

by section 3141-1 and that wherever the accommodations of the district hospital are inadequate, as stated in that section, the county commissioners may, subject to the approval of the state department of health, proceed to erect and maintain a county tuberculosis hospital.

While the provisions of the last amendment in senate bill No. 195, and in fact all of the other amendments, are not definite in conveying express authority to use the proceeds of a sale of an interest in a joint hospital, it is believed that this and the other sections of the act referred to, construed in the light of the apparent purpose of the whole act, would authorize the commissioners to use the balance of the proceeds of the sale of their county's interest in the district hospital for the establishment of a county tuberculosis hospital, where the district hospital, from the joint maintenance of which your county has withdrawn, had not the capacity to care for all cases of tuberculosis, and where the joint board of commissioners had failed or refused to provide additional accommodations therefor, as provided in section 3141-1, in 108 O. L., 230.

Whether or not such conditions existed does not appear from your letter and it is possible that this opinion may not be quite responsive to your situation, but the inference from such withdrawal justifies the hope that the above conclusion will assist in the solution of your question.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1266.

SHERIFF—EXPENSE ACCOUNT—WORDS “SUCH STATEMENT SHALL SHOW THE NUMBER OF THE CASE AND THE COURT IN WHICH THE SERVICE WAS RENDERED AND THE RAILROAD POINT FROM WHICH A LIVERY RIG WAS USED” CONSTRUED IN SECTION 2997 G. C., (108 O. L. 1218).

The last sentence of section 2997 G. C., as amended in 108 O. L., Part II, p. 1218, to the effect that “such statement shall show the number of the case and the court in which the service was rendered and the railroad point from which a livery rig was used,” is not to be construed as a limitation upon the sheriff's right to receive allowances for expenses incurred in connection with the duties and services enumerated in said section. The intent of said section is merely to require particular information to be given by the sheriff as to cases, courts and railroad points from which livery rigs were used, where the facts surrounding the sheriff's services are such as to make it possible for him to give that kind of information.

COLUMBUS, OHIO, May 22, 1920.

HON. R. A. KERR, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—In a recent letter to this department you say:

“I desire to call your attention to section 2997 as amended by the legislature and found in house bill No. 294, and particularly to the last sentence, which reads as follows in speaking of the sheriff's statement of expenses:

‘Such statement shall show the number of the case and the court in which the service was rendered and the railroad point from which a livery rig was used.’

There are numerous instances in which the sheriff is called on to look after persons where no affidavit has been filed and no case is ever made; for instance, there is sometimes an inmate of a county institution that escapes and when apprehended is simply returned to the county institution. In that instance no case would be filed. My question then is, can a sheriff collect for any expense except where a suit of some description is begun, if not, by what means is the sheriff to be reimbursed for expenses in looking up a case where the perpetrator of a crime is never apprehended?"

H. B. No. 294 (108 O. L., Part 11, p. 1203), passed by the last session of the General Assembly and filed in the office of the secretary of state, February 19, 1920, amends some fifty-eight different sections of the General Code, enacts three supplemental sections, and repeals certain other sections: The whole act has to do with fees and costs collected by public officers in connection with the performance of their public duties, and its passage was doubtless occasioned by the legislature's desire to correct certain discovered errors and undesirable practices relating to this subject.

Among the sections amended is section 2997 G. C., which now reads thus: (p. 1218)

"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, for his actual and necessary expenses incurred and expended in pursuing or transporting persons accused or convicted of crimes and offenses, in conveying and transferring persons to and from any state hospital for the insane, the institution for feeble-minded youth, Ohio hospital for epileptics, boys' industrial school, girls' industrial home, county homes for the friendless, homes of refuge, children's homes, sanitariums, convents, orphans' asylums or homes, county infirmaries, and all institutions for the care, cure, correction, reformation and protection of unfortunates, and all expenses of maintaining horses and vehicles necessary to the proper administration of the duties of his office. The county commissioners shall allow the sheriff his actual railroad and street car fare and telephone tolls expended in serving civil processes and subpoenaing witnesses in civil and criminal cases and before the grand jury, and may allow his necessary livery hire for the proper administration of the duties of his office. 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, including railroad fare, street car fare, telephone tolls and livery hire mentioned in this section before they shall be allowed by the commissioners. *Such statement shall show the number of the case and the court in which the service was rendered and the railroad point from which a livery rig was used.*"

The changes made in this section are by way of the addition of certain new matter, the main provisions of the section being undisturbed. The new matter consists in the addition of the words which we have underscored in setting out the section above. It will be observed that the last sentence of the section is new matter and it is this sentence which gives rise to your query.

It is evident that this section is, as to its contents, easily divisible into two parts. The first part tells what the county commissioners shall make allowances to the sheriff for, namely, (a) for keeping and feeding prisoners; (b) for his expenses in pursuing or transporting persons accused or convicted of crime; (c) for his

expenses in conveying persons to and from institutions for the care of unfortunates; (d) for his expenses of maintaining horses and vehicles necessary to the proper administration of his duties; (e) for his railroad and street car fare and telephone tolls expended in serving civil processes and in subpoenaing witnesses in civil and criminal cases and grand jury witnesses; (f) for his necessary livery hire for the proper administration of his duties.

The second part of the section has to do with the filing by the sheriff of a statement under oath to the county commissioners, showing all his actual and necessary expenses in doing any of the things referred to in the first part of the section. The legislature has enumerated with some particularly certain requisites of that statement. It must be a "full, accurate and itemized account." This requirement was also a part of section 2997 G. C. before its recent amendment. The legislature then expressed a desire (as evidenced by amended section 2997) that said statement should be something more than "full," "accurate" and "itemized," namely, that it should show "the number of the case and the court in which the service was rendered and the railroad point from which a livery rig was used."

Your question is in effect this: Whether the last sentence of section 2997 G. C. is to be construed as a qualification of and as a limitation upon the sheriff's right to be compensated for expenses incurred in connection with the duties and services enumerated in said section; that is, whether as to each service the fact must be that there was then pending a case in a court, to which the service is referable.

A negative answer to such question should, in my judgment, be given. It seems reasonably clear that all that was intended by the sentence in question was to require particular information to be given by the sheriff as to cases, courts and railroad points from which livery rigs were used, where the facts surrounding the sheriff's services are such as to make it possible for him to give that kind of information.

Unless this construction be adopted, certain curious results would follow, among them these:

(1) A sheriff pursuing a person accused of crime (for example, a murderer to whose crime the sheriff was an eye witness) could not be reimbursed for his actual and necessary expenses until some one filed an affidavit against the criminal.

(2) None of the expenses incident to serving subpoenas on grand jury witnesses could be paid, as a grand jury proceeding is not a "case" in court.

(3) The necessary livery hire of the sheriff and the expenses of maintaining horses and vehicles necessary to the proper administration of his duties could be paid only where referable to a case in court. Furthermore, under such a construction no livery hire could be paid at all, unless the point from which a livery rig was used happened to be a "railroad point," for the sentence in question requires the statement to show "the railroad point from which a livery rig was used."

It is hardly likely that the legislature intended any such consequences as those just referred to, which consideration leads me to believe that the true meaning of the sentence in question is that hereinabove set forth.

Respectfully,

JOHN G. PRICE,
Attorney-General.