

OPINION NO. 94-081**Syllabus:**

1. A county sheriff and a municipal corporation police department have concurrent jurisdiction to initiate and conduct an investigation of a homicide that occurs within the territorial boundaries of the municipal corporation.
2. A county sheriff who initiates and conducts an investigation of a homicide that occurs within the territorial boundaries of a municipal corporation within the county is not required to permit the municipal corporation police department to participate in that investigation.
3. A county sheriff who initiates and conducts an investigation of a homicide that occurs within the territorial boundaries of a municipal corporation within the county may not prohibit the municipal corporation police department from initiating and conducting a separate investigation of that homicide.

To: Paul E. Howell, Mercer County Prosecuting Attorney, Celina, Ohio
By: Lee Fisher, Attorney General, November 29, 1994

You have requested an opinion whether a county sheriff, through his county-wide jurisdictional powers and with the cooperation of the county coroner and county prosecutor, may initiate, sustain, and control the investigation of all homicides in the county to the exclusion of a municipal corporation police department, even where the homicide occurs within the territorial boundaries of the municipal corporation. By way of background, you state:

For purposes of answering this question, please consider that the county coroner would still be in control of the death scene and fully responsible for determining the cause of death as required by the Ohio Revised Code. Also, consider that the county prosecutor would cooperate with the county sheriff in the investigation of the homicide and would be fully responsible for the prosecution of any suspects charged as a result of the investigation.

Authority of a County Sheriff

The county sheriff, as a public officer, may exercise only those powers expressly provided by statute or necessarily implied therefrom. 1989 Op. Att'y Gen. No. 89-074 at 2-339; 1986 Op. Att'y Gen. No. 86-023 at 2-120; *see, e.g., United States v. Laub Baking Co.*, 283 F. Supp. 217, 220 (N.D. Ohio 1968). R.C. 311.07, R.C. 311.08, and R.C. 2935.03 set forth the general law enforcement powers of the county sheriff. R.C. 311.07(A) states, in pertinent part, that "[e]ach sheriff shall preserve the public peace and cause all persons guilty of any breach of the peace, within his knowledge or view, to enter into recognizance with sureties to keep the peace and to appear at the succeeding term of the court of common pleas, and the sheriff shall commit such persons to jail in case they refuse to do so." R.C. 311.08(A) provides in part that "[t]he sheriff shall ... exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law." R.C. 2935.03(A) authorizes the county sheriff to "arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the [county], a law of this state, an ordinance of a municipal corporation, or a resolution of a

township." Pursuant to these statutes the county sheriff "is the chief law enforcement officer in the county, with jurisdiction coextensive with the county, including all municipalities and townships." *In re Sulzmann*, 125 Ohio St. 594, 597, 183 N.E. 531, 532 (1932); *accord State v. Rouse*, 53 Ohio App. 3d 48, 52, 557 N.E.2d 1227, 1231 (Franklin County 1988); 1990 Op. Att'y Gen. No. 90-091 at 2-391.

Moreover, the exercise of law enforcement powers by the county sheriff necessarily requires the sheriff to investigate crimes that occur within his jurisdiction. 1988 Op. Att'y Gen. No. 88-035 at 2-157. As stated by the court in *United States v. Laub Baking Co.*:

The common law powers of a sheriff in Ohio have been defined. It is the duty of the sheriff "****to preserve the peace in his bailiwick or county. To this end he is the first man within the county, and it is incident to his office that he apprehend and commit to prison all persons who break or attempt to break the peace. *He is bound, ex officio, to pursue and take all traitors, murderers, felons, and rioters.*"

283 F. Supp. at 220 (emphasis added). Thus, a county sheriff is authorized to investigate a homicide that occurs within his county, even if the homicide occurs within a municipal corporation. *See generally State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 470, 423 N.E.2d 105, 113 (1981) (a power may be fairly implied where it is reasonably related to the duties of the entity).

Authority of a Municipal Corporation Police Department

As a creature of statute, a municipal corporation police department may exercise only the authority explicitly granted to it by statute or municipal ordinance or necessarily implied therefrom. 1990 Op. Att'y Gen. No. 90-086 at 2-370. *See generally* R.C. 737.05 (setting forth the composition of a city police force); R.C. 737.15 (setting forth the procedure for appointing a village marshal (designated chief of police)); R.C. 737.16 (providing for the appointment of deputy marshals, policemen, night watchmen, and special policemen for a village). R.C. 737.11, which describes the general duties of municipal corporation police departments, provides as follows:

The police force of a municipal corporation shall preserve the peace, protect persons and property, and obey and enforce all ordinances of the legislative authority of the municipal corporation, all criminal laws of the state and the United States, all court orders issued and consent agreements approved pursuant to sections 2919.26 and 3113.31 of the Revised Code, and all anti-stalking protection orders issued pursuant to section 2903.213 of the Revised Code.

