Note from the Attorney General's Office:

1933 Op. Att'y Gen. No. 33-1889 was overruled by
1988 Op. Att'y Gen. No. 88-058.

an act within his official duties and in furtherance of the welfare of the district. He is in an entirely different position than a peace officer, whose duty it is to make arrests or prefer criminal charges or execute the criminal laws. In my opinion, the case is of such a nature as to not warrant the sanitary district in assuming its defense, at least if the allegations of the petition are true. Of course, it may have been necessary to make some investigation to determine whether or not they were true, although one of the directors, the one who was charged with making the statements, must necessarily have known whether they were true or not. At any rate, it appears, from information which I have before me, that the district did not follow the resolution and employ and pay attorneys to defend this suit.

What actually took place was, that attorneys were employed to take a deposition in connection with the suit for the purpose of securing certain information in the belief that future litigation might thereby be forestalled or at least properly defended. It was felt that the only way this information might be obtained was by the taking of a deposition, and that the only way the deposition could be taken was by attorneys at law who were attorneys of record in the case. These attorneys filed an answer in the case and took the deposition and then withdrew from the case. It was for the taking of this deposition that the attorneys were paid.

The advisability of taking this deposition was a matter purely within the discretion of the directors, providing it related to a matter in which the district had an interest. The forestalling of future litigation and the securing of evidence for use in further litigation certainly was such a matter. I have no reason to think that the directors' determination with respect to the taking of this deposition was not made in good faith and with the honest intention that it was an act in line with their official duties and in pursuance of the welfare of the district.

Upon consideration of the foregoing principles in the light of the facts presented it is my opinion that the expenditure in question was lawful.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1889.

COUNTY JAIL—MATRON THEREOF NOT ENTITLED TO MEALS FREE OF CHARGE UNLESS CONTRACT SO PROVIDES—COMMISSIONERS UNAUTHORIZED TO PAY FOR LIGHTING OF QUARTERS OCCUPIED BY SHERIFF'S FAMILY.

SYLLABUS:

1. *A jail matron appointed under the provisions of section* 3178, *General Code, is not entitled to her meals free of charge in the absence of a provision in her contract which would take into consideration the question of meals.*

2. *Where persons are employed to prepare meals for prisoners in a county jail and their compensation is fixed at a certain sum and board, the county is authorized to furnish them their meals without any additional charge.*

3. *County commissioners are without authority to provide for the expense of lighting that part of the county jail which is used by the sheriff as a residence. County commissioners are unauthorized to pay for the electric current used to pre-*

pare the meals of the sheriff and his family but may pay for the electric current used to prepare the meals of the prisoners in the county jail.

COLUMBUS, OHIO, NOVEMBER 20, 1933.

HON. HAROLD U. DANIELS, *Prosecuting Attorney, Painesville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

> "I would appreciate an opinion from your office in regard to the following situation:
>
> The County Jail is being operated under the provisions of Section 2850 of the General Code. The Jail Building provides quarters for the prisoners and rooms for the use of the Sheriff and his family. There is only one kitchen in the building and in it are prepared meals for the prisoners and for the Sheriff and his family.
>
> The work in the kitchen is done by the Sheriff's wife and two assistants. The Sheriff's wife is also matron of the jail.
>
> 1. May the matron, who lives in the jail building, be charged for her meals or is it mandatory for the county to board her at the jail without making any charge therefor?
>
> 2. Assuming that at the time of employment the question of board was considered, and the compensation fixed at a certain sum and board, may the kitchen help be boarded at the jail without any charge being made therefor?
>
> 3. The electric current for that portion of the jail used by the sheriff and his family as a residence passes through the same meter as the current used in the kitchen, which is used to prepare the prisoners' food and also that of the sheriff and his family. May the county pay for the electric current used in this common kitchen?"

Section 3178, General Code, provides for the appointment of jail matrons. This section reads as follows:

> "The sheriff may appoint not more than three jail matrons, who shall have charge over and care for the insane, and all female and minor persons confined in the jail of such county, and the county commissioners shall provide suitable quarters in such jail for the use and convenience of such matrons while on duty. Such appointment shall not be made, except on the approval of the probate judge, who shall fix the compensation of such matrons not exceeding one hundred dollars per month, payable monthly from the general fund of such county upon the warrant of the county auditor upon the certificate of the sheriff. No matron shall be removed except for cause, and then only after hearing before such probate judge."

