June 2, 2023

The Honorable Shane A. Tieman
Scioto County Prosecuting Attorney
612 6th Street, Suite E
Portsmouth, OH 45662

SYLLABUS: 2023-007

1. Subject to approval by the court of common pleas, the county sheriff is authorized to promulgate rules and policies to deny an arrestee, whether arrested on-sight or on a warrant by an outside law-enforcement officer, admission to the county jail when the jail physician determines that off-site treatment is required as a matter of medical necessity.

2. The medical costs of an arrestee denied admission to the county jail are borne by the custodial law-enforcement agency.

3. If an arrestee is denied admission to the county jail based on medical necessity, custody remains with the outside law-enforcement officer and that officer is responsible for transporting and guarding the arrestee at the off-site medical facility.

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OPINION NO. 2023-007

The Honorable Shane A. Tieman
Scioto County Prosecuting Attorney
612 6th Street, Suite E
Portsmouth, OH 45662

Dear Prosecutor Tieman:

You have requested an opinion regarding R.C. 341.192(B) and medical policies and procedures of the county jail. I have framed your questions as follows:

1. Based on promulgated rules and policies or otherwise, is the county sheriff permitted to deny an arrestee, whether arrested on-sight or on a warrant by an outside law-enforcement officer, admission to the county jail when the jail physician determines that off-site treatment is required as a matter of medical necessity?

2. Which governmental entity is required to pay for the medical care of an arrestee who has been denied admission to the county jail?

3. Once an arrestee has been denied admission to the county jail because of the need to obtain necessary off-site medical treatment,

> is it the responsibility of the arresting outside law-enforcement officer or the county sheriff to transport the arrestee to the off-site medical facility and to maintain staff for guard duty?

I

To answer your questions, I must first determine the meaning of R.C. 341.192(B). It reads:

> (B) If a physician employed by or under contract to a county, municipal corporation, township, the department of youth services, or the department of rehabilitation and correction to provide medical services to persons confined in a jail or state correctional institution determines that a person who is confined in the jail or state correctional institution or who is in the custody of a law enforcement officer prior to the person's confinement in a jail or state correctional institution requires necessary care that the physician cannot provide, the necessary care shall be provided by a medical provider. The county, municipal corporation, township, the department of youth services, or the department of rehabilitation and correction shall pay a medical provider for necessary care an amount not exceeding the authorized reimbursement rate for the same service established by the department of medicaid under the medicaid program.

"In any case concerning the meaning of a statute," the "focus is the text." *State v. Bortree*, — Ohio St. 3d —, 2022-Ohio-3890, ¶10. Thus, the "inquiry begins with the statutory text, and ends there as well if the text is unambiguous." *Id.* (quotation marks and brackets omitted). A faithful interpretation of statutory text "must accord significance and effect to every word, phrase, sentence, and part of the statute … and abstain from inserting words where words were not placed by the General Assembly." *State ex rel. Carna v. Teays Valley Local School Dist. Bd. of Edn.,* 131 Ohio St.3d 478, 2012-Ohio-1484, 967 N.E.2d 193, ¶18; *A.S. v. J.W.*, 157 Ohio St.3d 47, 2019-Ohio-2473, 131 N.E.3d 44, ¶¶14-15.

The plain language of R.C. 341.192(B) confers certain authority on "physician[s] employed … to provide medical services to persons confined in a jail or state correctional institution." Specifically, it empowers these physicians to order treatment performed by an outside medical provider if they determine that an individual "requires necessary care that the physician cannot provide." *Id.*; R.C. 341.192(A)(2) (a "medical provider" is a physician or entity "that is not employed by or under contract to" the entity operating the jail or state correctional institution).

The physicians may exercise this power over inmates and arrestees alike. This follows from the fact that the statute allows treatment decisions to be made for those who are "confined in [a] jail or state correctional institution *or* who [are] in the custody of a law enforcement officer prior to the person's confinement in a jail or state correctional institution." (Emphasis added.) R.C.

