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TRANSPORTATION OF PRISONERS BETWEEN COUNTY JAIL AND A MUNICIPAL COURT IS THE DUTY OF THE BAILIFF OR DEPUTY SHERIFF OR *EX OFFICIO* DEPUTY BAILIFF—§§2301.15, 2949.08, 1901.32, R.C.

SYLLABUS:

Where it is necessary to transport a prisoner between the county jail and a municipal court (in which court he is accused), the bailiff or deputy bailiff of the court has the duty under Section 1901.32, Revised Code to transport the prisoner as necessary; except that in view of division (D) of Section 1901.32, Revised Code, making police officers and constable within the territory of the court *ex officio* deputy bailiffs of the court, the court may designate such officers to provide the transportation; and except that under Section 2949.08, Revised Code, the transportation of a prisoner convicted of a misdemeanor and sentenced to imprisonment in jail or a workhouse should be provided by the sheriff or constable.

Columbus, Ohio, November 14, 1962

Hon. John S. Ballard, Prosecuting Attorney  
Summit County Court House, Akron, Ohio

Dear Sir:

I have received your request for my opinion on the following question:

“In several recent instances, a township constable has made an arrest in an unincorporated area of Summit County, charged the prisoner with a violation of State law, and confined the prisoner in the city jail of the municipality whose municipal court had territorial jurisdiction of the location where the crime was committed. Many such prisoners must ultimately be transported to the County Jail, and some must be transported to County Jail and back to the municipal court more than once, for various appearances in the municipal court. The question that has arisen in these cases is whether responsibility for such transportation to and from the County Jail lies with the arresting township constable, the city police, or the county sheriff.”

A careful examination of the Revised Code reveals no provision which specifically delineates the responsibility about which you ask. It appears to me, however, that several sections of the code dealing with related matters, considered together, may be so construed as to answer your question.

As to the transportation of prisoners between the county jail and the common pleas court the code is reasonably clear. Section 2301.15, Revised Code, provides:

“The criminal bailiff shall act for the sheriff in criminal cases and matters of a criminal nature in the court of common pleas and the probate court of the county. Under the direction of the sheriff, he shall be present during trials of criminal cases in such courts and during such trials perform all the duties as are performed by the sheriff. The criminal bailiff shall conduct prisoners to and from the jail of the county, and for that purpose, shall have access to the jail and to the courtroom whenever ordered by such courts, and have care and charge of such prisoners when so doing. Under the direction of the sheriff, the criminal bailiff shall convey to the penitentiary all persons sentenced thereto. He shall receive and collect from the treasurer of state all costs in such criminal cases in the same manner as the sheriff is required to do, and pay the amount so collected to the sheriff of such county.”

It clearly appears from this section that responsibility for transportation of prisoners between the county jail and the common pleas court lies in the sheriff and a special officer under his direction, the criminal bailiff.

In my Informal Opinion No. 351, issued on August 11, 1961, I held that it is the responsibility of the county sheriff or township constable to transport a person convicted of a misdemeanor in a municipal court to the jail or workhouse. That opinion should be understood, however, as being

applicable only to the transportation of convicted prisoners to the county jail or workhouse, since its ruling is based upon the provisions of Section 2949.08, Revised Code, which reads:

“When a person convicted of a misdemeanor is sentenced to imprisonment in jail or the workhouse, the judge or magistrate shall order him into the custody of the sheriff or constable, who shall deliver him with the record of his conviction, to the jailer or keeper, in whose custody he shall remain until the term of his imprisonment expires or he is otherwise legally discharged.”

The Revised Code does not make specific provision for a criminal bailiff in a municipal court. Division (E) of Section 1901.32, Revised Code, does provide, however:

“The bailiff and deputy bailiffs shall perform for the court services similar to those performed by the sheriff for the court of common pleas, and shall perform such other duties as are requested by rule of court.”

It is my opinion, especially in view of the control exercised by the sheriff over the criminal bailiff as provided by Section 2301.15, *supra*, that the duties of the bailiffs set forth by Section 1901.32, *supra*, must be construed to include the prisoner transportation duties of a criminal bailiff.

This provision does not, however, mean that the responsibility for transporting prisoners may not fall on enforcement officers. Division (D) of Section 1901.32, Revised Code, provides in part:

“(D) Every police officer of any municipal corporation or police constable of a township within the territory is ex officio a deputy bailiff of the court in and for the municipal corporation or township within which he is commissioned as such police officer or police constable, and shall perform such duties in respect to cases within his jurisdiction as are required of him by a judge of said court or by the clerk or bailiff or deputy bailiffs thereof, without additional compensation. \* \* \*”

In view of this provision it is quite possible that responsibility for transporting a prisoner might fall upon the township constable who made the arrest, but such is not necessarily the case. That responsibility may be imposed upon such deputy bailiff of the municipal court, under whose jurisdiction the prisoner is held, as that court, its clerk, or bailiff may think expedient and proper.

It appears to me that the responsibility of transporting prisoners has less to do with the arresting agency or the place of arrest or incarceration as suggested by your question, than with the court under whose jurisdiction the prisoner is held. Where the common pleas court has jurisdiction or orders the transfer, the responsibility lies with the criminal bailiff under the control of the sheriff. Where the prisoner to be transferred is held under the jurisdiction of a municipal court, and with the exception as to convicted prisoners previously noted, the responsibility falls on such bailiff or deputy bailiff as that court shall prescribe. If that court or its clerk or bailiff think it proper that an arresting constable make the necessary transfers of a prisoner, and so order, then it is his duty to do so. If the court thinks such a procedure is expedient, it is within the power of the officers just mentioned to require some other deputy bailiff to provide such transportation.

Accordingly, it is my opinion and you are advised that where it is necessary to transport a prisoner between the county jail and a municipal court (in which court he is accused), the bailiff or deputy bailiff of the court has the duty under Section 1901.32, Revised Code, to transport the prisoner as necessary; except that in view of division (D) of Section 1901.32, Revised Code, making police officers and constables within the territory of the court *ex officio* deputy bailiffs of the court, the court may designate such officers to provide the transportation; and except that under Section 2949.08, Revised Code, the transportation of a prisoner convicted of a misdemeanor and sentenced to imprisonment in jail or a workhouse should be provided by the sheriff or constable.

Respectfully,

MARK MCELROY

Attorney General