Section 3157, General Code, provides that the sheriff shall have charge of the county jail. Section 2850, General Code, referred to in your letter, provides inter alia that the sheriff shall be allowed by the county commissioners the actual cost of keeping and feeding prisoners at a rate not to exceed seventy-five cents (75c) per day. It is fundamental that public officials have only such powers as are expressly granted to them and such implied powers as are necessary to effectuate the expressed

powers. I am unable to find any statutory authority which would permit the county to furnish the matron her meals free of charge. Section 3178, General Code, supra, provides for the compensation of the matron, and in the absence of a provision in her contract of employment which would take into consideration the question of meals, I am of the opinion, in answer to your first question, that it is not the mandatory duty of the county to furnish the matron her meals free of charge.

In answer to your second question, it is my opinion that the kitchen help may receive their meals without charge where their compensation has been fixed at a certain sum and board. Such a situation would, no doubt, be very common and I am unable to find any legal objections to such an administrative practice.

I come now to your third question relative to whether or not the county may pay for all the electric current that passes through a common meter. As to that part of the bill represented by current used in the residence of the sheriff, I am of the opinion the same may not legally be paid for by the county. In this connection, I call your attention to the case of *State ex rel.,* vs. *Toan, Auditor,* 13 O. C. C. (N. S.) 276. The syllabus of that case is as follows:

> "County commissioners are without authority to provide for the expense of lighting that part of the county jail which is used by the sheriff as a residence."

This decision was followed in the Annual Report of the Attorney General for 1912, Vol. I, page 268. In an opinion to be found in Opinions of the Attorney General for 1930, Vol. I, page 564, it was held as disclosed by the syllabus:

> "The county commissioners may not legally pay from the county funds the bill for furnishing light to the part of the jail utilized as the residence of the jailer."

Likewise, the county may not pay for the current used to prepare the meals of the sheriff and his family. The sheriff may not make a personal profit out of feeding the prisoners under his care. *Kohler* vs. *Powell,* 115 O. S. 418. This principle was recognized in the 1912 opinion, supra, the syllabus of which is as follows:

> "A contract by the county commissioners with the sheriff providing for the furnishing by the former of light, heat, water, fuel, telephones and cooking utensils for the residence of the latter and sixty cents a day for each prisoner maintained, would contravene the spirit of Section 2850, General Code, providing that the sheriff shall be allowed by the commissioners not less than forty-five nor more than seventy-five cents per day for keeping and feeding prisoners in jail. Such contract is nuauthorized and void."

As to the electric current which is used in preparing the meals of the prisoners, there is no doubt but that the same is a legal charge against the county and may be paid. It is the duty of the sheriff to feed the prisoners and the county commissioners, by virtue of section 2850, General Code, must pay the cost of feeding such prisoners within certain limitations.

It is therefore my opinion in specific answer to your inquiries that:

1. A jail matron appointed under the provisions of section 3178, General Code, is not entitled to her meals free of charge in the absence of a provision in her contract which would take into consideration the question of meals.

2. Where persons are employed to prepare meals for prisoners in a county jail and their compensation is fixed at a certain sum and board, the county is authorized to furnish their meals without any additional charge.

3. County Commissioners are without authority to provide for the expense of lighting that part of the county jail which is used by the sheriff as a residence. County Commissioners are unauthorized to pay for the electric current used to prepare the meals of the sheriff and his family but may pay for the electric current used to prepare the meals of the prisoners in the county jail.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1890.

CLAIMS—TOWNSHIP TRUSTEES AND BOARDS OF EDUCATION UNAUTHORIZED TO SETTLE AND COMPROMISE CLAIMS DUE THEIR RESPECTIVE SUBDIVISIONS.

SYLLABUS:

Boards of township trustees and boards of education do not have the power to settle and compromise claims due to their respective subdivisions similar to that granted to boards of county commissioners by Section 2416, General Code.

COLUMBUS, OHIO, NOVEMBER 20, 1933.

HON. RAYMOND E. LADD, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion as follows:

> "I wish to inquire if boards of education or township trustees have the same authority as county commissioners to compromise claims against the subdivision, the same being in reference to their authority to compromise with the sureties on a personal bond securing their depository funds in closed banks?"

In your request, you ask my opinion concerning the right of boards of education and boards of township trustees to settle claims *against* such subdivisions, yet the specific problem you present is a claim *in favor* of the subdivision. I, therefore, am asuming your question to be whether such subdivisions have the right to settle a claim in favor of the subdivision.

Under date of April 23, 1931, my immediate predecessor in office, in an opinion rendered to the Prosecuting Attorney of Tuscarawas County (1931 O. A. G., p. 579) held as stated in the syllabus:

> "Under proper circumstances, county commissioners have authority under section 2416 of the General Code, to enter into a compromise of claims