341.192(B); *see also* Ohio Adm.Code 5120:1-8-09. "The legislature's use of the word 'or,' a disjunctive term, signifies the presence of alternatives." *State ex rel. McDonald v. Indus. Comm.*, 2021-Ohio-4494, 182 N.E.3d 482, ¶17 (10th Dist.), quoting *In re Estate of Centorbi,* 129 Ohio St.3d 78, 2011-Ohio-2267, 950 N.E.2d 505, ¶18; *see also Penn v. A-Best Prods. Co.*, 10th Dist. Franklin No. 07AP-404, 2007-Ohio-7145, ¶9. Just so here. The statute governs the medical care of those who are confined in a jail or correctional institution (inmates), along with those who are in custody of outside law-enforcement officers (arrestees) before being so confined.

It is implicit in the design of R.C. 341.192(B) that the medical examination precedes, and does not constitute, a transfer of custody. (By "custody," I mean "[t]he care and control of a … person for inspection, preservation, or security," including "[c]ustody of a person (such as an arrestee) whose freedom is directly controlled and limited." *Black's Law Dictionary*, 441 and 1263 (9th Ed.2009); *see also* 2004 Op. Att'y Gen. No. 2004-024, at 2-209. After all, if arrestees were considered to be admitted to the jail (thereby becoming inmates) when the medical evaluation in R.C. 341.192(B) took place, there would be no reason for the statute to make this distinction between arrestees and inmates—everyone examined before being admitted to jail or prison would already be an inmate. *State ex rel. Myers v. Spencer Twp. Rural School. Dist. Bd. of Ed.,* 95 Ohio St. 367, 373, 116 N.E. 516 (1917) (we "should avoid that construction which renders a provision meaningless or inoperative"); R.C. 1.47(B). Thus, the statute is best read to mean that an arrestee becomes an inmate *only* when

he is booked, accepted into custody, and a record made of his confinement. R.C. 341.02(A)-(B) and 311.17(B)(3)(a); 1987 Op. Att'y Gen. No. 87-062, at 2-377, 2-379, and 2-381; 2004 Op. Att'y Gen. No. 2004-024, at 2-208, fn. 6 and 2-210; *see* Ohio Adm.Code 5120:1-8-01.

For what it is worth, regulations issued by the Ohio Department of Rehabilitation and Correction (ODRC) reflect the fact that a pre-admission medical exam does not transfer custody. By way of background, Ohio law requires the ODRC to promulgate "minimum jail standards." R.C. 5120.10(A); Ohio Adm.Code 5120:1-8-01 to 5120:1-12-18. And Ohio law tasks county sheriffs with preparing policies and procedures for the county jail in accordance with the standards. R.C. 341.02; 1995 Op. Att'y Gen. No. 95-028, at 2-141 to 2-142; R.C. 5120.10(B) (the ODRC director is authorized to bring action to enjoin compliance with the minimum jail standards); R.C. 5120.10(D)(1); Ohio Adm.Code 5120:1-7-01(A)-(D). Those standards require that an arrestee undergo an "inmate pre-screen," in which the person is evaluated "[b]efore acceptance into jail" for certain health and status conditions (sickness, drug use, mental health issues, injury) that impact acceptance or denial of admission into the jail. Ohio Adm. Code 5120:1-8-09(B). This is separate from the "receiving screen," which occurs for "each inmate upon arrival at the jail and prior to being placed in general population." Ohio Adm.Code 5120:1-8-09(C); *see also* Ohio Adm.Code 5120:1-7-02(B)(43) (defining "reception" as "[t]he period during which an inmate undergoes admission processing"). The existence of the two screens,

one preceding admission, bolsters my conclusion that a pre-admission screen does not transfer custody.

