

**OPINION NO. 87-091****Syllabus:**

1. A county sheriff has no duty to transport prisoners from the jail to the municipal court before the prisoners have been convicted and sentenced. (1978 Op. Att'y Gen. No. 78-019 (syllabus, paragraph two), approved and followed.)
2. Pursuant to R.C. 1901.32(A)(6), bailiffs and deputy bailiffs of a municipal court have a mandatory duty to transport prisoners from the jail to the municipal court before the prisoners have been convicted and sentenced. (1962 Op. Att'y Gen. No. 3420, p. 925, approved and followed.)

3. Pursuant to R.C. 1901.32(A)(5), police officers and constables of municipalities and townships located within the territory of a municipal court are ex officio deputy bailiffs of that court. R.C. 1901.32(A)(5) gives municipal court judges, clerks, bailiffs, and deputy bailiffs the authority to require ex officio deputy bailiffs to transport, without additional compensation, prisoners from the jail to the municipal court before the prisoners have been convicted and sentenced.

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**To: Betty D. Montgomery, Wood County Prosecuting Attorney, Bowling Green, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, November 19, 1987**

I have before me your request for my opinion regarding the transportation of prisoners to municipal courts. R.C. 2949.08 requires county sheriffs to transport prisoners from the municipal court to the jail after they have been convicted of a misdemeanor and sentenced. Your question, however, concerns the transportation of prisoners from the jail to the municipal court before they have been convicted and sentenced. I have rephrased your questions as follows:

1. Is a county sheriff legally obligated to transport to municipal court prisoners, as yet unconvicted of any crime, who are in jail on charges filed under the local ordinances of the municipality within the municipal court's jurisdiction?
2. If the county sheriff is not responsible for transporting these prisoners, who is responsible for transporting prisoners to municipal court before they have been convicted of any crime?

In 1978, one of my predecessors addressed the question whether a county sheriff was obligated to transport prisoners to the municipal court. After reviewing R.C. 311.07, R.C. 1901.32, R.C. 2301.15, and R.C. 2949.08, my predecessor concluded: "A county sheriff does not have a duty to accompany municipal court prisoners to court during trials and hearings prior to conviction." 1978 Op. Att'y Gen. No. 78-019 (syllabus, paragraph two). Although the relevant statutes have been amended since that opinion was issued, none of the pertinent language has been changed, and I conclude that my predecessor's opinion regarding the county sheriff's duty to transport prisoners to the municipal court is still valid. Accordingly, in answer to your first question, I conclude that a county sheriff has no duty to transport prisoners, as yet unconvicted, to a municipal court.

Turning to your second question, I note that R.C. 1901.01 establishes municipal courts, and R.C. 1901.32 enumerates the duties of municipal court bailiffs. Specifically, R.C. 1901.32(A)(6) provides in pertinent part:

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 any other duties that are requested by rule of court.

The services "performed by the sheriff for the court of common pleas" include the transfer of prisoners from the jail to the court. R.C. 311.07(A) requires the sheriff to "attend upon the court of common pleas," and R.C. 2301.15 enumerates duties that the "criminal bailiff" of the court of common pleas performs on the sheriff's behalf:

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. (Emphasis added.)

One of my predecessors analyzed R.C. 2301.15 and concluded 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." 1962 Op. Att'y Gen. No. 3420, p. 925 at 926. After reviewing the requirement of R.C. 1901.32 that municipal court bailiffs perform for the municipal court "services similar to those performed by the sheriff for the court of common pleas," he concluded that "the duties of the bailiffs set forth by [R.C.] 1901.32...must be construed to include the prisoner transportation duties of a criminal bailiff." 1962 Op. No. 3420 at 927. See also 1978 Op. Att'y Gen. No. 78-019. I agree with my predecessor, and conclude that R.C. 1901.32(A)(6), when read with the provisions of R.C. 2301.15, requires that the bailiff and deputy bailiffs of the municipal court conduct prisoners from the jail to the municipal court. The use of the word "shall" in R.C. 1901.32(A)(6) indicates the mandatory nature of the duties of municipal court bailiffs and deputy bailiffs. See, e.g., State ex rel. City of Niles v. Bernard, 53 Ohio St. 2d 31, 34, 372 N.E.2d 339, 341 (1978) ("shall" generally held to be mandatory). Furthermore, the statute does not provide that the bailiffs may perform those duties if the court orders them to do so; rather, it provides that the bailiffs and deputy bailiffs "shall perform for the [municipal] court services similar to those performed by the sheriff for the court of common pleas, and shall perform any other duties that are requested by rule of court." (Emphasis added.) Accordingly, I conclude that the bailiffs and deputy bailiffs of the municipal court have a mandatory duty to transport

prisoners from the jail to the municipal court before the prisoners have been convicted and sentenced.<sup>1</sup>

Although the duty to transport prisoners to the municipal court is mandatory upon the bailiffs and deputy bailiffs of the municipal court, these same duties may be required of municipal police officers or township police constables as ex officio deputy bailiffs under certain circumstances. R.C. 1901.32(A)(5) provides:

Every police officer of any municipal corporation and police constable of a township within the territory of the court is ex officio a deputy bailiff of the court in and for the municipal corporation or township within which he is commissioned as a police officer or police constable, and shall perform any duties in respect to cases within his jurisdiction that are required of him by a judge of the court, or by the clerk or a bailiff or deputy bailiff of the court, without additional compensation.

Thus, pursuant to R.C. 1901.32(A)(5), a municipal police officer or township police constable may be required in certain cases to transport prisoners to the municipal court by the judge, clerk, bailiff, or deputy bailiff of the municipal court within the officer's or constable's jurisdiction.

Accordingly, it is my opinion and you are advised:

1. A county sheriff has no duty to transport prisoners from the jail to the municipal court before the prisoners have been convicted and sentenced. (1978 Op. Att'y Gen. No. 78-019 (syllabus, paragraph two), approved and followed.)
2. Pursuant to R.C. 1901.32(A)(6), bailiffs and deputy bailiffs of a municipal court have a mandatory duty to transport prisoners from the jail to the municipal court before the prisoners have been convicted and sentenced. (1962 Op. Att'y Gen. No. 3420, p. 925, approved and followed.)
3. Pursuant to R.C. 1901.32(A)(5), police officers and constables of municipalities and townships located within the territory of a municipal court are ex officio deputy bailiffs of that court. R.C. 1901.32(A)(5) gives municipal court judges, clerks, bailiffs, and deputy bailiffs the authority to require ex officio deputy bailiffs to transport, without additional compensation, prisoners from the jail to the municipal court before the prisoners have been convicted and sentenced.

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<sup>1</sup> I note, however, that, pursuant to R.C. 2949.08, the county sheriff has the duty to transport prisoners from the municipal court to the jail after they have been convicted of a misdemeanor and sentenced.