

OPINION NO. 2000-024**Syllabus:**

A county sheriff, who is required, pursuant to a warrant issued by a court under Ohio R. Crim. P. 18(B)(4) or the Governor under R.C. 107.04 or R.C. 2963.20, to transport between a county jail and the jail of another county or state a person who has been charged with, convicted of, or pleaded guilty to, an offense in Ohio, may not use a private agency to transport the person.

To: Stephen J. Pronai, Madison County Prosecuting Attorney, London, Ohio
By: Betty D. Montgomery, Attorney General, April 24, 2000

You have requested an opinion concerning the county sheriff's use of a private agency to transport prisoners. In particular, you wish to know the following:

1. When a person, who has been charged with, convicted of, or pleaded guilty to, an offense in Ohio, must be transported between the county jail and the jail of another county or state because of a change of venue order or extradition proceedings, may a county sheriff use a private agency to transport the person?
2. Is a county sheriff authorized to relinquish custody of a person to a private agency?
3. If a person escapes or causes physical harm to himself or others while in the custody of a private agency, does any liability attach to the county sheriff?

Let us begin with your first question, which asks about the authority of a county sheriff to use a private agency to transport a prisoner either between Ohio counties, or to Ohio from another state in the case of extradition proceedings. This question requires that we examine the following matters: the general authority of a county sheriff to transport prisoners; the interstate extradition of persons; the duty of a county sheriff to execute warrants issued by courts of law or the Governor of Ohio; and the county sheriff's authority to delegate his duties. We will examine each of these concepts in that order.

The General Assembly has in many instances made county sheriffs responsible for transporting persons accused or convicted of committing crimes. *See, e.g.*, R.C. 341.12; R.C. 341.16; R.C. 2931.30; R.C. 2941.41; R.C. 2949.08; R.C. 2949.12; R.C. 2949.21; R.C. 2963.07; R.C. 2963.20; R.C. 2963.24; R.C. 2963.28; R.C. 2963.30; *see also* Ohio R. Crim. P. 4(E); Ohio R. Crim. P. 18(B)(4). *See generally* R.C. 325.07 ("[t]he board of county commissioners shall make allowances monthly to each sheriff for his actual and necessary expenses incurred and expended in ... transporting persons accused or convicted of crimes and offenses"). In addition, prior opinions of the Attorneys General have advised that a county sheriff has a duty to transport prisoners between the jail of the county and the court of common pleas or a

county court, 1995 Op. Att'y Gen. No. 95-033; 1991 Op. Att'y Gen. No. 91-047; 1987 Op. Att'y Gen. No. 87-091; 1962 Op. Att'y Gen. No. 3420, p. 925 ; 1959 Op. Att'y Gen. No. 1040, p. 721, and to transport prisoners to the penitentiary, 1931 Op. Att'y Gen. No. 3089, vol. I, p. 448.

With respect to the transportation of a person when a change of venue is ordered, Ohio R. Crim. P. 18(B)(4), provides, in part, as follows:

Where a change of venue is ordered and the defendant is in custody, a warrant shall be issued by the clerk of the court in which the action originated, *directed to the person having custody of the defendant commanding him to bring the defendant to the jail of the county to which the action is transferred*, there to be kept until discharged. (Emphasis added.)

See also, R.C. 2931.30 (setting forth similar provisions concerning the transfer of a prisoner when a change of venue is ordered).¹ Accordingly, when a change of venue is ordered, a court may issue a warrant commanding a county sheriff to transport a person in his custody to the jail of the county to which the action is transferred.

Similarly, when a person held in custody in another state is to be extradited to Ohio, a county sheriff may be required to transport the person to Ohio from the other state. Interstate extradition is governed by U.S. Const. art. IV, § 2, cl. 2 and 18 U.S.C.S. §§ 3182 and 3194. *In re Rowe*, 67 Ohio St. 2d 115, 117, 423 N.E.2d 167, 169 (1981); *see also* R.C. 2963.02. U.S. Const. art. IV, § 2, cl. 2 states:

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

18 U.S.C.S. §§ 3182 and 3194 were enacted by the United States Congress to carry out the mandate set forth in U.S. Const. art. IV, § 2, cl. 2. 18 U.S.C.S. § 3182 provides, in part:

Whenever the executive authority of any State ... demands any person as a fugitive from justice, of the executive authority of any State ... to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State ..., charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State ... from whence the person so charged has fled, the executive authority of the State ... to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear.