*

Before moving to your questions, a few notes. First, for clarity of analysis and ease of understanding, I have combined and addressed some questions together. Second, the answers to some of your questions could be somewhat different depending on whether the county sheriff has an agreement with other political subdivisions to provide services, and depending on the various policies and protocols implemented by the county sheriff, jail staff, and law-enforcement agencies. *E.g.,* R.C. 311.29(D) and 341.02; Ohio Adm.Code 5120:1-8-09(A)(1) *see also* 2013 Op. Att'y Gen. No. 2013-016, at 2-155 ("the Attorney General is not authorized to interpret the terms of a particular contract or agreement"). Finally, because I cannot address questions of fact about whether a particular situation constitutes a lawful arrest or detention, I will presume that the arrestee has been lawfully arrested and detained. 2014 Op. Att'y Gen. No. 2014-007, Slip Op. at 15; 2-66; *see also* 2004 Op. Att'y Gen. No. 2004-024, at 2-211 (a person shall not be confined unless it is authorized by law).

With this understanding of R.C. 341.192(B) and the limitations on the scope of my opinion-rendering function, I turn to the questions that you have posed.

II

Your first question asks whether, based on promulgated rules and policies or otherwise, the county sheriff

is permitted to deny an arrestee, whether arrested on-sight or on a warrant by an outside law-enforcement officer, admission to the county jail if the jail physician determines that off-site necessary medical treatment is required. I answer in the affirmative.

As a creature of statute, the county sheriff has "only those powers provided expressly by statute or necessarily implied therein." 2017 Op. Att'y Gen. No. 2017-018, Slip Op. at 11; 2-195, citing 2010 Op. Att'y Gen. No. 2010-013, at 2-91; *see also* R.C. 311.04, *et seq*. Pursuant to R.C. 341.01, the county sheriff "shall have charge of the county jail and all persons confined therein…[and] shall keep such persons safely, attend to the jail, and govern and regulate the jail according to the minimum standards for jails in Ohio promulgated by the [ODRC]." *See also* R.C. 341.04, 341.05, 341.20, and 307.021; 1985 Op. Att'y Gen. No. 85-008, at 2-32.

R.C. 341.01 is considered a "codification of the common law duty of a sheriff to employ ordinary care in keeping the prisoners confided to his custody and in protecting them." *Jenkins v. Kreiger,* 67 Ohio St.2d 314, 319, 423 N.E.2d 856 (1981); *Justice v. Rose,* 102 Ohio App. 482, 144 N.E.2d 303 (4th Dist.1957). The county sheriff's duty of care to inmates extends to the sheriff's deputies because the county sheriff is "responsible for the neglect of duty or misconduct in office of each of his deputies." R.C. 311.05; 1982 Op. Att'y Gen. No. 82-007, at paragraph one of the syllabus, and 2-22; *see also Hernandez v. Ohio Dept. of Rehab. and Corr.,* 62 Ohio Misc.2d 249, 261, 598 N.E.2d 211 (Ct. of Cl. 1990).

This duty of care includes maintaining a safe, healthy jail environment and providing adequate medical treatment for all inmates in the jail. Ohio Adm.Code 5120:1-8-09; Ohio Adm.Code 5120:1-8-05; 1995 Op. Att'y Gen. No. 95-028, at 2-142. It is considered dereliction of duty if an "officer, having charge of a detention facility" negligently fails to do this. R.C. 2921.44(C)(1)-(2); *accord Waites v. Gansheimer,* 110 Ohio St.3d 250, 2006-Ohio-4358, 852 N.E.2d 1204, ¶6, citing *Estelle v. Gamble* (1976), 429 U.S. 97, 104-105, 97 S.Ct. 285, 50 L.Ed.2d 251; *see also State v. Goins*, 2d Dist. Montgomery No. 21077, 2006-Ohio-989, ¶13; *see also* 1982 Op. Att'y Gen. No. 82-007, at 2-22, citing 1981 Op. Att'y Gen. No. 81-060 ("exactly what action by the sheriff would violate this duty of ordinary care is a question which can only be decided by a court, on a case by case basis").

