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PRISONERS—CONFINEMENT BY COUNTY SHERIFF—MILITARY PRISONERS, SHERIFF REQUIRED TO ACCEPT—§5923.47 R.C.

SYLLABUS:

Under the provisions of Section 5923.47, Revised Code, the sheriff of any county must accept for confinement and the execution of sentence any military prisoner sentenced by a court-martial pursuant to Sections 5923.36 and 5923.48, Revised Code.

Columbus, Ohio, July 29, 1958

Major General Leo M. Kreber, Adjutant General
State of Ohio, Columbus, Ohio

Dear Sir:

I have before me the correspondence from the Summary Court Officer of Battery "B," 137th AAA Bn (AW) (SP), concerning the Wood County civil authorities, which you have forwarded to me for consideration.

In essence, the question presented is whether the sheriff of Wood County may refuse to confine, in view of the provisions of Section 5923.47, Revised Code, a military prisoner pursuant to the sentence of a summary court-martial sitting in Lucas County.

Section 5923.47, Revised Code, reads as follows:

“*Any civil officer* having custody or control of *any jail or prison* shall confine therein *any military prisoner* upon request of competent military authority. The expense of service of writs under section 5923.46 of the Revised Code and of such confinement shall be paid from the funds appropriated for the maintenance of the Ohio national guard or the Ohio defense corps as the case requires.” (Emphasis added)

Research into this section, and the prior analogous provision, Section 5214, General Code, discloses that our courts have never had occasion to decide the particular question here presented; however, this is quite possibly because the provisions of Section 5923.47, *supra*, are abundantly clear. The code provides in unambiguous terms that *any* civil officer, such as a sheriff, having control or custody of *any* jail or prison, shall confine in his jail or prison *any* military prisoner upon the request of competent military authority. Certainly the prisoner to whom you refer, tried by summary court-martial under Section 5923.40, Revised Code, and sentenced to imprisonment under Sections 5923.40 and 5923.42, Revised Code, comes within the purview of the latter part of Section 5923.47, *supra*.

Perhaps the refusal of the sheriff of Wood County to confine this military prisoner was based on the fact that the summary court which sentenced him was sitting in Lucas County. If this be in fact the reason, nevertheless, it is not a valid objection, for the statute plainly contemplates such a situation, the rationale being that the jurisdiction of courts-martial is not fixed by geography but in the first instance by command. In this respect it might be observed that the sheriff of Wood County is under no duty to inquire into jurisdiction, for Section 5923.36, Revised Code, provides in part:

“* * * The jurisdiction of courts-martial or other military boards established under the military laws of this state shall be presumed, and the burden of proof rests on any person seeking to oust such courts or boards of jurisdiction.”

While there are no cases directly in point on this problem, as I have stated before, there are several habeas corpus actions in which the procedure here adopted for confinement was followed. *McGorray v. Murphy*, 80 Ohio St., 413; *In re Kuchta*, 81 Ohio St., 508; *Ex parte Johnson*, 22 O.D., 292. The writ was denied in each of these cases on grounds other than the civil confinement of military prisoners; it would thus seem that

your procedure was not novel but rather was one of long-standing military practice. It is interesting to note also that in the *McGorray* case the Supreme Court has gone so far as to say that the sheriff cannot even question the informality or lack of regularity in the commitment request.

In answer to your specific inquiry, therefore, it is my opinion that under the provisions of Section 5923.47, Revised Code, the sheriff of any county has the duty to accept for confinement and the execution of a sentence of a court-martial any military prisoner upon the request of competent military authority.

Respectfully,

WILLIAM SAXBE

Attorney General