

"Sec. 13724. If the convict is sentenced for felony to imprisonment in a reformatory, the penitentiary, or to death, and no property has been levied upon, the sheriff, shall deliver such certified cost bill, having accredited thereon the amount paid on costs, with the convict to the warden of the penitentiary or superintendent of such reformatory."

"Sec. 13726. When the clerk of court certifies on the cost bill that execution was issued according to the provisions of this chapter, and returned by the sheriff 'no goods, chattels, lands or tenements found whereon to levy,' the warden of the penitentiary or the superintendent of such reformatory shall certify thereon the date on which such prisoner was received at the institution, and the fees for transportation; whereupon the auditor of state shall audit such cost bill and the fees for transportation and issue his warrant on the treasurer of state for such amount as he finds to be correct."

As will be noted by the provisions of Sections 13724 and 13726, supra, when a convict is sentenced for a felony to imprisonment in a reformatory, penitentiary or to death, and has no property out of which the costs of his conviction can be collected, the costs are paid from the treasury of the state, but I find no provision of law which takes care of a situation such as you have outlined in your inquiry, and I am therefore of the opinion that there is no way provided for the payment from public funds of the costs, or an allowance in lieu thereof, which accrue before an examining magistrate when he binds over a defendant, who is afterwards convicted of a felony and sentenced otherwise than to imprisonment in a reformatory, or the penitentiary, or to death.

Respectfully,

EDWARD C. TURNER,
Attorney General.

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MISDEMEANORS—COMMITMENT TO MARYSVILLE REFORMATORY—
COSTS OF COMMITMENT.

SYLLABUS:

When persons are convicted of misdemeanors involving violations of state laws, in the municipal court for the city of Ashtabula and sentenced to the Marysville Reformatory, the expense of executing the order of commitment should, by virtue of the provisions of Section 3017, General Code, be paid from the county treasury of the county of Ashtabula. Under the same section "in like manner such expense shall be paid from the municipal treasury when incurred in ordinance cases."

COLUMBUS, OHIO, April 27, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your communication in which you refer to Sections 1579-850 and 3017 of the General Code, and state:

"Defendants are occasionally committed to the Marysville Reformatory from the Municipal Court of Ashtabula for the commission of misdemeanors and the question of the taxing district's liability for the expense of conveying such prisoner has been raised."

You ask:

"Are such expenses payable from the treasury of Ashtabula county?"

The act of the legislature creating a municipal court for the city of Ashtabula in Ashtabula county, Ohio, conferred on said court jurisdiction in cases involving misdemeanors as follows:

Section 1579-824, General Code, provides:

"The Municipal Court shall have jurisdiction of all misdemeanors committed within the city and township of Ashtabula, or within four miles of the city limits, and all violations of city ordinances, of which police courts in municipalities now have, or may hereafter be given jurisdiction. In felonies the Municipal Court shall have the powers which police courts in municipalities and justices of the peace now have, or may hereafter be given."

Section 1579-825, General Code, provides as follows:

"In the actions and proceedings of which the Municipal Court has jurisdiction, all laws conferring jurisdiction upon the court of common pleas, a police court, or a justice of the peace, giving such court or officer power to hear or determine such causes, prescribing the force and effect of their judgments, orders or decrees, and authorizing or directing the execution or enforcement thereof, shall be held to extend to the Municipal Court, unless inconsistent with this act or plainly applicable (inapplicable)."

It will be seen from the provisions of the foregoing statutes that the municipal court for the city of Ashtabula has jurisdiction of all misdemeanors committed within the city and township of Ashtabula, or within four miles of the city limits, and such jurisdiction includes the power to hear and determine such causes and to prescribe the force and effect of the judgments, orders or decrees of such court in accordance with the general laws, when not inapplicable, conferring jurisdiction upon the court of common pleas, a police court or a justice of the peace. This would include in proper cases the power to commit persons who have been found guilty to the Marysville Reformatory.

Section 1579-852 in providing for the appointment of a bailiff for the municipal court of Ashtabula, provides in part as follows:

"The bailiff shall be appointed by the judge of the Municipal Court, and hold office during the pleasure of the court. He shall perform for the Municipal Court, services similar to those usually performed by the sheriff of courts of common pleas, and by the constable of courts of justices of the peace. Such bailiff shall receive such compensation, not less than six hundred dollars per annum, payable out of the treasury of the city of Ashtabula, in monthly installments, as the council may prescribe. * * * Every police officer of the city of Ashtabula shall be ex-officio deputy bailiff of the Municipal Court and shall perform from time to time such duties in respect to cases within the jurisdiction of said court as may be required of them by said Court or the clerk thereof."

Section 3017, General Code, provides as follows:

"In all state cases any wholly salaried minor court officer charged with the execution of a warrant to arrest or order of commitment shall receive from the county treasury the actual necessary expense of executing such writs upon specifically itemized bills, verified by his oath, and certified to

by the proper magistrate, court or clerk thereof, and in like manner such expense shall be paid from the municipal treasury when incurred in ordinance cases."

Section 1579-850, General Code, in making provision for the duties of the clerk of the Ashtabula Municipal Court, provides in part as follows:

"* * * * *

He (the clerk) shall collect all fines, costs and penalties. He shall be the receiver of all moneys payable into his office and on request shall pay them to persons entitled thereto. On the first business day of each calendar month he shall pay to the treasurer of the city of Ashtabula, to the credit of the Municipal Court fund, all moneys collected by his office for official services; and to the credit of the safety fund, all fines collected for violation of city ordinances.

He shall on the first day of each month in each year, pay to the county treasurer all fines collected for the violation of state laws.

* * * * *

When a person is convicted of a violation of a state law and is committed to the Marysville Reformatory from the municipal court of Ashtabula, it would of course become the duty of the bailiff or one of the deputy bailiffs of that court to convey the prisoner to the reformatory, and inasmuch as each of these officers is a wholly salaried minor court officer, it follows that he should receive from the county treasury of Ashtabula county the actual necessary expense of executing such order of commitment as provided by Section 3017, *supra*.

Your inquiry has no doubt been prompted by the fact that the legislature in passing the municipal court act creating the municipal court of the city of Ashtabula has, in making the provision with reference to the duties of the clerk of this court as contained in Section 1579-850, *supra*, to the effect that the clerk shall pay into the treasury of the city of Ashtabula all moneys collected by his office for official services, provided that the city shall receive and have all costs collected in cases wherein commitment is made to the Marysville Reformatory, whereas by the provisions of Section 3017, General Code, the expenses of transporting persons so committed must be paid out of the county treasury.

The municipal court act creating the municipal court for the city of Ashtabula was passed by the legislature in 1925, nearly four years after the enactment of Section 3017 and it must be assumed that the legislature in enacting the later act was aware of the provisions of the earlier act and intended that even though any costs that might be collected by the clerk of the municipal court in state cases were to be paid to the municipality such provision was in no way to effect the provisions of Section 3017, General Code.

It is therefore my opinion that when persons who have been convicted in the municipal court of the city of Ashtabula for misdemeanors involving violations of state laws and sentenced to the Marysville Reformatory, the necessary expense of executing the order of commitment should by virtue of the provisions of Section 3017, General Code, be paid from the county treasury of the county of Ashtabula. Under the same section "in like manner such expense shall be paid from the municipal treasury when incurred in ordinance cases."

Respectfully,

EDWARD C. TURNER,

Attorney General.