

OPINION NO. 82-077**Syllabus:**

A county sheriff may not transfer persons sentenced to incarceration in the county jail to a city workhouse without a specific order from the sentencing judge providing for workhouse incarceration.

To: Michael F. Boller, Shelby County Prosecuting Attorney, Sidney, Ohio
By: William J. Brown, Attorney General, September 28, 1982

I have before me your request for my opinion concerning the following question: "[May] a county sheriff transfer misdemeanants sentenced [to incarceration in jail] under a municipal ordinance or state statute to a city workhouse without a specific order from the municipal [sentencing] judge, where the county commissioners have contracted with such workhouse for the housing of prisoners?"

You have stated³ in your request and in a conversation with a member of my staff that there are no workhouses, whether city, county or jointly operated, in Shelby County. Consequently, all persons convicted of violations of municipal ordinances or state misdemeanor offenses are sentenced to incarceration in the Shelby County Jail. This has created a situation in which the Shelby County Jail from time to time becomes insufficient to house all county misdemeanants sentenced to confinement in jail, particularly during weekend confinements. In an attempt to relieve the congestion in the jail, your county sheriff desires to transfer, as necessary, misdemeanants to the Toledo City Workhouse pursuant to a county contract providing for such incarceration. A municipal court judge has objected to this procedure and has stated that it is his opinion that in order for such a transfer to be legally made his sentence must specifically indicate the Toledo Workhouse as the place of confinement for the misdemeanor in question.

Where, as in your fact situation, a board of county commissioners has contracted for the receipt of its prisoners into a city workhouse located in another county, R.C. 2947.18 authorizes a court or magistrate, and not a county sheriff, to sentence persons convicted of a misdemeanor to such workhouse. R.C. 2947.18 provides as follows:

Where the board of county commissioners of a county, or legislative authority of a municipal corporation having no workhouse, has made provisions for receiving prisoners into the workhouse of a city in any other county or district in the state, a court or magistrate, where imprisonment in jail may lawfully be imposed in such case, may sentence persons convicted of a misdemeanor, including a violation of a municipal ordinance, to such workhouse. (Emphasis added.)

The authority specifically granted to a court or magistrate by R.C. 2947.18 to order that a workhouse sentence be served in a city workhouse located outside the

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county should be compared to the similar authority granted to a county sheriff with regard to jail sentences. As I concluded in the second syllabus of 1981 Op. Atty Gen. No. 81-042:

Where the jail of a county is insufficient to house prisoners of that county who have been sentenced to incarceration in jail, the county sheriff is authorized by R.C. 341.12 to determine where [that is, in which county's jail] such sentence is to be carried out. (Emphasis added.)

Since sentencing is basically a judicial function, it is obviously within the power of a court to determine whether a particular sentence should be to a workhouse or to a jail. These two types of penal institutions are clearly treated separately throughout the Ohio Revised Code. See 1981 Op. No. 81-042. Although neither term is defined in the Code, it appears that a sentence to a county jail is a more severe sentence than one to a workhouse. See R.C. 2947.22 (workhouse prisoner may be temporarily confined in county jail). Thus, absent some specific authority to the contrary, a county sheriff has no authority to incarcerate in a workhouse, a prisoner who has been ordered to serve a term in jail, regardless of any county contract permitting a court to order such workhouse confinement.

You have asked whether R.C. 341.12 authorizes a county sheriff to transfer persons ordered to serve a sentence in the county jail to a workhouse located in and operated by a city outside the county. R.C. 341.12 provides as follows:

In a county not having a sufficient jail, or when the jail is in danger of being broken into by a mob, the sheriff shall convey any person charged with the commission of an offense, sentenced to imprisonment in the county jail, or in custody upon civil process, to the jail of any county which the sheriff deems most convenient and secure. (Emphasis added.)

Your question is whether the language of R.C. 341.12, "the jail of any county," includes a city-operated workhouse. In answering your question, it appears that the plain language of R.C. 341.12 precludes any construction thereof. See Wachendorf v. Shaver, 149 Ohio St. 231, 78 N.E.2d 370 (1948). By the use of the word "the" before "jail" the General Assembly has recognized the fact that each county operates one jail. "The" (as opposed to the indefinite articles "a" and "an") is a definite article "used to refer to a particular person, thing, or group." Webster's New World Dictionary 1473 (2nd ed. 1978). It is my understanding that there are, in fact, eighty-eight county jails in Ohio, one for each county. See R.C. 341.01 ("The sheriff shall have charge of the county jail. . ."). County jails are operated pursuant to R.C. Chapter 341. It is, of course, a question of fact whether a particular penal facility is being operated by a county pursuant to R.C. 341, and is, consequently, the jail of that county. The prepositional phrase, "of any county," which succeeds "the jail" in R.C. 341.12 indicates that the facility belongs to a particular county and not a city. Webster's New World Dictionary 987 (2nd ed. 1978). Therefore, it appears clear that the language of R.C. 341.12, which permits a sheriff in a county not having a sufficient jail to convey any person sentenced to imprisonment in the county jail "to the jail of any county which the sheriff deems most convenient and secure," refers only to a jail which is operated by a county in accordance with R.C. Chapter 341. Clearly, such language does not include a city-operated workhouse.

Thus, I conclude that a county sheriff may not transfer persons sentenced to incarceration in the county jail to a city workhouse without a specific order from the sentencing judge providing for workhouse incarceration.