivision, authority, or county to perform any police function, exercise any police power, or render any police service in behalf of the contracting

Therefore, I express no opinion on these issues. I do note, however, that R.C. 1531.16 provides that sheriffs and deputy sheriffs "shall enforce the law and the orders of the division of wildlife for the taking, possession, protection, preservation, and propagation of wild animals, and for this purpose shall have the power conferred upon game protectors." This statute does not appear to extend the jurisdiction of the sheriff, however, and therefore does not affect my opinion.

² Although your question is phrased in terms of "security services", you have indicated that the Center is interested in contracting with the sheriff for full-time deputies whose regular assignment would be the Center. I find that this arrangement would come within the language of R.C. 311.29 "to perform any police function, exercise any police power, or render any police service...."

subdivision, authority, or county, or its legislative authority, which such subdivision, authority, or county, or its legislative authority, may perform, exercise, or render.

Upon the execution of such agreement and within the limitations prescribed by it the sheriff may exercise the same powers as the contracting subdivision, authority, or county possesses with respect to such policing which by such agreement the sheriff undertakes to perform or render, and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the contracting subdivision, authority, or county directly.

Any agreement authorized by this section shall not suspend the possession by a contracting subdivision, authority, or county of any police power performed or exercised or police service rendered in pursuance to such agreement nor limit the authority of the sheriff.

R.C. 311.29(B) (emphasis added).

R.C. 311.29 does not give the sheriff the authority to enter into contracts to provide police services to non-profit corporations. Furthermore, the principle of *expressio unius est exclusio alterius*, the "expression of one thing implies exclusion of another," *Craftsman Type Inc. v. Lindley*, 6 Ohio St. 3d 82, 82, 451 N.E.2d 768, 769 (1983); *Kroger v. Bowers*, 3 Ohio St. 2d 76, 209 N.E.2d 209 (1965), indicates that naming of the particular entities with which the sheriff may contract implies that a contract with any other entity is not authorized pursuant to this statute. See generally 1979 Op. Att'y Gen. No. 79-025 (a statute which provided that counties could procure liability insurance but which failed to make a similar provision for township officers indicated a decision not to allow such purchases under the doctrine of *expressio unius est exclusio alterius*). I conclude, therefore, that the sheriff does not have the authority to contract with the Center to provide police services for the Center's wildlife preserve.

The second question which you have asked is whether the Center can legally make a donation to the general fund of the county or to the sheriff's budget in order to enable the sheriff to hire additional deputies.

R.C. 9.20 addresses the authority of public bodies to accept gifts, devises, and bequests:

The state; a county, a township, or a cemetery association or the commissioners or trustees thereof; a municipal corporation or the legislative authority, a board, or other officers thereof; and a benevolent, educational, penal, or reformatory institution, wholly or in part under the control of the state, or the board of directors, trustees, or other officers thereof may receive by gift, devise, or bequest moneys, lands, or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms of the gift, devise, or bequest. Such gifts or devises of real estate may be in fee simple or of any lesser estate and may be subject to any reasonable reservation. This section does not affect the statutory provisions as to devises or bequests for such purposes. (Emphasis added.)

R.C. 9.20 thus provides that the county or the county commissioners may receive a gift of money to be applied according to the terms of the gift. By again applying the principle of *expressio unius est exclusio alterius*, it can be inferred that the legislature intended to limit the public bodies or officers that are authorized to accept gifts, devises, or bequests pursuant to R.C. 9.20. Under this doctrine, there is no authority for county officers other than the county commissioners to receive gifts, devises, or bequests.³ For this reason, I find that the Center cannot make a

³ Furthermore, an examination of R.C. Chapter 311, which governs the office of sheriff, reveals no authority for the sheriff to accept gifts.

donation⁴ directly to the sheriff or to the sheriff's budget. The Center may, however, make a donation to the county commissioners pursuant to R.C. 9.20.

R.C. 9.20 has been interpreted by my predecessors to confer a qualified rather than an absolute power to receive and administer property. In 1957 Op. Att'y Gen. No. 1150, p. 545, it was determined that a governmental agency may receive property and administer the same pursuant to R.C. 9.20 provided that the terms or conditions of the gift do not require the agency to exercise powers or perform duties and functions not otherwise accorded it by law. "[T]he authority of governmental agencies to administer property according to the terms of gifts, devises, or bequests is primarily limited by the scope of the functions, powers and duties of those agencies." *Id.* at 550. See also 1982 Op. Att'y Gen. No. 82-086. Therefore, whether the county commissioners have the authority to accept a donation for the purpose of enabling the sheriff to hire additional deputies depends upon the powers and duties of the commissioners with respect to the hiring of deputies.

County commissioners generally have jurisdiction over county matters. An exception occurs "in respect to matters the cognizance of which is exclusively vested in some other officer or person." *Dall v. Cuyahoga County Building Commission*, 14 Ohio N.P. (n.s.) 209, 211, 24 Ohio Dec. 9, 11 (1913). The hiring of sheriff's deputies is, in fact, a matter within the exclusive authority of the sheriff. R.C. 311.04 provides that "[t]he sheriff may appoint, in writing, one or more deputies." In addition, the sheriff is given the authority to fix the compensation of his deputies pursuant to R.C. 325.17:

The officers mentioned in section 325.27 of the Revised Code⁵ may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, fix the compensation of such employees and discharge them, and shall file certificates of such action with the county auditor.