R.C. 341.01 is silent on the methods by which the county sheriff is to keep inmates safe and healthy at the jail or to govern the jail according to the minimum jail standards, so "it necessarily follows that the officer who is required to perform this duty has implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method of doing the thing commanded." *State ex rel. Hunt v. Hildebrant*, 93 Ohio St.1, 11-12, 112 N.E. 138 (1915). Accordingly, the county sheriff or jail administrator "shall prepare written operational policies and procedures and prisoner rules of conduct, and maintain the records prescribed by these policies and procedures in accordance with the minimum standards for jails in Ohio promulgated by the [ODRC]." R.C. 341.02; *State ex rel. Wellington v. Kobly,* 112 Ohio St.3d 195, 2006-Ohio-

6571, 858 N.E.2d 798, ¶22-24; *see also* Ohio Adm.Code 5120:1-7-03; Ohio Adm.Code 5120:1-8. These operational policies and procedures are reviewed by the court of common pleas and, if approved, they are adopted. R.C. 341.02. Additionally, the health authority of the jail—a physician, health administrator, or agency with "final clinical judgment rest[ing] with a single, designated, responsible, local physician licensed in Ohio"—is authorized by the minimum jail standards to prepare policies and procedures relating to medical and mental health services at the jail, as well as policies governing the acceptance or denial of admission to the jail during an inmate pre-screen. Ohio Adm.Code 5120:1-8-09(A)(1); Ohio Adm.Code 5120:1-8-09(B).

Therefore, I conclude that the county sheriff has the authority, subject to approval by the court of common pleas, to make policies denying admission of arrestees based on medical necessity. *See, e.g., State v. Malcolm,* 5th Dist. Licking No. 2021 CA 101, 2022-Ohio-2785, ¶5 (jail refusing to book a probationer on a warrant due to health risks associated with COVID-19 pandemic); *see also* Supreme Court of Ohio, *Guidance to Local Courts: COVID-19 Public Health Emergency*, (Mar. 20, 2020) https://perma.cc/B3KE-GDB7; Ohio Department of Health Director's Order, *In Re: Order to Limit Access to Ohio's Jails and Detention Facilities* (Mar. 15, 2020), rescinded, https://perma.cc/F6BY-ZL68 .

I cannot, however, answer whether a particular policy or procedure may be adopted or evaluate whether any currently in effect are appropriate, as "[t]he Attorney General has no authority to exercise

discretion bestowed upon another government official." 1998 Op. Att'y Gen. No. 98-023, at 2-125; 1990 Op. Att'y Gen. No. 90-032; *see also* 2014 Op. Att'y Gen. No. 2014-007, Slip Op. at 15; 2-66 ("An opinion of the Attorney General cannot resolve questions of fact"). These specifics are better addressed either by the ODRC, which promulgates the minimum jail standards, or by the court of common pleas, which approves the policies created by the county sheriff or jail administrator.

Finally, I note that R.C. 341.192(B) provides an additional statutory basis for the county sheriff to deny admission of an arrestee to the jail. If the jail physician employed by or under contract to the county determines that an arrestee in the custody of an outside law-enforcement officer prior to confinement in the jail "requires necessary care that the physician cannot provide, the necessary care *shall* be provided by a medical provider." (Emphasis added.) R.C. 341.192(B); *see also* Ohio Adm.Code 5120:1-8-09(B)(2).

III

Your second question asks which governmental entity is required to pay for medical care of an arrestee who has been denied admission to the jail. Your letter suggests that when the jail physician determines an arrestee requires treatment, the county jail is financially responsible for this treatment. I disagree, and explain why in what follows.

A

With limited statutory exceptions, "[l]iability for the cost of medical treatment arises with the arrest of a person" and remains until custody is transferred. 1989 Op. Att'y Gen. No. 89-017, at paragraph one of the syllabus; 1991 Op. Att'y Gen. No. 91-047, at 2-249; 1980 Op. Att'y Gen. No. 80-084, at paragraphs one and two of the syllabus; *see also* 1960 Op. Att'y Gen. No. 1642, p. 563, at 565; 1948 Op. Att'y Gen. No. 3131, p. 221, at 228; *but see* R.C. 1905.35, 341.21(A), 341.21(B), and 5120.161(B). Courts have accordingly held that "[t]he responsibility for the care and sustenance of a prisoner falls upon the one who exerts actual, physical dominion and control over the prisoner; the care the prisoner receives is not incident to the crime, but to the custody." *Cuyahoga Cty. Hosp. v. Cleveland,* 15 Ohio App.3d 70, 472 N.E.2d 757 (8th Dist.1984), at paragraph one of the syllabus.

