

delinquent levy due such subdivision which is unpledged for other purposes to the payment of interest and the retirement of the bonds issued under authority of this act.”

Answering your question, therefore, I am of the opinion that when a subdivision issues bonds under Section 2293-43, General Code, the amount of unpledged delinquent taxes and assessments which are collected for such subdivision after the exchange or sale of said bonds shall be paid to the authority having charge of the sinking fund of the subdivision, which money shall be placed in a separate fund for the purpose of retiring said bonds.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5701.

ARREST—VIOLATIONS OF LIQUOR CONTROL ACT—DETENTION OF PRISONER PENDING ISSUANCE OF WARRANT—PROPER COURT TO HEAR SUCH CASE—DUTY OF SHERIFF OVER SUCH PRISONER.

SYLLABUS:

1. *A person arrested without a warrant under the conditions set forth in Section 13432-1, General Code, must be promptly taken by the arresting officer before a court or magistrate having jurisdiction of the offense, and an arresting officer, including an Inspector of the Department of Liquor Control, does not have the power or authority in such a case to detain the prisoner until a particular court or magistrate becomes available if some other court or magistrate having jurisdiction of the offense is available and accessible at the time.*

2. *A person arrested without a warrant can be detained in a county jail for safe-keeping only until a charge can be filed against him by the arresting officer with a court or magistrate having jurisdiction of the offense and available and accessible at the time to the arresting officer.*

3. *A person arrested under a warrant or search warrant can be detained in a county jail by a sheriff for safe-keeping on behalf of the arresting officer only for such time as will permit the arresting officer to safely take the prisoner before the court or magistrate issuing the warrant or to some other court or magistrate having jurisdiction of the offense if the issuing court or magistrate is not available.*

4. *A person arrested for violation of the laws of this state pertaining to the manufacture, sale and distribution of beer and intoxicating*

liquors, under a warrant either by a sheriff or an Inspector of the Department of Liquor Control, cannot be detained by such officers until the prisoner can be taken before the court or magistrate issuing the warrant if some other court or magistrate having jurisdiction of the offense is available at the time to the arresting officers and the court or magistrate issuing the warrant is not.

5. A sheriff, as the jailer of the county, can, without a commitment or court order accept and hold for safe-keeping for a reasonable time only, a person arrested by an Inspector of the Department of Liquor Control either without a warrant under the conditions prescribed in Section 13432-1, General Code, or under a warrant.

COLUMBUS, OHIO, June 9, 1936.

HON. GEORGE L. LAFFERTY, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter requesting my opinion on the following questions:

"1. May the Sheriff of Columbiana County legally receive prisoners from Inspectors of the Department of Liquor Control, who have said prisoners under arrest either under the warrant which is part of the search warrant or under a regular warrant for the arrest of said prisoners, and where either of said warrants are directed to an Inspector of the Department of Liquor Control, and the Sheriff legally hold said prisoners for arraignment before a court of record and without said Inspector at the time presenting said Sheriff with a commitment from some court or magistrate for said prisoner.

2. If either of the warrants above mentioned are directed to the Sheriff, may the Sheriff hold the prisoners for arraignment before a court of record without having a commitment if before a judge of the court of record can be found said prisoner could be taken before a magistrate having jurisdiction?

3. If in either of the above cases the Sheriff does receive the prisoner, how long is he justified in holding the prisoner before taking the prisoner before a court of record, even though a magistrate's court is available before whom the prisoner could be taken instead of waiting for the court of record?

4. May the Sheriff legally receive in the county jail a prisoner from an Inspector of the Department of Liquor Control who has been arrested by said Inspector on view, and hold him for arraignment before a court of record without having a commitment accompany the prisoner?

5. May the Sheriff legally receive in the county jail prisoners of the Department of Liquor Control whenever orally requested by Inspectors of the Department of Liquor Control, and mark his jail register—"To be held for the Department of Liquor Control" whether the Inspector has arrested the prisoner on a search warrant, warrant, or on view, so as to give the Inspector time within which to have the prosecutor or city solicitor file information in a court of record and have the prisoner arraigned in said court of record?"

