

2540.

SHERIFF IS ENTITLED TO FULL DAY'S ALLOWANCE FOR KEEPING AND BOARDING A PRISONER EVEN THOUGH SUCH PRISONER IS IN JAIL ONLY PART OF A DAY.

## SYLLABUS:

*Under the provisions of section 2850, General Code, a sheriff is entitled to a full day's allowance for keeping and boarding a prisoner, even though such prisoner is in jail for only part of a day.*

COLUMBUS, OHIO, June 4, 1925.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I have your communication of May 4th, reading as follows:

"We respectfully request your written opinion upon the following matter:

"May a sheriff legally be allowed a full day's compensation when a prisoner is boarded but part of a day?"

Section 2850, General Code, reads:

"The sheriff shall be allowed by the county commissioners not less than forty-five nor more than seventy-five cents per day for keeping and feeding prisoners in jail, but in any county in which there is no infirmary, the county commissioners, if they think it just and necessary, may allow any sum not to exceed seventy-five cents each day for keeping and feeding any idiot or lunatic. The sheriff shall furnish at the expense of the county, to all prisoners confined in jail, except those confined for debt only, fuel, soap, disinfectants, bed, clothing, washing and nursing when required, and other necessaries as the court in its rules shall designate."

You will note that this section provides that the sheriff shall be allowed *not less than* forty-five cents nor more than seventy-five cents per day for *keeping and feeding* prisoners in jail.

I find no court decisions directly answering your question nor one wherein the point in your question was specifically raised. However, in the case of *State vs. Clark*, 170 Mo. 67, (70 S. W. Rep. 489), the facts show that a prisoner was *kept and boarded* by a sheriff from "after adjournment of court on one day until it was in session the *next day*" and the sheriff sued for and recovered \$2.50, the statute in that state allowing \$1.25 per day for *keeping and feeding* prisoners, the court holding it was a *per diem* allowance for the *safekeeping and feeding*.

Section 2850, General Code, does not provide for a part of such *per diem* allowance for keeping and a part for each meal served, but is a daily allowance of *not less than* forty-five cents per day. In other words, it is not a divisible sum.

The commissioners having fixed the allowance *per diem* and the sheriff having accepted the prisoner, it is, in effect, a contract for *per diem keep and board* of prisoners and it is, therefore, my opinion that where a person is legally committed to jail and is kept therein any part of a day, the sheriff is entitled to the full *per diem* allowance under section 2850, General Code.

Respectfully,  
C. C. CRABBE,  
Attorney General.