As discussed above, if an arrestee is denied admission to the jail based on the medical evaluation of the jail physician, custody remains with the outside law-enforcement officer. R.C. 341.192(B); *see also* Ohio Adm. Code 5120:1-8-09(B); 1982 Op. Att'y Gen. No. 82-007, at 2-22 (sheriff has no duty of care to those not in his custody). It follows that "the obligation to pay the cost of medical treatment of a prisoner who has been arrested is that of the law enforcement agency in physical custody of the prisoner." 1989 Op. Att'y Gen. No. 89-017, 2-81, citing *University Hospitals of Cleveland v. Cleveland*, 28 Ohio Misc. 134, 276 N.E.2d 273, 277 (C.P.1971) (despite statutory amendments, remains valid); *see also City of Toledo v. Corr. Comm. of*

Northwest Ohio, 2017-Ohio-9149, 103 N.E.3d 209, ¶27 (6th Dist.) (reading R.C. 753.02(A) to require a municipal corporation to pay for all individuals in any Ohio prison is implausible). As the county sheriff can expend his public funds only for individuals in his custody, paying for medical care of a noncustodial arrestee would likely violate his fiduciary duties. R.C. 325.07 and 311.20; *State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918), at paragraph one of the syllabus (public money "constitute[s] a public trust fund…[which] can only be disbursed by clear authority of the law").

B

When the county sheriff is responsible for the medical costs of the inmates in the county jail, R.C. 341.192(B) limits the amount he can pay. As a reminder, here is the relevant clause:

> The county, municipal corporation, township, the department of youth services, or the department of rehabilitation and correction shall pay a medical provider for necessary care an amount not exceeding the authorized reimbursement rate for the same service established by the department of medicaid under the medicaid program.

Text does not get much clearer than that: the amount that the county sheriff pays, assuming the county sheriff is responsible to pay at all, must "not exceed[] the authorized reimbursement rate" under Medicaid. R.C. 341.192(B); *Mercy Med. Ctr. v. Corr. Health Care*

Group, C.P. No. 2019-CV-02517, 2021 Ohio Misc. LEXIS 4076, at *7 (Feb. 22, 2021).

IV

Your final question asks whether the arresting outside law-enforcement officer or county sheriff has the responsibilities to transport an arrestee who is denied admission to the jail based on medical necessity to an off-site medical facility and to provide staff for guard duty.

My answer to this question is necessarily limited by statute, as the Attorney General is authorized only to advise county prosecutors on matters related to the prosecutor's official duties. R.C. 109.14. Since the county prosecutor is statutorily permitted to provide legal advice to the county sheriff, I can opine only on whether the responsibilities in question are the duty of the county sheriff. R.C. 309.09(A); 1993 Op. Att'y Gen. No. 1993-003, at 2-21, fn. 1. I am not able to determine the responsibilities of other law-enforcement agencies that receive legal advice from other officials beyond what is set out in the Revised Code or in established case law. *Id.*; *e.g.,* R.C. 3313.35, 733.51, and 705.11.

A

The Revised Code does not expressly confer upon the county sheriff or any law-enforcement officer a duty to transport or guard an arrestee, so "an examination of the provisions of law providing for the custody of individuals arrested by peace officers is required in order to determine whether the General Assembly intended

to delegate [these duties] to county sheriffs." 1993 Op. Att'y Gen. No. 93-003, at 2-21. I note that the Revised Code does set forth express duties for the county sheriff and other law-enforcement officers to serve as bailiffs for, and transport inmates to and from, the court of common pleas and municipal court, respectively. But the question posed here relates neither to inmates nor appearances in court, and so these statutes are inapt. *E.g.,* R.C. 2301.15 and 1901.32(A).

