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December 21, 2020

Michael J. Navarre
Lucas County Sheriff Elect
1622 Spielbusch Avenue
Toledo, Ohio 43604

Re: Opinion Relating to Obligation of a
County Sheriff to Provide Traditional
Police Services

Dear Sheriff-Elect Navarre:

You have requested an opinion regarding the obligation of a county sheriff to provide police patrols and answer calls for service in townships that do not have their own police departments.¹ For the reasons stated herein, we conclude the following:

1. A county sheriff has the discretionary authority, but not the duty, to provide traditional police services, such as patrols and investigation services, if the county sheriff deems it reasonably necessary to aid in carrying out the duty to preserve the public peace under *R.C. 311.07(A)* or any other duties and powers conferred upon the county sheriff by statute or common law.
2. A board of county commissioners may, but is not required to, appropriate moneys

¹ Your request specifically seeks an opinion relating to townships without their own police departments. However, when determining the statutory and common law duties of a county sheriff, Ohio law makes no distinction based on the existence of a township police department. The duties of a county sheriff relating to providing traditional police services is the same for all jurisdictions within the county.

to a county sheriff for the purpose of paying for patrols and investigation services designed to aid the county sheriff in carrying out the duties and powers conferred upon a sheriff by statute or common law.

In order to respond to your request, we must begin by examining the statutory and common law authority of a county sheriff. A county sheriff is a creature of statute and possesses only those powers expressly provided by law and other powers reasonably necessary to make the express power effective. *Clayton v. Ohio Board of Nursing*, 147 Ohio St.3d 114, 2016-Ohio-643, 62 N.E.2d 132, ¶ 33; 1994 *Ohio Op. Att’y Gen.* No. 81.

A county sheriff is the chief law enforcement officer of the county with jurisdiction coextensive with the county. 2015 *Ohio Op. Att’y Gen.* No. 2015-032; 1990 *Ohio Op. Att’y Gen.* No. 90-091. The primary statutory duty of a county sheriff is to preserve the public peace in the county and cause all persons guilty of any breach of the peace, within the sheriff’s knowledge or view, to enter into recognizance with sureties to keep the peace. *R.C.* 311.07(A); 2018 *Ohio Op. Att’y Gen.* No. 28; 2006 *Ohio Op. Att’y Gen.* No. 43; 1994 *Ohio Op. Att’y Gen.* No. 4021.²

The phrase ‘preserve the public peace’ as used in *R.C.* 311.07(A) is not defined by statute, 2018 *Ohio Op. Att’y Gen.* No. 28, and the activities that may be included within the authority of a county sheriff ‘to preserve the peace’ are not, as a general rule, amenable to precise definition. 1987 *Ohio Op. Att’y Gen.* No. 97-099. The duty confers broad authority upon a county sheriff to undertake any activities that, in the sheriff’s reasonable discretion are

² A county sheriff is also required to execute warrants, writs and other processes, attend upon the common pleas court and the court of appeal during their sessions. *R.C.* 311.07(A), 311.08(A); 2018 *Ohio Op. Att’y Gen.* No. 28.

necessary to protect the public from harm. 1997 *Ohio Op. Att'y Gen.* 97-015. The duty imposes both a mandatory duty upon a county sheriff to respond to and stop a breach of the peace that comes within the sheriff's knowledge or view as well as the discretionary authority to undertake any activity that supports the sheriff's efforts to preserve the public peace. *State ex rel. Concord Township Board of Trustees v. Cunningham*, 11th Dist. Lake No. 12-198, 1988 Ohio App. LEXIS 3730 *5.

However, courts have interpreted this statutory requirement in the traditional, narrow manner, even though this may not comport with modern law enforcement practices. *Geauga County Board of Commissioners v. Geauga County Sheriff*, 11th Dist. Geauga No. 2002-G-2484, 2003-Ohio-7201, ¶ 40. Under this narrow interpretation, certain practices, such as patrolling county roads, are not considered mandatory duties. *Id.*, at ¶ 40.

Thus, Ohio law does not require a sheriff to patrol the county as a police officer or to ferret out crime as a detective. *Jones, et al. v. Wittenberg, et al.*, 357 F. Supp. 696, 700(N.D. Ohio 1973); *In re Sulzman*, 125 Ohio St. 594, 597, 183 N.E. 531(1932); *Geauga County Sheriff*, at ¶ 83. The sheriff is merely required to respond to calls and bring to justice those that the sheriff knows to have committed illegal acts. *Jones, supra.*; *Lorain County, supra.* Any additional police protection that a sheriff provides the residents of the county, such as the road patrol, is within the sheriff's discretion. *Geauga County Sheriff, supra.*; *Lorain County, supra.*³

Therefore, as the Lucas County Sheriff, you have the discretionary authority, but not

³ Ohio law contemplates that townships will contract with the county sheriff or other jurisdictions for additional police protection. *Geauga County Sheriff*, at ¶ 41; *Lorain County, supra.*; *R.C.* 505.43.

the duty, to provide traditional police services, such as patrols and investigation services, if you deem it reasonably necessary to aid in carrying out the duty to preserve the public peace under R.C. 311.07(A) or any other duties and powers conferred upon the county sheriff by statute or common law.

However, if you determine that providing traditional police services is reasonably necessary to aid in carrying out your duty to preserve the public peace under R.C. 311.07(A) or any other duties and powers conferred upon the county sheriff by statute or common law, the County Commissioners must determine the appropriate funding for such discretionary services.

In setting the amount of funding for a county sheriff, the county commissioners must determine if the requested funds are necessary for the sheriff to perform the sheriff's statutory duties, *Whitman v. Mages*, 11th Dist. Trumbull No. 3558, 1985 Ohio App. LEXIS 7326 *9(Oct.4, 1985), such as preserving the peace, providing security for certain county courts, serving court documents, and operating the county jail. *Geauga County*, at ¶¶ 52, 54. The county commissioners are required to provide the sheriff with sufficient funding to perform the statutorily mandated duties. *Id.*, ¶ 55.

However, the commissioners are not required to appropriate funds for a county sheriff to perform his discretionary powers. *Id.*, ¶¶ 46, 55. As noted above, Ohio law does not require a county sheriff to patrol the county as a police officer or to ferret out crime as a detective. A sheriff is merely required to respond to calls and bring to justice those that the sheriff knows to have committed illegal acts. Thus, providing additional police services is a discretionary power of the sheriff and it is within the discretion of the commissioners to provide funding for

such services. *Geauga County*, at ¶83; *Lorain County*, *supra*.

Therefore, based on the foregoing, it is our opinion, and you are hereby advised that:

1. As Lucas County Sheriff, you have the discretionary authority, but not the duty, to provide traditional police services, such as patrols and investigation services, if you deem it reasonably necessary to aid in carrying out your duty to preserve the public peace under *R.C. 311.07(A)* or any other duties and powers conferred upon the county sheriff by statute or common law.
2. The Board of Lucas County Commissioners may, but is not required to, appropriate moneys to the Sheriff's Department for the purpose of paying for patrols and investigation services designed to aid you in carrying out the duties and powers conferred upon you by statute or common law.

Respectfully submitted,



JULIA R. BATES
Lucas County Prosecuting Attorney

cc: Board of Lucas County Commissioners