

May 17, 2010

The Honorable C. David Warren
Athens County Prosecuting Attorney
Athens County Court House
First Floor
Athens, Ohio 45701

SYLLABUS:

2010-013

1. A county sheriff may not move his office to a location outside the county seat of justice.
2. A county sheriff may not maintain his primary office in the county seat of justice and an operations center outside the county seat of justice.



RICHARD CORDRAY
OHIO ATTORNEY GENERAL

May 17, 2010

OPINION NO. 2010-013

The Honorable C. David Warren
Athens County Prosecuting Attorney
Athens County Court House
First Floor
Athens, Ohio 45701

Dear Prosecutor Warren:

You have requested an opinion concerning the authority of a county sheriff to have an office outside the county seat of justice. Specifically, you ask:

1. May a county sheriff move his office to a location outside the county seat of justice?
2. May a county sheriff maintain his primary office in the county seat of justice and an operations center outside the county seat of justice?

It is a fundamental legal principle that a county sheriff, as a creature of statute, has only those powers expressly provided by statute or as may exist by necessary implication. *United States v. Laub Baking Co.*, 283 F. Supp. 217, 220 (N.D. Ohio 1968); 2007 Op. Att’y Gen. No. 2007-029 at 2-304. In accordance with this principle, absent express or implied authority, a county sheriff may not (1) move his office to a location outside the county seat of justice or (2) maintain an office in the county seat of justice and an operations center outside the county seat of justice.

R.C. 311.06 states that “[t]he sheriff’s office *shall* be maintained at the seat of justice, in such rooms as the board of county commissioners provides for that purpose.” (Emphasis added.) The use of the word “shall” in R.C. 311.06 “connotes the imposition of a mandatory obligation unless other language is included that evidences a clear and unequivocal intent to the contrary.” *State v. Golphin*, 81 Ohio St. 3d 543, 545-46, 692 N.E.2d 608 (1998).

Nothing in R.C. 311.06 or elsewhere in the Revised Code authorizes a county sheriff to maintain his office outside the county seat of justice. Absent such authority, a county sheriff may not move his office to a location outside the county seat of justice.¹ *Cf. Kick v. Dailey*, 1995 Ohio App. LEXIS 4650, at *8 (Holmes County Oct. 17, 1995) (upon the request of a licensee, an adjudicatory hearing under former R.C. 3717.61-.69 must be held in the county seat of the county in which the licensee conducts business since R.C. 3717.67(D)(1) states the hearing “shall” be held there).

Your second question asks whether a county sheriff may maintain his primary office in the county seat of justice and an operations center outside the county seat of justice.² Pursuant to R.C. 311.06, a county sheriff is required to maintain his primary office in the county seat of justice. No statute, however, expressly authorizes a county sheriff to maintain an operations center outside the county seat of justice. Hence, unless there is implied authority to do so, a county sheriff may not maintain an operations center outside the county seat of justice.

R.C. 307.01(A) requires a board of county commissioners to provide offices for county officers. Unless restricted by statute, a board of county commissioners may exercise its discretion when providing office space to county officers. 1974 Op. Att’y Gen. No. 74-032 at 2-142 and 2-143; 1968 Op. Att’y Gen. No. 68-099 at 2-141 and 2-142; 1965 Op. Att’y Gen. No. 65-91.

With respect to the county sheriff’s office, R.C. 311.06 requires a board of county commissioners to provide “rooms” at the county seat of justice for the county sheriff’s office. For purposes of R.C. 311.06, the word “rooms” is accorded its common, everyday meaning. *See* R.C. 1.42. According to *Merriam-Webster’s Collegiate Dictionary* 1082 (11th ed. 2005), a “room” is “an extent of space occupied by or sufficient or available for something.” Thus, pursuant to R.C. 311.06, a board of county commissioners is required to provide space for the county sheriff’s office and any such space provided must be at the county seat of justice.

R.C. 311.06 does not set forth any exceptions to its mandatory obligations. When the General Assembly intends to provide an exception to the requirement that a county officer maintain his office at the county seat of justice, the General Assembly has used plain and unequivocal language to express that intention. *See* R.C. 315.11(A) (“[t]he county engineer shall

¹ A county sheriff may have the authority to temporarily move his office to a location outside the county seat of justice when an emergency occurs. *See* R.C. 5502.24(B) (“[t]he governing body of each political subdivision of this state may establish and designate, by ordinance, resolution, or other manner, alternate or substitute sites or places as the emergency location, or locations, of government and may make any necessary arrangements for the use of those sites or places”).

² For the purpose of this opinion, it is assumed that the term “operations center” does not mean a countywide public safety communications system operated under R.C. 307.63.

keep the engineer's office in the county seat, or at another location as provided in division (B) of this section, in such rooms as are provided by the board of county commissioners").³ Accordingly, insofar as the General Assembly has not set forth any exceptions to R.C. 311.06's mandatory obligations, all space provided by a board of county commissioners for a county sheriff's office must be at the county seat of justice. *See* 1965 Op. Att'y Gen. No. 65-91 (except as provided in R.C. 323.61, the language of R.C. 319.03, which requires the office of the county auditor to be at the county seat of justice, and R.C. 321.05, which requires the office of the county treasurer to be at the county seat of justice, prohibits a board of county commissioners from establishing branch offices for the county auditor and county treasurer outside the county seat of justice). *See generally Scheu v. State*, 83 Ohio St. 146, 157-58, 93 N.E. 969 (1910) ("an exception to the provisions of a statute not suggested by any of its terms should not be introduced by construction from considerations of mere convenience").

This means that a county sheriff does not have either express or implied authority to maintain an operations center outside the county seat of justice. Consequently, a county sheriff may not maintain his primary office in the county seat of justice and an operations center outside the county seat of justice.

In conclusion, it is my opinion, and you are hereby advised as follows:

1. A county sheriff may not move his office to a location outside the county seat of justice.
2. A county sheriff may not maintain his primary office in the county seat of justice and an operations center outside the county seat of justice.

Respectfully,



RICHARD CORDRAY
Ohio Attorney General

³ R.C. 315.11(B) states:

With the consent of the county engineer, the board of county commissioners may provide by resolution for establishment of the primary office of the county engineer at a location outside the county seat. The adoption of the resolution and the location of the engineer's primary office shall be entered on the journal of the board. The board shall give reasonable public notice of its action taken pursuant to this division in accordance with [R.C. 121.22(F)].