

OPINION NO. 73-124

Syllabus:

1. In order to obtain reimbursement from the board of county commissioners for necessary transportation expenses under R.C. 325.07, the sheriff is required to file under oath a monthly report containing a full, accurate, and itemized account of all his actual and necessary expenses;

2. When the sheriff has filed proper reports of his necessary transportation expenditures, the board of county commissioners is required, under R.C. 325.07, to reimburse the sheriff for such expenses insofar as it is financially possible for it to do so.

To: Michael Nolan, Athens County Pros. Atty., Athens, Ohio
By: William J. Brown, Attorney General, December 12, 1973

Your request for my opinion states the following:

"The Board of County Commissioners of Athens County appropriated \$13,000.00 to the Athens County Sheriff in an account entitled 'Other Expenses.' Included in that appropriation were the travel and transportation expenses provided for in Section 325.07, Revised Code. Although the County Sheriff did not submit itemized monthly reports for the first eight months of this year as is required in Section 325.07, Supra, the Board of County Commissioners did authorize the expenditure of \$12,949.55 from the 'Other Expenses' account during the first eight months of the year after receiving bills from the sheriff.

"At this time the Board of County Commissioners has received bills totalling \$3,000.00 from the sheriff, and the 'Other Expenses' account has an existing balance of \$50.45; and the Board of County Commissioners reports that the General Fund is totally committed at this time.

"The Board of County Commissioners would like your opinion as to who is liable for the Sheriff's Department bills which have been received and which exceed the 1973 appropriation for the County Sheriff's Department. * * *."

The board of county commissioners is required to pay certain of the sheriff's expenses. Under R.C. 325.07 the board "shall make allowances monthly to each sheriff for his actual and necessary expenses" in transporting persons accused or convicted of crime, in conveying individuals to or from various institutions, and in maintaining the transportation facilities required by his duties. The board shall also allow the sheriff his actual transportation and telephone expenses in connection with the service of civil and criminal process and any other necessary transportation expenses. In addition, the Section provides that the sheriff shall file a monthly report of his expenditures before they are allowed by the board. That portion of R.C. 325.07 reads as follows:

"* * * Each sheriff shall file under oath a monthly report containing a full, accurate, and itemized account of all his actual and necessary expenses, including telephone tolls and any other transportation expense mentioned in this section, before such expense is allowed by the board. Such statement shall show the number of the case, the court in which the service was rendered, and the point from which a transportation vehicle was used."
(Emphasis added.)

The duty of the board to examine the sheriff's report before reimbursing him for claimed expenses is spelled out in R.C. 305.20 which provides:

"Before making any payment to the sheriff of moneys claimed by him for official services rendered for the county, the board of county commissioners shall make a full examination and adjustment of the account of the sheriff to the date of such settlement, showing the amount of money in his hands belonging to such county, or with which he is chargeable at such date, and shall pay over to him only the balance that is found due him on such settlement after deducting all moneys found to be in his hands, or with which he is chargeable."

Furthermore, while R.C. 325.07 provides that the board may, in order to make funds readily available to the sheriff to perform the duties enumerated in the Section, advance to him an amount up to 50% of his annual salary, this does not relieve the sheriff of the mandatory duty of filing monthly reports. After the board has approved the amount expended, it is required to restore an equal amount to the advance fund. This part of the Section provides:

"For the purpose of making available to the sheriff funds necessary in the performance of the duties required of him under this section, the board may authorize, as an advancement to the sheriff, a sum not exceeding fifty per cent of his annual salary, from appropriations made to him by such board for pursuing prisoners within or without the state or for transporting such prisoners to penal institutions, or both, and for transporting persons to the institutions enumerated in this section, from which sum of money so advanced the necessary expenses for such transportation or pursuance may be paid by the sheriff. The county auditor shall draw his warrant upon the county treasurer, in favor of the sheriff, as authorized by the board.

"After the itemized monthly report provided for in this section has been filed by the sheriff and approved and allowed by the board, such board shall restore to the fund the amount expended and disbursed by such sheriff, as approved and allowed by the board.

"Any unexpended balance of such fund remaining in the hands of the sheriff, at the end of each succeeding fiscal year, shall be returned and paid into the county treasury by the sheriff."

In commenting upon the effect of R.C. 325.07 in Opinion No. 3039, Opinions of the Attorney General for 1958, my predecessor said:

"* * *the board of county commissioners is required, insofar as financially possible, to make allowance to the sheriff for expenses incurred in the maintenance of transportation facilities necessary for the performance of the duties of the office of sheriff.