No person in this state can be deprived of his liberty except by virtue of some lawful writ or process issued under authority of law. A person cannot be arrested except upon a warrant which can be issued only upon a verified complaint being filed with either a judge, clerk or magistrate. Sections 13432-8 and 13432-9, General Code. The arrest of a person without a warrant is unlawful except where the legislature has provided otherwise as in Sections 13432-1 and 13432-2, General Code. The arrest without a warrant, by a police officer, of a person found violating a statute or an ordinance is expressly authorized by Section 13432-1, General Code, which reads:

"A sheriff, deputy sheriff, marshal, deputy marshal, watchman or police officer, herein designated as 'peace officers' shall arrest and detain a person found violating a law of this state, or an ordinance of a city or village, until a warrant can be obtained.

A constable within the limits of the township in which said constable has been appointed or elected, shall arrest and detain a person found by him in the commission of a misdemeanor, either in violation of a law of this state or an ordinance of a village, until a warrant can be obtained."

The arrested person can only be detained without a charge being placed against him for such time as will allow the police officer to file a complaint with the judge, clerk or magistrate having jurisdiction of the offense, since the arresting officer, under Section 13432-3, General Code, which reads:

"When a peace officer has arrested a person without a warrant, he must without unnecessary delay, take the person arrested before a court or magistrate having jurisdiction of the offense, and must make or cause to be made before such court or magistrate a complaint stating the offense for which the person was arrested."

must obtain a warrant to legalize the further imprisonment of the accused. The power to detain a person without a warrant, as provided by Section 13432-1, General Code, was no doubt given to police officers so as to prevent a failure of justice through the escape of misdemeanants or criminals, and this power must be measured by and ends with the necessity on which it is based. The further object of Section 13432-3, General Code, requiring that prompt complaint be made by an arresting officer, is for the purpose of protecting and assuring those arrested without a warrant that they will be promptly and without unnecessary delay taken before a court or magistrate in order that they may be heard concerning the offense with which they are charged as having committed. Thus it is the duty of a police officer, including an Inspector of the Department of Liquor Control appointed as provided in paragraph 8 of Section 6064-8, General Code, after making an arrest without a warrant under the conditions set forth in Section 13432-1, General Code, to take the accused person without unnecessary delay and within a reasonable time, before a court or magistrate having jurisdiction of the alleged offense in order that a charge may be filed and the arrested person examined and held as the case may warrant.

Under the terms of Section 13432-3, General Code, this must be done without unnecessary delay which means that it must be done promptly and within a reasonable time, under all circumstances which may vary in each case depending on the accessibility and availability of a court or magistrate and the safety with which the arrested person might be taken before the court or magistrate. Although a police officer including an Inspector of the Department of Liquor Control can detain a person arrested without a warrant until the prisoner can be safely taken before a court or magistrate having jurisdiction of the offense, nevertheless such officers would not be justified in holding in custody a person arrested without a warrant merely because the arresting officer desired to file a complaint in a court of record in preference to a magistrate even though the latter was available and accessible to the arresting officer at the time. Such a detention would be in violation of Section 13432-3, General Code, and would be highly improper if not illegal. Section 13432-3, General Code provides that a person arrested without a warrant shall be taken promptly and without unnecessary delay before a court or magistrate having jurisdiction of the offense and there is no provision in the laws of this state which would authorize a police officer under such circumstances to prefer a particular court or magistrate over another court or judicial officer in filing a complaint. In other words, it is the duty of a police officer when arresting a person without a warrant to take him promptly before a court or magistrate having jurisdiction of the offense and then and there available and accessible to the arresting officer.

Under the Code of Criminal Procedure of this state a justice of the

peace has jurisdiction to hear and determine criminal cases arising out of violations of the Liquor Control Act (Sections 6064-1, et seq., General Code). Section 13422-3, General Code, reads in part :

“Magistrates shall have jurisdiction within their respective counties, in all cases of violations of any law relating to :

* * * * * * * * *

8. Any violation of the liquor control act, or keeping a place where intoxicating liquor is sold, given away or furnished in violation of any law prohibiting such acts.

