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PRISONER, MILITARY — OHIO NATIONAL GUARD — COMPENSATION FOR CONFINEMENT IN COUNTY JAIL — SHERIFF — §§311.20, 5923.47 R.C.

SYLLABUS:

1. Under the provisions of Section 5923.47, Revised Code, the sheriff of any county must accept for confinement any military prisoner upon request of the Ohio National Guard and there is no requirement that the Adjutant General enter into a contract with the county for the care of such prisoners.
2. For the expense of keeping and feeding military prisoners confined at the request of the Ohio National Guard, the sheriff of a county shall be allowed the rate provided by Section 311.20, Revised Code, and the Ohio National Guard shall reimburse the county for such expense at the same rate.

Columbus, Ohio, April 9, 1959

Hon. Loren G. Windom, Major General
The Adjutant General, Columbus, Ohio

Dear Sir:

I have before me your request of March 9, 1959 reading as follows:

"Please refer to ORC 311.20 and 5923.47. Several County Sheriffs, notably Cuyahoga County, have taken the position that they will not accept military prisoners from the Ohio National Guard without a special contract with the Adjutant General including provision for the payment of costs in excess of those prescribed in ORC 311.20.

"Your opinion on the following questions is requested:

"1. Can the Sheriff of a County require the Adjutant General to enter into a contract for the care of prisoners as a prerequisite to the acceptance of military prisoners from the Ohio National Guard?

"2. What is the correct rate at which the County should be reimbursed for the care of military prisoners received from the Ohio National Guard?"

Section 5923.47, Revised Code, to which you refer, 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)

Section 341.01, Revised Code, reads as follows:

"The sheriff shall have charge of the county jail and all persons confined therein. He shall keep such persons safely, attend to the jail, and govern and regulate the jail according to the rules and regulations prescribed by the court of common pleas."
(Emphasis added)

Thus, a sheriff is a civil officer having custody or control of a jail within the purview of Section 5923.47, *supra*.

In Opinion No. 2458, Opinions of the Attorney General for 1958, p. . . ., my predecessor in office had occasion to consider whether the sheriff of a county may refuse, in view of the provisions of Section 5923.47, Revised Code, to confine a military prisoner pursuant to the sentence of a summary court martial. The syllabus in that opinion reads as follows:

“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.”

As noted in Opinion No. 2458, *supra*, Section 5923.47, *supra*, 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 Ohio National Guard which, by Section 5923.01, Revised Code, is included as a part of the state militia, and which is specifically mentioned in Section 5923.47, *supra*, is a competent military authority under the provisions of said Section 5923.47, Revised Code. Moreover, this section does *not* require that a contract be entered into before the sheriff is required to accept a military prisoner, but states clearly that the sheriff *shall* confine any military prisoner *upon the request of competent military authority*.

Perhaps the position taken by the sheriffs to whom you refer is based on the provisions of Section 341.21, Revised Code, which provides for a contract between the county and the United States for the use of the county jail for the custody of prisoners charged with or convicted of crime by the United States. This, however, is not persuasive in the instant case as said Section 341.21, Revised Code, pertains exclusively to prisoners of the *United States*, while the Ohio National Guard, as such, is an *agency of the state*. Also, the provisions of Section 5923.47, *supra*, include a specific reference to the Ohio National Guard and plainly indicate that the section applies to prisoners of the Ohio National Guard.

The second question raised by your letter asks the “correct rate at which the county should be reimbursed for the care of military prisoners received from the Ohio National Guard.” On this point, the latter part of Section 5923.47, *supra*, states that expenses of confinement shall be paid from the funds appropriated for the maintenance of the Ohio National Guard but does not state how such expense shall be determined. Section

311.20, Revised Code, however, appears to be pertinent in this regard, the first sentence reading:

“The sheriff shall be allowed by the board of county commissioners the actual costs of keeping and feeding prisoners or other persons confined in the county jail but at a rate not to exceed one dollar and fifty cents per day of three meals each.”

Thus, for keeping and feeding a military prisoner at the request of the Ohio National Guard, a sheriff is allowed his actual costs not to exceed one dollar and fifty cents per day of three meals each. It follows, therefore, that in reimbursing the county for the care of military prisoners under the provisions of Section 5923.47, *supra*, the Ohio National Guard should do so at the same rate.

Accordingly, it is my opinion and you are advised:

1. Under the provisions of Section 5923.47, Revised Code, the sheriff of any county must accept for confinement any military prisoner upon request of the Ohio National Guard and there is no requirement that the Adjutant General enter into a contract with the county for the care of such prisoners.

2. For the expense of keeping and feeding military prisoners confined at the request of the Ohio National Guard, the sheriff of a county shall be allowed the rate provided by Section 311.20, Revised Code, and the Ohio National Guard shall reimburse the county for such expense at the same rate.

Respectfully,

MARK McELROY
Attorney General