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"It is to be noted, however, that it is the 'necessary' expenses which are authorized to be paid. This issue is one which will properly be

determined in the first instance by the board of county commissioners. See Section 325.07, supra."
(Emphasis added.)

In brief summary of the foregoing, the sheriff is entitled to be reimbursed by the board of county commissioners at the end of each month for all his necessary transportation expenses; in order to receive such reimbursement, the sheriff must submit a report of such expenditures to the board; and the board is to determine whether the claimed expenses are necessary. In the alternative, the board may, in its discretion, make funds readily available to the sheriff for transportation purposes by the advancement of a sum not exceeding fifty per cent of his annual salary. But this does not relieve the sheriff of the requirement that he file a monthly report. When he does so, and when the claimed expenditure has been approved by the board, the board must restore an equal amount to the advance fund in order to keep the fund at the level of the amount originally advanced. All of this, of course, rests upon the assumption that the board has adequate financial resources, and that it is not financially impossible for the board to meet the sheriff's necessary transportation expenses.

In the light of this summary of the pertinent statutory provisions, I approach your particular question. You state that the Board of County Commissioners appropriated \$13,000 in its annual budget to cover the Sheriff's "Other Expenses", including transportation expenses covered by R.C. 325.07; that the Sheriff has never submitted the itemized and sworn to monthly reports required by R.C. 325.07; that the Board did, nevertheless, authorize the expenditure of \$12,949.55 from the \$13,000 appropriation for the first eight months of the year on the basis of bills submitted by the Sheriff; that subsequently the Board has received additional bills in the amount of \$3000 from the Sheriff; and that there are no available funds in the County's General Fund to meet these bills. Since you refer only to an appropriated amount of \$13,000 out of which the Sheriff's transportation expenses are to be met, I assume that the Board did not adopt the alternative method of advancing a certain sum to the Sheriff out of the appropriation.

It is clear that, in order to obtain reimbursement for his necessary transportation expenses, the Sheriff must submit to the Board a monthly sworn report of the items for which he claims reimbursement. It is equally clear that, if the Sheriff's report is satisfactory, the Board must provide reimbursement to the extent it is financially able to do so. In this case, the Sheriff submitted no reports for the first eight months of the year. The Board, nevertheless, approved expenditures of \$12,949.55 on the basis of bills presented by the Sheriff. Under these circumstances, the Board must be held to have ratified the Sheriff's expenses for the eight months, despite his failure to file the monthly statutory reports. State v. Exec'r of Buttles, 3 Ohio St. 309, 319-325 (1854). The real question is the responsibility for the subsequent bills totalling \$3000.

The answer to this is already contained in what has been said above. The primary responsibility for the expenditures rests upon the Sheriff. In order to obtain reimbursement, he is required, under R.C. 325.07, to "file under oath a monthly report containing a full, accurate, and itemized account of all his actual and necessary *transportational expenses * * *." Until he fulfills this statutory requirement to the satisfaction of the Board, he is responsible for the bills. He must, therefore, file proper reports for the months in which the \$3000 was expended.

Once such a proper report is filed the burden shifts to the Board. Under the mandatory provisions of R.C. 325.07, the Board must reimburse the Sheriff for all his necessary transportation expenses. The fact that the Sheriff has expended the \$13,000 originally appropriated for his transportation and other expenses is irrelevant. Since the Board ratified those expenditures, they must have been necessary. And if any of the additional \$3000 was also necessary, the Board must appropriate whatever is required to reimburse the Sheriff. Once again, this assumes that the Board has sufficient funds available to it. You state that the Board has reported that the General Fund is totally committed at the present time. However, Title 57 of the Revised Code, which generally governs the subject of taxation, provides for the transfer of public moneys of a political subdivision from one fund to another where necessary. R.C. 5705.14, 5705.15, 5705.16. In the event that a transfer cannot be accomplished and it is financially impossible for the Board to dispose of the pending bills, it may be necessary to resort to the Sheriff's "furtherance of justice" allowance. R.C. 325.071; Opinion No. 67-120, Opinions of the Attorney General for 1967. It goes without saying that the Board may not expend any moneys which have not been properly appropriated. R.C. 5705.41.

In specific answer to your question it is my opinion, and you are so advised, that:

1. In order to obtain reimbursement from the board of county commissioners for necessary transportation expenses under R.C. 325.07, the sheriff is required to file under oath a monthly report containing a full, accurate, and itemized account of all his actual and necessary expenses;

2. When the sheriff has filed proper reports of his necessary transportation expenditures, the board of county commissioners is required, under R.C. 325.07, to reimburse the sheriff for such expenses insofar as it is financially possible for it to do so.