* * * * * * * * *

The term “magistrate” as used in Section 13422-3, General Code, is defined in Section 13422-1, General Code, which reads in part :

“For the purposes of this title, the word ‘magistrate’ shall be held to include justices of the peace, police judges or justices, mayors of municipal corporations and judges of other courts inferior to the court of common pleas. * * *”

This office in an opinion which may be found in Opinions of the Attorney General for 1934, Vol. II, page 1587, held that :

“A justice of the peace and judges of courts inferior to the court of common pleas have jurisdiction to hear and determine cases arising from the violations of the Liquor Control Act, and for keeping a place where intoxicating liquor is sold, given away or furnished in violation of the penal laws of this state.”

Since a justice of the peace, as well as judicial officers of courts inferior to courts of record, have jurisdiction to hear and determine offenses charging violations of the Liquor Control Act, it follows that a police officer, including an Inspector of the Department of Liquor Control, who arrests a person without a warrant for violating the Liquor laws of this state would not have authority to detain such person until a judge of a court of record was available if at the time a magistrate is available and accessible to the arresting officer and the prisoner could be safely taken before the magistrate. Detaining a person arrested without a warrant under such circumstances would be illegal and in violation of Section 13432-3, General Code, the plain terms of which cannot be disregarded by a police officer or superseded by an order adopted by an administrative officer, board or department. If a magistrate, judge, court or officer is available, with the power to issue a warrant, take bail or hear the case,

it is the mandatory duty of the arresting officer to proceed promptly with the prisoner to such magistrate or judicial officer. It is also the duty of a police officer where a person is arrested without a warrant to make a reasonable effort to find a magistrate or court and obtain the issuance of a warrant or warrants.

The principal question raised in your request for my opinion concerns the power of a sheriff of a county to accept and hold without a commitment or other judicial process for safe-keeping a person arrested without a warrant as provided in Section 13432-1, General Code, by a peace officer such as an Inspector of the Department of Liquor Control. The rule of law in reference to that question is stated in 46 A. L. R. 806 as follows:

“As a general rule a jailer, unless he has legal authority in the form of a valid written mittimus is liable for false imprisonment in detaining a prisoner beyond *a reasonable time for procuring such authority.*” (Italics ours.)

The same question has been considered by this office in several opinions rendered by a former Attorney General. In Opinions of the Attorney General for 1927, Vol. III, page 1702, it was held as disclosed by the first and second branches of the syllabus:

“1. It is unlawful to arrest a person ‘on suspicion’, that is, because it is suspected that such person may have committed a crime or offense, and imprison such person in the county jail for a longer period of time than is reasonably necessary under the circumstances for a charge to be filed before the proper court or magistrate and a legal warrant and commitment obtained. Where one is so arrested and held for a longer period without such writ or other authority from a competent court or magistrate, he has a right of action for false imprisonment against the officer or person who made the arrest and those by whom he has been so unlawfully held in custody.

2. A board of county commissioners is without authority to make allowances to sheriffs for the keeping and feeding of persons confined in the jail at the instance of arresting officers and other persons lawfully making arrests, for a longer period than is reasonably necessary for such person making the arrest to take the prisoner before a proper magistrate and procure a lawful commitment for him.”

In the opinion it was stated as follows at page 1705:

“The county jail, formerly called the common gaol, is for the confinement of persons lawfully committed thereto by some competent tribunal and for the use of peace officers and others

who are authorized to make arrests for the purpose of holding the persons arrested until commitment by such competent tribunal may be procured."

To the same effect is the first paragraph of the syllabus of an opinion to be found in Opinions of the Attorney General for 1928, Vol. II, page 1505, wherein it was held:

"1. Persons arrested by peace officers for violating state laws may lawfully be confined in the county jail for such a period of time as is reasonably necessary under all the circumstances of the case, to procure a proper warrant or commitment from a magistrate of competent jurisdiction."