When an arrest is made pursuant to a warrant, the arrestee is to be taken by the arresting law-enforcement officer "without unnecessary delay" to the court that issued the warrant, or to the clerk of courts if the court itself is not in session. Crim.R. 4(E)(1); R.C. 2935.02, and 2935.13; *see also Johnson v. Reddy,* 163 Ohio St. 347, 353, 126 N.E.2d. 911 (1955). When making a warrantless arrest, a law-enforcement officer "shall arrest and detain" the arrestee until a warrant is obtained. R.C. 2935.03(A)(1); Crim.R. 4(E)(2); *see also* R.C. 2935.04. The law-enforcement officer is required to take the arrestee to the court of jurisdiction and file an affidavit, at which point a warrant is issued. R.C. 2935.05, 2935.08, and 2935.16. Until an arrestee is released by that officer, custody is transferred from the arresting law-enforcement officer to another law-enforcement officer, or the arrestee is admitted into a detention facility, the arrestee remains in custody of the arresting law-enforcement officer. 2004 Op. Att'y Gen. No. 2004-024, at 2-209; 1962 Op. Att'y Gen. No. 3405, p. 905, at 908; R.C. 341.13; *Hicks v. Ohio Dept. of Natural Resources*, 63 Ohio Misc.2d 338, 341, 629 N.E.2d 1108 (Ct. of Cl. 1993); *compare* 1928 Op. Att'y Gen. No. 2246, vol. II, p. 1505, 1508 (question of custody turned

on "whether or not the prisoner had been delivered to the sheriff so as to become either actually or constructively a prisoner in the county jail") *with* 1945 Op. Att'y Gen. No. 361, p. 420, at 425 (the individual was not in custody when the arrest was made without a warrant and no affidavit was sought to obtain a warrant or summons).

Because the Revised Code expressly imposes upon the arresting law-enforcement officer the duties to detain and convey an arrestee, it therefore "must be concluded that the General Assembly did not intend the county sheriff" at the jail to have any duties regarding the custody or transportation of an arrestee in custody of an outside law-enforcement officer. 1993 Op. Att'y Gen. No. 93-003, at 2-24. Simply put, "the county sheriff has no duties with respect to an individual arrested by [an outside law-enforcement officer] until such time as the individual is delivered and registered in the county jail." *Id.*; 1987 Op. Att'y Gen. No. 87-062, at 2-382; 2004 Op. Att'y Gen. No. 2004-024, at 2-209; 1928 Op. Att'y Gen. No. 2246, vol. II, p. 1505, 1508.

B

The transfer of custody is the only mechanism by which the county sheriff assumes responsibility for the arrestee; the arresting law-enforcement officer cannot delegate his duties.

"A public officer may not delegate those duties which require the exercise of discretion unless the power to delegate is expressly granted." 1985 Op. Att'y Gen. No. 85-008, at 2-32; *but see* 1979 Op. Att'y Gen. No. 79-067,

at 2-223 (a ministerial duty may be delegated). A law-enforcement officer is a public official and the performance of a law-enforcement duty "requires the exercise of judgment and discretion in order to safeguard the public and protect the civil rights of the public and prisoners." 2000 Op. Att'y Gen. No. 2000-024, at 2-165; *State v. Huddleston,* 173 Ohio App.3d 17, 2007-Ohio-4455, 877 N.E.2d 354, ¶14 (10th Dist.) citing *Colorado v. Bertine*, 479 U.S. 367, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987); R.C. 2921.01(A); *see also* R.C. 102.01(B); Ohio Ethics Opinion 83-004 at 1. Therefore, with the exception of delegating duties to individuals over whom a law-enforcement officer has "immediate supervision and control," law-enforcement duties cannot be delegated. 1992 Op. Att'y Gen. No. 92-024, at 2-85; 1982 Op. Att'y Gen. No. 82-007, at 2-22; R.C. 311.05; *Sage v. City of Akron*, 30 Ohio N.P. (N.S.) 72, 74, 1932 Ohio Misc. LEXIS 1462 (1932) ("Municipal duties may be delegated to subordinates, but not to outsiders"); *see also* 2000 Att'y Gen. 2000-024, at 2-166 (county sheriff cannot delegate transportation duties to a private entity); 1985 Op. Att'y Gen. 85-008, at 2-32 (county sheriff cannot delegate his duty to run a jail to a private entity). And this is also due, in no small part, to the differences in "appointing authorities, statutorily imposed duties, and jurisdictional limitations" among law-enforcement agencies. 1989 Op. Att'y Gen. No. 89-044, at 2-188, fn. 3; *see also* 1996 Op. Att'y Gen. No. 96-017, at 2-67 ("a law enforcement officer owes a duty of loyalty to the law enforcement agency that employs him").