Pursuant to 18 U.S.C.S. § 3194, "[a]ny agent appointed as provided in section 3182 of this title who receives the fugitive into his custody is empowered to transport him to the State ...

¹Article IV, § 5(B) of the Ohio Constitution provides that the Ohio Rules of Criminal Procedure prevail over conflicting statutes so long as the subject of regulation is procedural. *State v. Greer*, 39 Ohio St. 3d 236, 245, 530 N.E.2d 382, 395 (1988), *cert. denied*, 490 U.S. 1028 (1989).

from which he has fled." Thus, in accordance with federal law, when a person is extradited by another state to Ohio, a county sheriff may be required to transport the person from that state to Ohio.

States may enact ancillary proceedings, which are consistent with the Constitution and laws of the United States, that provide for the surrender of interstate fugitives. *Innes v. Tobin*, 240 U.S. 127 (1916); *Sanders v. Conine*, 506 F.2d 530 (10th Cir. 1974); *Culbertson v. Sweeney*, 70 Ohio App. 344, 44 N.E.2d 807 (Cuyahoga County 1942), *appeal dismissed*, 140 Ohio St. 426, 45 N.E.2d 118 (1942); *see, e.g., English v. Matowitz*, 148 Ohio St. 39, 72 N.E.2d 898 (1947). In Ohio the General Assembly has enacted statutory provisions that supplement the interstate extradition provisions of the Constitution and laws of the United States. *See generally* R.C. Chapter 2963 (extradition).

With respect to the extradition of a person from another state to Ohio, R.C. 2963.05 provides that, when a person charged with a crime in Ohio is imprisoned or held under criminal proceedings in another state, the Governor may agree with the executive authority of that state for the extradition of that person to Ohio before the conclusion of any criminal proceedings or term of imprisonment. In addition, pursuant to R.C. 2963.20, whenever the Governor demands from the executive authority of another state the extradition of a person charged with committing a crime, escaping from confinement, or breaking the terms of his bail, probation, or parole, the Governor may issue a warrant commanding an agent to receive and convey the person to the appropriate venue. Finally, R.C. 3115.53(B)(1) states that the Governor may "[d]emand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to pay support under a support order."

R.C. 2963.05, R.C. 2963.20, and R.C. 3115.53 thus authorize the Governor to agree to or demand the extradition of a person to Ohio. In order to exercise his extradition authority, R.C. 107.04 empowers the Governor to command a county sheriff to transport to a county jail a person extradited by another state to Ohio:

When the governor requires the aid of a ministerial officer in exercising any of the powers granted in Section 11 of Article III, Ohio Constitution, or any authority vested in him by law, he may issue his warrant directed to the sheriff of any county in the state commanding such sheriff to execute his orders, and make return thereof in such manner as he directs. (Emphasis added.)

Accord R.C. 2963.20; *see* R.C. 3113.53(C). Therefore, when a person is to be extradited to Ohio, the Governor may issue a warrant commanding a county sheriff to transport the person to Ohio from another state.

A county sheriff is required to execute every order and warrant directed to him by a proper and lawful authority of this state. R.C. 311.07(A); R.C. 311.08(A). Accordingly, when a court issues a warrant commanding a county sheriff to transport a person in his custody to the jail of the county to which an action is transferred, *see* Ohio R. Crim. P. 18(B)(4), or when the Governor issues a warrant commanding a county sheriff to transport to Ohio a person extradited by another state, *see* R.C. 107.04; R.C. 2963.20, a county sheriff has a duty to execute the warrant. R.C. 311.07(A); R.C. 311.08(A).