In addition, a village marshal "shall suppress all riots, disturbances, and breaches of the peace" and "arrest all disorderly persons in the village and pursue and arrest any person fleeing from justice in any part of the state." R.C. 737.19(C).

Thus, within the territorial boundaries of a municipal corporation, a municipal corporation police department is statutorily authorized to exercise law enforcement powers. *See* R.C. 737.11; R.C. 737.19(C). Since the exercise of law enforcement powers by a municipal corporation police department necessarily requires the department to investigate crimes that

occur within the territorial boundaries of the municipal corporation, *see* Op. No. 88-035 at 2-157, the department is authorized to investigate a homicide that occurs within the territorial boundaries of the municipal corporation.

Investigation of a Homicide Committed Within the Territorial Boundaries of a Municipal Corporation

Your specific question concerns the authority of a county sheriff who conducts a homicide investigation within the jurisdiction of a municipal corporation police department to exclude the department from the investigation. In light of the specific language of R.C. 737.11 and R.C. 737.19(C), it does not appear that the General Assembly intended to grant the county sheriff sole authority to investigate homicides that occur within a municipal corporation. To the contrary, the General Assembly has conferred the authority to investigate crimes that occur within a municipal corporation upon the county sheriff and also upon the municipal corporation police department. *See* R.C. 2935.03(A). *Compare* R.C. 311.07 and R.C. 311.08 with R.C. 737.11 and R.C. 737.19(C). Accordingly, a county sheriff and a municipal police department have concurrent jurisdiction to initiate and conduct an investigation of a homicide that occurs within the territorial boundaries of the municipal corporation.

Although a county sheriff and municipal corporation police department have concurrent jurisdiction to investigate homicides that occur within the municipal corporation, no provision within the Revised Code requires the county sheriff to permit the municipal corporation police department to participate in homicide investigations initiated and conducted by his office. Further, no provision requires the county sheriff and a municipal corporation police department to conduct a joint homicide investigation when the homicide occurs in the municipal corporation. Absent a statutory mandate to the contrary, it thus appears that a county sheriff who initiates and conducts an investigation of a homicide that occurs within the territorial boundaries of a municipal corporation within the county is not required to permit the municipal corporation police department to participate in that investigation.

In addition, no provision authorizes the county sheriff to prohibit a municipal corporation police department from initiating and conducting a separate investigation of a homicide that occurs within the territorial boundaries of the municipal corporation. Rather, as stated above, a municipal corporation police department has the authority to initiate and conduct an investigation of a homicide that occurs within the territorial boundaries of the municipal corporation. *See also* R.C. 313.09 (when requested by the county coroner, the "sheriff of the county, the police of the city, the constable of the township, or marshal of the village in which the death occurred may be requested to furnish more information or make further investigation"); R.C. 313.15 (in determining the necessity of further custody of a body, a county coroner is required to consult with the prosecuting attorney, the sheriff, or the police department of a municipal corporation if the death occurred therein).

If a municipal corporation police department were prohibited from initiating and conducting an investigation of a homicide that occurred within the department's jurisdiction, the authority of the department to preserve the peace, protect persons and property, and enforce municipal ordinances and criminal laws of the state and the United States would be emasculated, and the intent of the General Assembly in enacting R.C. 737.11 and R.C. 737.19 would not be effected. Because the primary purpose in the interpretation of a statute is to determine and give effect to legislative intent, *Henry v. Central Nat'l Bank*, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968), a county sheriff who initiates and conducts an investigation of a homicide that occurs

within the territorial boundaries of a municipal corporation within the county may not prohibit the municipal corporation police department from initiating and conducting a separate investigation of that homicide.

Cooperation Between the County Sheriff and Municipal Corporation Police Department in the Conduct of Homicide Investigations

Although a county sheriff and municipal corporation police department may initiate and conduct independent investigations of a homicide that occurs within the territorial boundaries of the municipal corporation, the interaction of the sheriff and police department at a crime scene should be marked by cooperation, rather than competition for control. The public safety and welfare is not advanced when law enforcement agencies take antagonistic positions as they carry out their investigations. For instance, separate homicide investigations may result in the duplication of tasks, inefficient use of personnel, and delay in presenting relevant evidence to the county prosecuting attorney. Thus, a county sheriff and municipal corporation police department should strive to reach a mutually agreeable arrangement whereby the sheriff and police department will function cooperatively in executing their respective law enforcement duties.

Conclusion

In light of the foregoing, it is my opinion, and you are hereby advised as follows:

1. A county sheriff and a municipal corporation police department have concurrent jurisdiction to initiate and conduct an investigation of a homicide that occurs within the territorial boundaries of the municipal corporation.
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3. A county sheriff who initiates and conducts an investigation of a homicide that occurs within the territorial boundaries of a municipal corporation within the county may not prohibit the municipal corporation police department from initiating and conducting a separate investigation of that homicide.