

3159.

COUNTY AUDITOR—DUTY TO ISSUE WARRANT IN FAVOR OF LEGALLY APPOINTED JAIL MATRON WHEN APPROPRIATION MADE BY COMMISSIONERS FOR DEPUTIES AND ASSISTANTS OF SHERIFF'S OFFICE.

*SYLLABUS:*

*Where an appropriation has been made from the general fund for "deputies and assistants" of the sheriff's office, it is mandatory that the county auditor issue his warrant on such appropriation for the salary of a legally appointed jail matron, in the amount certified by the sheriff to be correct and payable.*

COLUMBUS, OHIO, April 17, 1931.

HON. FRED. W. EVERETT, JR., *Prosecuting Attorney, Jackson, Ohio.*

DEAR SIR:—Your recent request for my opinion reads as follows:

"The Sheriff of this county, under the provisions of Section 3178 of the General Code of Ohio, appointed B. G. as jail matron to care for insane, female and minor prisoners confined in the jail of such county. This appointment was made on January 5th, 1931, and upon the same day the Probate Judge made the following entry upon his journal:

"This day came W. T. G., Sheriff of Jackson County, Ohio, and represented to the undersigned Probate Judge of said County, that he had this day appointed B. G. as Jail Matron, for said County, from this day until the First Monday in January, 1933, for the purpose of caring for the insane, female and minor prisoners, which may be confined in said jail, and asked the approval of said appointment, and that compensation may be fixed therefor.

On consideration thereof, and the Court being fully advised in the premises, the undersigned Probate Judge, hereby approves said appointment, and fixes the compensation of said B. G. as said Jail Matron at the sum of fifty (\$50.00) Dollars per month, as provided by law.

J. G. E., *Probate Judge.*'

At the expiration of the first month B. G. received a certificate from the Sheriff and presented it to the County Auditor for payment which was refused on account of no funds being appropriated by the County Commissioners to pay a jail matron. Can the County Auditor refuse to issue the warrant by reason of the fact that there has been no funds appropriated specifically for a jail matron?"

Section 3178, General Code, to which you refer, 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 2570, General Code, which is pertinent to your inquiry, reads:

"Except moneys due the state which shall be paid out upon the warrant of the auditor of state, the county auditor shall issue warrants on the county treasurer for all moneys payable from such treasury, upon presentation of the proper order or voucher therefor, and keep a record of all such warrants showing the number, date of issue, amount for which drawn, in whose favor, for what purpose and on what fund. He shall not issue a warrant for the payment of any claim against the county, unless allowed by the county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal authorized by law so to do."

It is to be noted from a reading of the section, that the county auditor is required to issue warrants on the county treasurer for all moneys payable from such treasury, upon presentation of the proper order or voucher therefor, but it is provided that he shall not issue a warrant for the payment of any claim against the county commissioners except where the amount due is fixed by law or is allowed by an officer authorized by law so to do.

In the instant case the probate judge was authorized by the provisions of section 3178 to approve the appointment of the matron made by the sheriff and fix her compensation, and this having been accomplished, the duty devolved on the county auditor to issue his warrant, payable from a pertinent appropriation from the general fund of the county, for the compensation so fixed. A consideration of the provisions of section 2460, General Code, also impels this conclusion. Said section reads as follows:

"No claims against the county shall be paid otherwise than upon the allowance of the county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the claim. No public money shall be disbursed by the county commissioners, or any of them, but shall be disbursed by the county treasurer, upon the warrant of the county auditor, specifying the name of the party entitled thereto, on what account, and upon whose allowance, if not fixed by law."

In the situation you present, the compensation of the jail matron was fixed by a person authorized by law so to do. From your communication it appears that a certificate was presented from the person allowing the claim, and it then became the duty of the county auditor to issue his warrant on a proper appropriation from the general fund of the county.

Section 5625-33, General Code, reads in part as follows:

"No subdivision or taxing unit shall: \* \* \* (b) Make any expenditure of money unless it has been appropriated as provided in this act. (c) Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show upon its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn."

It follows from the foregoing that if there has not been an appropriation

from which the salary in question may be paid, the county auditor may not be compelled to issue his warrant in the amount of such salary as certified by the sheriff to be payable. *State ex rel. v. Thomas*, 35 O. App. 250, 259.

I am informed that there exists at present an appropriation under the heading of "Sheriff's Office" for "Compensation of deputies and assistants." The question then presented is whether or not a jail matron can be classified as a deputy or assistant to the sheriff, so as to allow a proper warrant to be drawn upon that appropriation. In this respect the case of *State of Ohio ex rel. v. Cooper, Sheriff*, 12 O. N. P. (N. S.) 659, is pertinent. The second branch of the syllabus reads:

"A woman serving as matron of a jail is not a public officer, and could not become a public officer under our present Constitution, but is a mere assistant of the sheriff whose term of office expires with that of her superior \* \* \*"

In view of the foregoing, I am of the opinion that where an appropriation has been made from the general fund for "deputies and assistants" of the sheriff's office, it is mandatory that the county auditor issue his warrant on such appropriation for the salary of a legally appointed jail matron, in the amount certified by the sheriff to be correct and payable.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

3160.

APPROVAL, BONDS OF CLEVES-NORTH BEND VILLAGE SCHOOL DISTRICT, HAMILTON COUNTY, OHIO.—\$50,000.00.

COLUMBUS, OHIO, April 17, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

3161.

APPROVAL, ARTICLES OF INCORPORATION OF THE MID-WEST MUTUAL INSURANCE ASSOCIATION.

COLUMBUS, OHIO, April 18, 1931.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and my opinion as to the validity thereof, the proposed articles of incorporation of THE MID-WEST MUTUAL INSURANCE ASSOCIATION. The caption designating the same as articles of incorporation is inconsistent with the terminology used in Sections 9593 to 9607, General Code, under the authority of which said association is formed. Opinion of Attorney General, No. 2859, dated January 24, 1931; Opinion of Attorney General, No. 3008, dated February 28, 1931. I consider, however, that this is not a serious defect and may well be ignored.

In all other respects, I find that said proposed articles of incorporation conform with the Constitution and laws of the United States and the State of Ohio. I am therefore of the opinion that it is proper for you to file the same as provided by law.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*