R.C. 325.17 (footnote added).

The sheriff's authority to hire deputies and to fix their compensation is, however, limited to some extent. R.C. 325.17 provides that the compensation fixed by the county officers for their deputies and other employees "shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for such office." Thus, the county commissioners have the authority to fix the maximum sum to be expended by the sheriff for employee compensation. The general rule with regard to the respective powers of the county commissioners and the individual appointing authorities under R.C. 325.17 (and its predecessor, G.C. 2981⁶) is set forth in the syllabus of 1927 Op. Att'y Gen. No. 1339, vol. IV, p. 2432:

⁴ Your question refers to a "donation" rather than a "gift." The dictionary defines "donation" as "...[a] gift or grant; contribution." *The American Heritage Dictionary* (2d college ed. 1976). I have therefore, for purposes of this opinion, considered a "donation" to be a "gift" within the meaning of R.C. 9.20.

⁵ The sheriff is one of the officers mentioned in R.C. 325.27.

⁶ G.C. 2981, the language of which was essentially the same as that of R.C. 325.17, read as follows:

Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid semi-monthly from the county treasury, upon the warrant of the county auditor. Each of such officers may require such of his employes as he deems proper to give bond to the state

Although the board of county commissioners has nothing to do with the question as to the number of deputies, assistants or clerks that may be appointed by the sheriff and other officers of the county for their respective offices, nor with the amount of compensation to be paid any deputy, assistant or clerk in said several offices, the board of county commissioners is charged with the duty, to be exercised in its sound discretion, of making appropriations to pay the compensation of deputies, assistants and clerks in such offices; and the amount that may be expended by the sheriff or other county officers for deputies, assistants or clerk high [sic], may not in the aggregate exceed the appropriations made by the board of county commissioners for said purpose with respect to the said several county offices.

See also 1987 Op. Att'y Gen. No. 87-018; *County Commissioners of Henry County v. Rafferty*, 19 Ohio N.P. (n.s.) 97, 27 Ohio Dec. 47 (1916).

With respect to your question, the Center may legally make a donation to the county commissioners to be allocated to the sheriff pursuant to R.C. 325.17, since the county commissioners have the power to fix such allocation. However, the county commissioners cannot receive a donation for the specific purpose of hiring additional sheriff's deputies since the county commissioners do not have the power to hire such deputies, and their ability to accept a gift for a particular purpose is limited by their power to apply the gift for the intended purpose. Therefore, I find that the Center cannot make a donation to the county commissioners to be used for the specific purpose of hiring additional deputies, although the Center may make a donation to be applied to the sheriff's allocation under R.C. 325.17. However, it is within the discretion of the sheriff, pursuant to R.C. 311.04, to hire more deputies; the sheriff is under no duty to use the donated money for the additional deputies. I note that your question did not specify that the additional deputies to be hired would be assigned exclusively to the Center. However, such a restriction on the purpose for the donation would not change my opinion, since I have already determined that a donation for the purpose of hiring additional deputies, without regard to their duties, is not proper.

It should also be noted, that while R.C. 9.20 *permits* the county commissioners to receive gifts, devises or bequests, it does not make the receipt of such gifts mandatory. The statute provides that the county commissioners "may receive" such gifts, devises, or bequests. The use by the legislature of the term "may" generally indicates that the provision is permissive rather than mandatory. *Dennison v. Dennison*, 165 Ohio St. 146, 134 N.E.2d 574 (1956); *State ex rel. John Tague Post v. Klinger*, 114 Ohio St. 212, 151 N.E. 47 (1926). Accordingly, the county commissioners may refuse to accept a gift. *See Andrews v. Teachers Retirement System*, 62 Ohio St. 2d 202, 404 N.E.2d 747 (1980) (an unwanted gift need not be accepted).

Your third question concerns the jurisdiction of the Muskingum County sheriff and his deputies in the event that the Center expands into neighboring counties. You have asked whether Muskingum County deputies will be able to exercise their authority in the other counties or whether the respective sheriffs of those counties have exclusive jurisdiction in their counties. You have also asked whether Muskingum County deputies will have to be "deputized" by the sheriffs of the neighboring counties in order to exercise their authority in those counties.

Generally, the authority of deputies is expressed in R.C. 3.06(A): "A deputy, when qualified, may perform any duties of his principal..." A sheriff's deputy acts as the agent of the sheriff. *State ex rel. Geyer v. Griffin*, 80 Ohio App. 447, 76 N.E.2d 294 (1946). It follows that the jurisdiction of the deputy is limited by the

in an amount to be fixed by such officer with sureties approved by him, conditioned for the faithful performance of their official duties. Such bond with the approval of such officer, indorsed thereon, shall be deposited with the county treasurer and kept in his office.

jurisdiction of the sheriff. As a county officer, the jurisdiction of the sheriff is coextensive with the county. *Re Sulzmann*, 29 Ohio N.P. (n.s.) 92, aff'd 125 Ohio St. 594 (1932); *see also* 1941 Op. Att'y Gen. No. 3633, p. 216. Further, it has been held that a law enforcement officer who serves a particular political subdivision may exercise official powers within the territory of the political subdivision which has appointed the officer. *See generally City of Fairborn v. Munkus*, 28 Ohio St. 2d 207, 277 N.E.2d 227 (1971); *see also* 1986 Op. Att'y Gen. No. 86-068; 1971 Op. Att'y Gen. No. 71-076. In general, therefore, the jurisdiction of the Muskingum County sheriff and his deputies is limited to Muskingum County.

