crimes enumerated in Section 13708, General Code, by implication, the crimes excepted therein are no longer crimes ineligible for probation, on the theory that the specific mentioning in a later statute of but one crime as not subject to probation, included all the others as subject to probation. The fallacy of such a contention is manifest, however, when proper consideration is given to the words "except * * * as hereinafter provided", which, of course, referred to Sections 13707 and 13708, General Code, (orginally a part of the same act) before the amendment of 1925, and must, therefore, be said to refer to said sections after such amendment.

In the case of *Madjorous* vs. *State of Ohio,* 113 O. S. 427, Section 13706, supra, was attacked as being unconstitutional on the grounds that the enactment of such a section was an encroachment of the legislature upon the judiciary. In the above case, in the opinion by Judge Marshall, at page 432, it was said:

> "The Legislature of Ohio has made a limited provision in such matters, which provision will be found in Section 13706 to 13715, inclusive, General Code. In those sections certain provision is made for placing prisoners upon probation, and certain exceptions are made thereto in the same chapter. Section 6212-17, General Code, is merely an additional exception to the general provisions of Section 13706, General Code. The legislature has the power to fix the jurisdiction of the trial courts. It has the power to define crimes and misdemeanors. It has the power to provide the procedure, and the unlimited power to fix conditions and limitations upon definitions of crimes and upon provisions for practice and procedure. In short, it has the power to give and the power to take away. It has given power in the matter of probation of prisoners in Section 13706, and it has made exceptions thereto in Sections 13707, 13708 and 6212-17."

From the case, supra, it is clear that the supreme court considered specifically the crimes mentioned in Section 13708, General Code, as not now subject to probation.

Specifically answering your question, for the reasons and upon the authority above stated, I am of the opinion that a person who pleads guilty to or is convicted of arson, shall not have the benefit of probation.

Respectfully,
EDWARD C. TURNER,
Attorney General.

663.

COUNTY COMMISSIONERS—CONTRACT WITH COUNTY SHERIFF FOR FEEDING PRISONERS.

SYLLABUS:

A board of county commissioners and a county sheriff are without power to enter into a contract, in which, for the consideration of sixty-five cents per day per prisoner and twenty cents per week per prisoner, the sheriff agrees to board county prisoners and launder such prisoners' clothes; and such a contract is void ab initio,

whether the same was entered into prior or subsequent to the amendment of Section 2850 by Amended Senate Bill No. 28 of the 87th General Assembly.

COLUMBUS, OHIO, June 24, 1927.

HON. LYNN B. GRIFFITH, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

"On the 1st day of January, 1927, the Board of Commissioners of Trumbull county, Ohio, entered into a written agreement, with J. H. S., sheriff of said county, which agreement is as follows:

'AGREEMENT

THIS AGREEMENT, Made and entered into this 4th day of January, 1927, by and between the Board of Commissioners of Trumbull county, Ohio, and J. H. S., sheriff of Trumbull county, Ohio,

WITNESSETH: For the consideration of a 65 cent per day prisoners the party of the second part agrees to board said prisoners; and for 20 cents a week the party of the second part agrees to launder prisoners clothes.

Said compensation to be paid quarterly in accordance with Section 2850 G. C.

This contract shall be in force for a period of one year.

IN WITNESS WHEREOF, All parties have hereunto set their hands, this 1st day of January, 1927.

THE BOARD OF COMMISSIONERS,
TRUMBULL COUNTY, OHIO.

I. B. J.
T. H. M.
J. T. R.
J. H. S.
J. H. S. Party of the Second Party.'

On January 3rd, the county commissioners passed the following resolution:

'RESOLUTION

BE IT RESOLVED, By the Board of Commissioners, Trumbull county, Ohio, that the sheriff be allowed, for keeping and feeding prisoners, the sum of 65 cents per day per prisoner; and also for laundering the clothing of prisoners the sum of 20 cents per prisoner per week, in accordance with Section 2850 G. C.

Moved by Mr. M., seconded by Mr. V., that we pass the foregoing resolution.

Yeas: Mr. R. Mr. M. and Mr. V.

PASSED: Jan. 3, 1927.'

Amended Senate Bill No. 28, which was passed at the recent session of the General Assembly, has other provisions for the providing of food and laundry for the inmates of county jails.

My question is this: In view of the fact that this contract was entered into by the county commissioners, and the sheriff, on the 1st day of January, and the sheriff, pursuant to the provisions thereof, has relied upon the binding effects of the contract for the period of the year 1927, and has purchaseed food and provisions for the year 1927, and is now in a position where he must accept delivery of said provisions, what is the effect of Amended Senate Bill No. 28 as to this contract; is the contract a binding obligation on the county until the end of the year, or must the sheriff comply with the Amended Senate Bill No. 28 and subject himself to the obligations of his contract of purchases."

