

523.

COURT OF COMMON PLEAS—COMMITMENT TO SHERIFF,
PRISONER IN ANOTHER COUNTY—SHERIFF CON-
TRACTS RECEIVING AND CARE OF PRISONERS IN-
VALID, WHEN.

SYLLABUS:

1. *The court of common pleas is the only court authorized by Sections 3170, 3171 and 3172, General Code, to issue an order of commitment to the sheriff of the county, wherein the offense was committed, for the imprisonment of a prisoner in another county.*

2. *A sheriff has no authority to enter into a contract with any person or body politic to receive and care for prisoners committed under virtue of Sections 3170, 3171 and 3172, General Code, as the sheriff's fees in such cases are fixed by statute and such contract would subserve no public purpose.*

COLUMBUS, OHIO, April 27, 1937.

HON. A. C. L. BARTHELMEW, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR: I acknowledge receipt of your communication of recent date, viz.:

“Will you please give us your opinion and interpretation of General Code Section No. 3170, under the title “Use of Jails of other Counties.” It is noted that this acting part provides “in a county not having a sufficient jail * * * or sentence to imprisonment in the county jail * * * to the jail of any county which he may deem most convenient and secure.”

The question being whether or not courts of other counties, both municipal and common pleas and for violation of city ordinances as well as state statutes, may commit to the Stark County Jail instead of the jail in the particular county of venue. And further, may the sheriff of Stark County enter into contracts with other counties, municipalities or political subdivisions for the keeping and receiving of such prisoners so sentenced.”

While your inquiry is confined to Section 3170, General Code, I am of the opinion that a proper interpretation of Section 3170, General Code, necessitates the consideration of Sections 3171 and 3172, General Code, and I set them out, viz.:

SECTION 3170. "In a county not having a sufficient jail, or when the jail is in danger of being broken into by a mob, the sheriff shall convey any person charged with the commission of an offense or sentenced to imprisonment in the county jail, or in custody upon civil process, to the jail of any county which he may deem most convenient and secure. Such officer may call such aid as is necessary in guarding, transporting or returning such person. Whoever neglects or refuses to render such aid, when so called upon, shall forfeit and pay the sum of ten dollars, to be recovered by an action in the name and for the use of the county. Such officer and his assistants shall receive such compensation for their services as the auditor of the county from which such person was removed deems reasonable, payable from the county treasury on the warrant of the auditor."

SECTION 3171. "The sheriff of the county to which such prisoner has been removed, on being furnished a copy of the process or commitment, shall receive him into his custody and be liable for escape, or other neglect of duty in relation to such prisoner, as in other cases. Such sheriff shall receive from the treasury of the county from which he was removed such fees as are allowed by law in other cases."

SECTION 3172. "The sheriff of such adjoining county shall not receive such prisoner unless there is deposited in his hands, in addition to all fees allowed by law, fifty cents per week for the use of such jail, for each prisoner so committed, and a like sum for a period of time less than one week. If such prisoner be discharged before the expiration of the term for which he was committed, the excess advanced shall be refunded."

Isolate Section 3170 from Section 3171 and 3172 and you reach the natural conclusion that in the event a county has an insufficient jail, or in the face of mob violence, the sheriff would have plenary power to convey the prisoner to the jail of any county which he may deem most convenient and secure, but if the sheriff proceeded under such section, what would he do with such prisoner when he arrived at the jail of the county to which he was removed? Before accepting such prisoner, the receiving sheriff would very properly demand of the committing sheriff a copy of the process of commitment. If the commitment were regular on its face, the prisoner would be accepted and upon such acceptance the receiving sheriff would be entitled to receive from the treasury of the county from which the prisoner was removed such fees as are allowed by law.

Section 3172, General Code, attaches a condition to the reception of such prisoner to the following effect; that he shall not receive such prisoner unless there is deposited in his hands, in addition to all fees allowed by him by law, fifty cents a week for the use of such jail for each prisoner so committed and a like sum for a period less than one week.

It is plain that the committing sheriff must present an order of commitment to the receiving sheriff, and I read into this section the provision that such order must be issued by a court of competent jurisdiction. The sheriff is an officer of the county and the court of common pleas is a court of general jurisdiction, with full power to issue all manner of process and direct the same to the sheriff of the county for service or execution, as the case may be. Consequently, there could be no question as to the right of the court of common pleas to commit a prisoner to the jail of a foreign county under the conditions imposed by Section 3170, General Code.

Municipal courts in general have the same jurisdiction in criminal cases as police courts. Under the law, municipal courts are provided with bailiffs who are authorized to perform for the municipal court, services similar to those usually performed by the sheriff for courts of common pleas and by the constable for courts of justice of the peace. At first reading it would seem that the bailiff of the municipal court would have power to remove a prisoner to the jail of another county in case of the insecurity of the local jail or imminence of mob violence and that the municipal court could issue the order of commitment to the sheriff of the foreign county.

Such holding would do violence to the established rule that criminal laws must be construed strictly. If the General Assembly had intended to include bailiffs of municipal courts within the provisions of Section 3170, General Code, it could have so provided. Having used the word "sheriff," I must hold that the sheriff alone can execute the process.

When the General Assembly granted this power to the sheriff, it gave him extra-territorial jurisdiction, that is power to act beyond the confines of his own county, and such grants are always given a strict construction.

Unless the courts inferior to the court of common pleas are authorized to issue orders of commitment to the sheriff of the county, such courts could not come within the purview of the sections of the General Code herein involved. I have searched diligently and find nowhere any authority granted to courts inferior to the court of common pleas to issue an order of commitment to the sheriff of the county under any circumstances for any purpose. It follows that such courts have no vestige of authority to issue an order of commitment to the sheriff of

the county in which they have jurisdiction to commit a prisoner to a jail of another county.

I am aware that under certain conditions these inferior courts may commit prisoners to the jail of their own county, but the order of commitment in such cases is made to the officer of the court from which it is issued and must be delivered by such officer to the sheriff of the county, otherwise the sheriff would have no authority to detain such prisoner.

The Sheriff of Stark County has no authority to enter into contracts to receive and care for prisoners committed to the jail of the county under favor of Sections 3170, 3171 and 3172, General Code.

The law makes specific provision for the fees the sheriff shall receive in such cases and I fail to see wherein any public purpose would be subserved on account of the existence of such contracts.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

524.

TAXES — OPERATION OF MOTOR VEHICLES—TAX LEVY,
AMENDED SUBSTITUTE HOUSE BILL 283—EFFECTIVE

SYLLABUS:

Section 6292, General Code, as amended by Amended Substitute House Bill No. 283 of the 92nd General Assembly, prescribing the rate of taxes levied by Section 6291, General Code, upon the operation of motor vehicles on the public roads or highways of this state, is a law providing for tax levies within the meaning of the term as used in Article II, Section 1d of the Constitution and went into effect April 16, 1937, when approved by the Governor.

COLUMBUS, OHIO, April 27, 1937.

HON. WILLIAM J. KENNEDY, *Secretary of State, Columbus, Ohio.*

DEAR SIR: Your letter of recent date is as follows:

“We have filed with us House Bill No. 283 which was passed by the General Assembly March 31st, signed by the Governor on April 16th, and filed in our office on April 19th.

There seems to be some question as to whether this bill is immediately effective on the date signed by the Governor, or as