OPINION NO. 88-060

Syllabus:

1. A sheriff has a duty to detain in the county jail a prisoner charged with commission of a misdemeanor under state law, for the period between his arrest and his initial appearance before a court, magistrate or clerk of courts as required by R.C. 2935.05 or R.C. 2935.13, or until he is otherwise released prior to such initial appearance.

2. A sheriff has no duty to detain in the county jail a prisoner charged with commission of a misdemeanor under a municipal ordinance, unless the county jail is being used by the municipal corporation for the purpose of a workhouse or other jail of the municipal corporation pursuant to R.C. 1905.35.

3. A sheriff has a duty to detain in the county jail a prisoner committed to it for failure to post bond under R.C. 2937.32 during the period between his commitment and trial on a state misdemeanor charge.

To: Robert P. DeSanto, Ashland County Prosecuting Attorney, Ashland, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 9, 1988

I have before me your request for my opinion concerning the county sheriff's duty to detain in the county jail alleged misdemeanants arrested by municipal police officers or Ohio highway patrolmen. Pursuant to a conversation with a member of your staff, I have restated your specific questions as follows:

1. Must a county sheriff detain in the county jail a prisoner arrested by a municipal police officer or an Ohio highway patrolman, for the period between arrest for committing a misdemeanor and initial appearance before a court, magistrate or clerk of courts as required by R.C. 2935.05 or R.C. 2935.13, or until he is otherwise released prior to such initial appearance?

2. Must a county sheriff detain in the county jail an alleged misdemeanant arrested by a municipal police officer or an Ohio highway patrolman for the period between commitment for lack of sufficient bail and conclusion of trial?

A person accused of committing a misdemeanor is subject to arrest and detention. *See, e.g.,* R.C. 2935.03(A), R.C. 5503.01. Detention of a person charged with a misdemeanor may include confinement in jail. *See generally* R.C. 2921.01(E) (for purposes of R.C. Chapter 2921 the term "detention" includes confinement of a person charged with a crime). Detention allows time to obtain a warrant, or summons in lieu of a warrant, and to secure a subsequent appearance before the court to answer the charge. R.C. 2935.03; R.C. 2935.05; R.C. 2935.10; Crim. R. 4. Pretrial detention is terminated upon the posting of sufficient bail, if a warrant is issued, or upon issuance of a summons. Crim. R. 4; Crim. R. 46.

R.C. 2937.32 controls when there is a failure to post bond. That section provides: "If an offense is not bailable or sufficient bail is not offered, the accused shall be committed to the jail of the county in which he is to be tried or, in the case of offense against a municipality, in the jail of said municipality if such there be." Thus, the commitment to the county jail would control the duty of the sheriff to detain a prisoner awaiting trial. In cases where violation of a municipal ordinance constitutes a misdemeanor, commitment will be in the municipal jail. Where the misdemeanor violation is of a state statute, commitment will be to the county jail and the sheriff has a duty to detain the prisoner.

R.C. 1905.35 makes it clear that a sheriff has no duty to detain a prisoner during the time between arrest and the fixing of bail if the alleged misdemeanor violation is of a municipal ordinance. That section provides:

> Imprisonment under the ordinances of a municipal corporation shall be in the workhouse or other jail of the municipal corporation. Any municipal corporation not provided with a workhouse, or other jail, may, for the purpose of imprisonment, use the county jail, at the expense of the municipal corporation, until the municipal corporation is provided with a prison, house of correction, or workhouse. Persons so imprisoned in the county jail are under the charge of the sheriff. Such sheriff shall receive and hold such persons in the manner prescribed by the ordinances of the municipal corporation, until such persons are legally discharged.[1]

Although R.C. 1905.35 uses the term "imprisonment" rather than detention, I note that at least one court has held that pretrial detention consisting of actual confinement is equivalent to imprisonment. *See generally White* v. *Gilligan*, 351 F. Supp. 1012 (S.D. Ohio, 1972) (pretrial detention is imprisonment for purposes of credit toward sentence served, good time and eligibility for parole). I therefore conclude that the term "imprisonment," as used in R.C. 1905.35, includes pretrial detention, and thus find that a sheriff has no duty to detain in the county jail a prisoner charged with a violation of a misdemeanor under a municipal ordinance, unless the county jail is being used by the municipal corporation for the purpose of a workhouse or other jail of the municipal corporation under R.C. 1905.35.

Classification of prisoners as either municipal prisoners or county prisoners has long been recognized by prior opinions of the Attorney General. One of my predecessors explained the classification as being based on the nature of the charges brought:

> It is quite clear that under the statutes of Ohio, the counties, on behalf of the state and the municipalities, have certain responsibilities for board and maintenance of prisoners. From an examination of the many statutes touching on this subject matter, I also believe that it is quite clear that, except to the extent specifically directed by statute, a municipality has such responsibility only for "municipal prisoners." I do not find, however, any statutes or decisions of Ohio courts, or previous opinions of this office, defining precisely what is meant by "municipal prisoners." ...