There are, however, some statutory exceptions to the general rule which limits a law enforcement officer's authority to the territory of the political subdivision appointing such officer. One such exception exists in R.C. 2935.03(D), which permits a sheriff, deputy sheriff and certain other law enforcement officers who are otherwise authorized to arrest and detain a person, to pursue, arrest and detain that person outside of the officer's jurisdiction, 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...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 [4507.02.1] of the Revised Code.

R.C. 2935.03(D). Pursuant to this statute, the Muskingum County sheriff and deputies have the authority, under limited circumstances, to pursue an offender into an adjoining county and to arrest and detain the offender until a warrant can be obtained.

Another exception to the general rule is found in R.C. 311.04 which provides, *inter alia*, as follows:

...In cases of emergency the sheriff may request of the sheriff of another county the aid of qualified deputies serving in such other counties of the state, and if the consent of the sheriff of such other county is received, the deputies while so assigned shall be deemed to be the deputies of the sheriff requesting aid....

R.C. 311.04. Thus, in cases of emergency, a deputy of the Muskingum County sheriff may be assigned to another county and may exercise the same authority as a deputy of the county to which he was assigned. Although the statute does not refer to "deputizing", the deputies so assigned "shall be deemed to be the deputies of the sheriff of the county requesting aid." R.C. 311.04. I find, however, that it would be difficult to characterize the situation you have described, to wit, the anticipated expansion of the Center across Muskingum County lines, as an "emergency." Although "emergency" is not defined for purposes of R.C. 311.04, it connotes a situation of great urgency. The dictionary defines "emergency" as "[a]n unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate action." *The American Heritage Dictionary* (2d college ed. 1976). The anticipated expansion of the Center cannot fairly be described as an emergency, and accordingly I find that R.C. 311.04 does not apply to the situation you have described.

A third statutory exception exists in R.C. 311.29, which was cited above in response to your first question. As noted, this statute allows the sheriff to provide police services on behalf of certain public bodies, including other counties. The sheriff may contract with the board of county commissioners of any contiguous county with the concurrence of the sheriff of such other county. *Id.* The sheriff, under a contract pursuant to this section, may undertake "to perform any police

function, exercise any police power, or render any police service in behalf of the contracting...county...which such county...may perform, exercise, or render." *Id.* The sheriff's authority under such a contract is thus limited to providing those police services on behalf of the contracting county that the contracting county itself has the authority to provide. The statute does not require that the deputies of the sheriff providing such service be "deputized" by the sheriff of the county receiving such services. The contract, which cannot exceed four years in duration, must provide for the reimbursement of the county for the costs incurred by the sheriff. R.C. 311.29(D).⁷

Thus, pursuant to R.C. 311.29, the Muskingum County sheriff has the authority to contract with the board of county commissioners of any contiguous county, with the concurrence of the sheriff of such other county, and to exercise any police power which the contracting county could itself exercise. I find, therefore, that the Muskingum County sheriff has the authority to enter into a contract with the board of county commissioners of any contiguous county into which the Center expands to exercise police powers and to provide police services on behalf of such county, provided that the sheriff of that county concurs in such agreement and further provided that the Muskingum County sheriff exercises only those powers which the contracting county has authority to exercise.

It is therefore my opinion, and you are hereby advised that:

1. A county sheriff has no authority to enter into a contract with a non-profit corporation to provide security services at its wildlife preserve.
2. A county sheriff has no authority to receive by gift, devise or bequest money or other property.
3. A county, or the board of county commissioners, has the authority pursuant to R.C. 9.20 to receive by gift, devise or bequest money to be allocated to the sheriff's budget for employee compensation pursuant to R.C. 325.17. However, neither the county nor the board of county commissioners has the authority to receive a gift, devise or bequest for the specific purpose of hiring additional sheriff's deputies.
4. A county sheriff has no authority outside of his jurisdiction except as expressly provided by statute.

⁷ It should be noted that R.C. 307.15 provides the board of county commissioners the authority to enter into an agreement with the board of any other county, "to exercise any power, perform any function or render any service in behalf of" the contracting county which such county may exercise, perform or render. R.C. 307.15. However, one of my predecessors considered this statute in light of the powers and duties of the sheriff and determined that because the sheriff is an elected officer who is authorized by R.C. 311.04 to appoint deputies and who has sole discretion with respect to the assignments of such deputies, the board of county commissioners is not authorized to agree to provide the sheriff's services to another political subdivision. 1958 Op. Att'y Gen. No. 2292, p. 390.