At the time the so-termed "agreement" between the board of county commissioners and the sheriff was entered in to, Section 2850, General Code, read as follows:

"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."

Your attention is also directed to Section 2997, General Code, which provides in part as follows:

"In addition to the compensation and salary herein provided the county commissioners shall make allowances quarterly to each sheriff for keeping and feeding prisoners, as provided by law. * * * . *Each sheriff shall file under oath with the quarterly report herein provided a full, accurate and itemized account of all his actual and necessary expenses * * * before they shall be allowed by the commissioners.* * * * " (Italics the writer's).

As the law stood at the time the so-called "agreement" was executed, the sheriff purchased the supplies and rendered his account for them each quarter to the commissioners and the allowances were then made by the commissioners to the sheriff for the amount shown by the account if deemed correct.

It is elementary that public officials, such as county commissioners and sheriffs, have only such powers as are expressly given by statute and those necessarily implied to carry the powers expressly granted into effect, and that when their duties are specifically enjoined by law they are bound to perform them accordingly.

I have no hesitancy whatever in reaching the conclusion that neither the county commissioners nor the sheriff had any authority in law to enter into such an agreement and that the attempted contract was void *ab initio*. Not only did they lack authority to excute such agreement but the proposed agreement itself is in violation and directly in conflict with the provisions of Sections 2850 and 2997, supra.

In this connection your attention is directed to the recent case of *Kohler, sheriff, vs. Powell, et al.*, 115 O. S. 418; Vol. XXV, The Ohio Law Bulletin and Reporter, January 17, 1927, page 285. In that case the court had under consideration the

construction and relative significance of Sections 2850, 2997 and 3162 of the General Code. In the course of the opinion Judge Kinkade said:

> "The sheriff insists that, if he can feed the prisoners for less than forty-five cents per day per prisoner, then he may appropriate to his own use the difference between the minimum fixed and the actual cost to the sheriff of the food furnished to the prisoners. This claim was wholly denied and rejected by both the trial and the appellate court. By the maximum rate of seventy-five cents per day per prisoner and the minimum rate of forty-five cents per day, fixed by Section 2850, General Code, above quoted, the legislature clearly intended to prevent both extravagant overfeeding and niggardly underfeeding of the prisoners. Both limitations are in accord with the general welfare of the prisoners, and the sheriff is wholly without authority to violate either limitation. It is said, because of the provisions in Section 2997, above quoted, that these allowances 'for keeping and feeding prisoners' are to be made 'in addition to the compensation and salary herein provided', we must assume that the legislature was thereby making a further allowance to the sheriff as an additional compensation, which in effect, though not in name, increases his salary, although Section 2996 limits the salary to $6,000.00. This construction does great violence to the terms employed by the legislature, and is not tenable. Some stress is laid upon the word 'keeping', as used in connection with the word 'feeding', and, as we understand counsel, their claim is that the words 'keeping and feeding prisoners' as used in Section 2997 contemplates some further service by the sheriff outside of the matter of feeding the prisoners, for the performing of which the legislature intended to compensate the sheriff. * * * We cannot adopt as correct the views of counsel that this word 'keeping', as used, extends the scope of Section 2997 so as to justify additional compensation to the sheriff. If the sheriff by underfeeding may save some portion of the minimum, forty-five cents, for himself, why may he not render all bills for feeding at the maximum, seventy-five cents, regardless of his actual disbursements for food, and thereby secure from the county a much larger reimbursing return, from which he may carve out a much larger amount for his own personal profit?
>
> Public money may be used only for public purposes and never for private gain. The methods employed to direct public money from public channels into private channels are sometimes very ingenious, but they do not affect the fundamental principle involved."

Specifically answering your question in view of the foregoing it is my opinion that the county commissioners and sheriff were without authority to enter into the contract set forth in your letter and that such agreement was void *ab initio* and therefore not a binding obligation on the county. It is further my opinion that the sheriff must comply with the terms of Section 2850, General Code, as amended by Amended Senate Bill No. 28, passed by the 87th General Assembly.

In this connection I am enclosing herewith copies of Opinions Nos. 307 and 361, respectively rendered under dates of April 11th and April 21, 1927, in which the provisions of Section 2850, as amended, were construed.

Respectfully,
EDWARD C. TURNER,
Attorney General.