Let us now determine whether a county sheriff may delegate this duty to a private entity. It is a well-settled rule that the authority of a public body or officer to delegate official duties to a private entity is limited, and, in the absence of specific statutory authority

therefor, may only be exercised with respect to purely ministerial duties. See *Bell v. Board of Trustees of Lawrence County Gen. Hosp.*, 34 Ohio St. 2d 70, 296 N.E.2d 276 (1973); *Rieke v. Hogan*, 34 Ohio Law Abs. 311, 36 N.E.2d 886 (Ct. App. Cuyahoga County 1940), *aff'd*, 138 Ohio St. 27, 32 N.E.2d 9 (1941); *Burkholder v. Lauber*, 6 Ohio Misc. 152, 154, 216 N.E.2d 909, 911 (C.P. Fulton County 1965); 1997 Op. Att'y Gen. No. 97-054 at 2-332; 1980 Op. Att'y Gen. No. 80-060 at 2-239; 1956 Op. Att'y Gen. No. 7107, p. 663, at 665. This rule is based on the presumption that the General Assembly has delegated duties to a public body or officer named in a statute because that body or officer is deemed competent to exercise the judgment and discretion necessary for performance of the duties. See 1997 Op. Att'y Gen. No. 97-054 at 2-332; 1985 Op. Att'y Gen. No. 85-008 at 2-32.

No 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. See generally *Burkholder v. Lauber*, 6 Ohio Misc. at 154, 216 N.E.2d at 911 (the power to contract on behalf of the county is vested in the board of county commissioners, and no other officer can bind the county by contract without express provision of law). Moreover, a county sheriff's duty to transport prisoners under a warrant issued by a court or the Governor is not a purely ministerial duty. To the contrary, a county sheriff who performs this function is performing a law enforcement duty that requires the exercise of judgment and discretion in order to safeguard the public and protect the civil rights of the public and prisoners.

As stated in *Cleveland Police Patrolmen's Ass'n v. City of Cleveland*, 118 Ohio App. 3d 584, 588, 693 N.E.2d 864, 867 (Cuyahoga County 1997), *appeal dismissed*, 79 Ohio St. 3d 1449, 680 N.E.2d 1022 (1997):

[T]he function of transporting a prisoner in a marked police vehicle by uniformed armed officers can only be regarded as a duty of enforcing laws; we further recognize that these individuals will not perform other police duties such as traffic enforcement, fingerprint identification, or homicide investigation. This does not dissuade us from the conclusion that the function of transporting prisoners on the public highways among the general public is primarily a law enforcement duty with its attendant problems and concerns, including potential hostage, kidnap, escape or riot situations; medical emergencies, including stroke, seizure, and conditions requiring administration of CPR; necessity for training in the conduct of body and automobile searches; the use of force, including deadly force; and the protection and enforcement of the civil rights of the public and those being transported - all of which are directly related to preserving the peace, protecting life and property, and enforcing the law.

See 1989 Op. Att'y Gen. No. 89-071 at 2-327 (the transportation of a prisoner is a function that includes duties that relate to the preservation of the peace, protection of life and property, and enforcement of the law). Accordingly, a county sheriff's duty to transport a prisoner pursuant to a warrant issued by a court or the Governor is a law enforcement duty because the sheriff is required to maintain custody and control over the prisoner in order to preserve the peace, protect lives and property, and enforce the laws of this state and the United States. See R.C. 311.07(A).

A county sheriff's responsibility to maintain effective custody and control over a prisoner requires the sheriff to exercise his judgment and discretion. See 1985 Op. Att'y Gen. No. 85-008 at 2-32 (the control and management of the county jail requires a county sheriff

to exercise his discretion). Because a county sheriff's duty to transport prisoners under a warrant issued by a court or the Governor is not a purely ministerial duty, a county sheriff may not delegate this duty to a private entity. *Id.* ("the duties imposed upon a sheriff which require the exercise of his discretion as to the control and management of the county jail prevent the county from contracting with a private corporation to be the jail administrator"). Therefore, a county sheriff, who is required, pursuant to a warrant issued by a court under Ohio R. Crim. P. 18(B)(4) or the Governor under R.C. 107.04 or R.C. 2963.20, to transport between a county jail and the jail of another county or state a person who has been charged with, convicted of, or pleaded guilty to, an offense in Ohio, may not use a private agency to transport the person.

In view of our answer to your first question, we need not address your remaining questions.

Based on the foregoing, it is my opinion, and you are hereby advised that a county sheriff, who is required, pursuant to a warrant issued by a court under Ohio R. Crim. P. 18(B)(4) or the Governor under R.C. 107.04 or R.C. 2963.20, to transport between a county jail and the jail of another county or state a person who has been charged with, convicted of, or pleaded guilty to, an offense in Ohio, may not use a private agency to transport the person.