Do transporting an arrestee to, and guarding an arrestee at, a medical facility constitute law-enforcement duties? The answer is "yes."

"[T]he function of transporting prisoners on the public highways among the general public is primarily a law enforcement duty … directly related to preserving the peace, protecting life and property, and enforcing the law." *Cleveland Police Patrolmen's Assn. v. City of Cleveland*, 118 Ohio App.3d 584, 588, 693 N.E.2d 864 (8th Dist.1997); 1989 Op. Att'y Gen. No. 89-071, at paragraph two of the syllabus; *State v. Glenn*, 28 Ohio St.3d 451, 454, 504 N.E.2d 701 (1986); *see also* 2000 Op. Att'y Gen. No. 2000-024, at 2-165 (the duty to transport prisoners is not ministerial). Guarding an arrestee at a medical facility is also directly related to the law-enforcement officer's primary duties: to ensure that the arrestee does not escape, endanger society, injure a medical provider, or even get injured himself. *See, e.g.,* R.C. 2921.34, 341.011, and 2921.44(A)(2); *Schweder v. Baratko,* 103 Ohio App. 399, 404, 143 N.E.2d 486 (8th Dist.1957) (a law-enforcement officer has a duty "to protect society as a whole against acts inherently destructive and dangerous to its peace and security"); 1958 Op. Att'y Gen. No. 3039, p. 676, at 678; R.C. 109.71(A)(1). Because transporting and guarding an arrestee are law-enforcement duties, either assigned to the law-enforcement officer by statute or implicit in the duty of care that attaches upon arrest, these cannot be delegated to the county sheriff absent express statutory authority. *See Clemets v. Heston,* 20 Ohio App.3d 132, 485 N.E.2d 287 (6th Dist.1985), paragraphs four and five of the syllabus.

*

In the situation presented here, if admission of the arrestee to the jail is denied because of the need to obtain necessary medical treatment, custody does *not* transfer to the county sheriff. Instead, the outside law-enforcement officer retains custody and has the duty to transport the arrestee to the medical facility and guard the arrestee while present there, unless custody is lawfully relinquished and the duty of care discharged. *E.g.,* R.C. 2935.10; Crim.R. 4; *see generally,* 1986 Op. Att'y Gen. No. 86-003. And, as stated above, because the county sheriff does not have custody of the arrestee, he cannot expend public funds appropriated for inmates for the arrestee's care. *E.g.,* R.C. 325.07 and 311.20; *State ex rel. Smith* at paragraph one of the syllabus.

Conclusions

Accordingly, it is my opinion, and you are hereby advised that:

1. Subject to approval by the court of common pleas, the county sheriff is authorized to promulgate rules and policies to deny an arrestee, whether arrested on-sight or on a warrant by an outside law-enforcement officer, admission to the county jail when the jail physician determines that off-site treatment is required as a matter of medical necessity.

2. The medical costs of an arrestee denied admission to the county jail are borne by the custodial law-enforcement agency.

3. If an arrestee is denied admission to the county jail based on medical necessity, custody remains with the outside law-enforcement officer and that officer is responsible for transporting and guarding the arrestee at the off-site medical facility.

Respectfully,

DAVE YOST
Ohio Attorney General