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[1] With the promulgation of the "minimum standards for jails in Ohio" by the Department of Rehabilitation and Corrections as Ohio Administrative Code 5120:1-7 through 5120:1-12, a municipal corporation's jail facility may only qualify as an 8-hour facility. If an alleged misdemeanant was arrested on a weekend for violation of a municipal ordinance and no magistrate or judge was available and continued detention was required the prisoner would have to be moved to a five day or full service jail. The transfer would be to the county jail under the terms of R.C. 1905.35 since the municipal corporation would be "not provided with a workhouse, or other jail" and, thus "may for the purpose of imprisonment, use the county jail...."

> It is my opinion that the distinction is based solely on whether the violation is that of a municipal ordinance. The fact that the convicting court is designated as a mayor's court or a municipal court, supported at least in part by the municipal corporation, appears to be of no consequence in the consideration of this question. My opinion in this regard is in accord with what I understand has been the long accepted practice in Ohio and is fully supported by the reported authorities outside of Ohio. (Citation omitted.)

1952 Op. Att'y Gen. No. 1138, p. 121, 123. *See also* 1979 Op. Att'y Gen. No. 79-008, p. 2-22 ("responsibility for the housing of a prisoner depends upon the basis of the offense with which he has been charged or convicted"); 1978 Op. Att'y Gen. No. 78-019; 1976 Op. Att'y Gen. No. 76-012; 1956 Op. Att'y Gen. No. 6768, p. 483; 1955 Op. Att'y Gen. No. 5561, p. 317 (where a prisoner is arrested by a city police officer, and held in the county jail to await the filing of formal charges, the responsibility to feed the prisoner rests with the county if the prisoner is charged with a state offense, but rests with the municipality if the prisoner is charged with a municipal offense). The formulation of this "charging test" was expressly expanded to include those charged but not convicted:

> [A] municipal prisoner is one who has been *charged with* or sentenced for *violation of a municipal ordinance* and responsibility for the sustenance and care of such a prisoner rests with the municipality; and a county prisoner is one *charged with* or sentenced by the county for *violation of a state statute* and responsibility for the sustenance and care of such prisoner rests with the county. (Emphasis added.)

Op. No. 76-012, p. 2-36. Op. No. 76-012 was expressly followed in Op. No. 79-008, in which my predecessor concluded in the syllabus that "The county is charged with the duty to house a prisoner charged with a misdemeanor under state law, both prior to and after conviction." In reviewing the Revised Code and the opinions of my predecessors I see nothing to indicate that the duty of the county sheriff to hold a person being detained after arrest turns upon whether the arrest was made by a municipal police officer, highway patrolman, or deputy sheriff. To the contrary, the status of the arresting officer is irrelevant to this determination.

In your letter of request you have asked that I reconsider the numerous prior opinions following the "charging test." You indicate that two court decisions may have cast doubt upon the conclusion reached by my predecessors. The first of these cases, *University Hospitals v. City of Cleveland*, 28 Ohio Misc. 134, 276 N.E.2d 273 (C.P. Cuyahoga County 1971) was thoroughly discussed in Op. No. 76-012. In that opinion, my predecessor pointed out that the court had, in *dicta*, made the following pronouncement:

> [I]t is nevertheless obvious, that if a person is arrested by a municipal officer, and not released under bond, such person is a prisoner of the municipality and thus that municipality is responsible for his medical needs, including hospitalization. Similarly, all persons arrested by a county official, and not released under bond, are the responsibility of the sheriff and he must pay for their hospitalization.

Op. No. 76-012, p. 2-36. As my predecessor pointed out, the decision in *University Hospitals* is distinguishable in that it deals with the responsibility to pay medical expenses of an individual who was not even under arrest. The person treated at the hospital was found wounded on the street by municipal police officers who transported him to the hospital. He remained at the hospital for twenty-one days, but was never formally charged with a crime. After twenty-one days he was taken to a different hospital, but only after he was taken into custody by a county sheriff. I agree with my predecessor that the decision in *University Hospitals* does not change the long-standing rule that the status of a prisoner is to be determined by the charge that is made against him rather than the employer of the arresting officer.

The second case to which you refer, *Cuyahoga County Hospital v. City of Cleveland*, 15 Ohio App. 3d 70, 472 N.E.2d 757 (Cuyahoga County 1984), is likewise distinguishable as it also deals only with the responsibility for medical treatment. In

that case the court concluded that responsibility to pay for medical treatment rests with the entity exerting actual, physical dominion and control over the prisoner prior to detention in a municipal or county jail. The court did not address the issue of when the county sheriff has a duty to detain in the county jail a person arrested by a police officer who is to be charged with committing a state misdemeanor. Thus, I do not find that the case provides sufficient basis to jettison the "charging test" which has long been followed by my predecessors, and is well entrenched in Ohio law.

Therefore, it is my opinion, and you are so advised, that:

1. A sheriff has a duty to detain in the county jail a prisoner charged with commission of a misdemeanor under state law, for the period between his arrest and his initial appearance before a court, magistrate or clerk of courts as required by R.C. 2935.05 or R.C. 2935.13, or until he is otherwise released prior to such initial appearance.

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