The then Attorney General in the course of his opinion said at page 1508:

"While there is no express statute authorizing an arresting officer to place a person charged with crime in the county jail where the circumstances are such that it is not reasonably possible forthwith to take the accused before a competent magistrate for examination and commitment or release, it is my opinion that such officers have that power and authority, although as said in Opinion No. 972, supra:

"* * * the power of detaining the person so arrested or restraining him of his liberty in such a case is not a matter within the discretion of the officer making the arrest. He cannot legally hold the person arrested in custody for a longer period of time than is reasonably necessary under all circumstances of the case to obtain a proper warrant or order for his further detention from such tribunal or officer authorized under the law to issue such warrant or order. If the person arrested is detained or held by the officer for a longer period of time than is reasonably required under the circumstances without such warrant or authority, he will have a cause of action for false imprisonment against the officer and all others by whom he has been unlawfully detained. See *Brock v. Stinson*, 108 Mass., 520; *Green vs. Kennedy* 48 N. Y. 653; *Tubbs vs. Tukey*, 3 Cush., 48; *Leger, et al vs. Warren*, 62 O. S., 500'.

You state in your letter that the prisoner in question was arrested in the night season, and I assume from this statement that it was not possible under the circumstances immediately to have the prisoner before a magistrate, and that he was

being taken to the county jail to be held until the next morning. If this be true, the police officer making the arrest was authorized to deliver the prisoner to the county jail to be held in custody for such time as was reasonably necessary under all the circumstances to obtain a commitment from the magistrate, and when so delivered such prisoner became a prisoner lawfully confined in the county jail."

A similar question was considered in Opinions of the Attorney General for 1928, Vol. IV, page 2947, wherein it was held in the third paragraph of the syllabus:

"3. There is no authority for a county sheriff to detain persons on suspicion of their having committed offenses punishable by Federal Law, nor for the detention and imprisonment of persons merely at the request of the United State Marshal, for a longer time than is reasonably necessary to obtain a legal warrant for their arrest. Any person arrested or detained without a warrant first having been procured for such arrest should be taken, as soon as reasonably possible, before a proper magistrate and a warrant procured, or he should be released."

In the course of his opinion the Attorney General at page 2954 stated that:

"Nowhere is there any authority in the statutes of Ohio for a sheriff to arrest for Federal offenses without first having procured a warrant, nor is there any authority for holding persons in jail for from one to three days without the issuing of a warrant whether they are suspected of Federal or State offenses. The law requires the procuring of a warrant within a reasonable time after a person is detained and it is doubtful whether from one to three days is a reasonable time under any circumstances.

In Ruling Case Law, Vol. II, page 800, where the matter of making arrests without warrant is discussed, it is said:

'The duty of the one making such an arrest to bring the prisoner before a magistrate or prosecuting officer that proceedings for the trial of the prisoner may be instituted, and that he may have an opportunity to give bail or otherwise procure his release is even more important than if a warrant had been issued before arrest.'

The same rule of law was recently announced in the case of *Janus v. United States*, 38 Fed. (2nd) 431. The fourth paragraph of the syllabus reads:

“4. It was duty of officer making arrest, without warrant, of persons found in charge of sheep on government land, trespassing contrary to 25 U. S. C. A. Sec. 179, upon discovering absence of magistrate from office, to place prisoners in jail and make effort to secure attendance of magistrate at his office.”

It would appear to me that common sense itself would dictate such a rule of law because where a person is arrested without a warrant as provided in Section 13432-1, General Code, the arresting officer has the right and it is his duty to detain the arrested person in some safe and convenient place such as a county jail until the officer, acting promptly and without unnecessary delay, could file a complaint before a court or magistrate having jurisdiction of the offense.

The rule of law pertaining to the safe keeping of a prisoner by a sheriff or a police officer until the prisoner can be taken to a magistrate or court having jurisdiction of the offense would likewise be applicable to a case where a person is arrested by a police officer under a writ or process issued by a court, magistrate or other competent person. In other words, the sheriff may grant to a police officer the temporary use of a county jail for the detention of a person arrested by virtue of a writ or process issued under authority of law to such police officer. However, the arrested person can be detained in the county jail only until the arresting officer can safely convey the prisoner before the court or magistrate issuing the writ or process, or some other court or magistrate having jurisdiction of the offense if the court or magistrate that issued the writ or process is not available. In the case of *In re Durant*, 12 Atl., 650 (Vt.), at page 654, it is stated that:

“It has been repeatedly held in civil causes, even, that an officer may use the common jail for the safekeeping of a person arrested under a *capias*, whom it is his duty to safely keep so as to have him to appear at a time and place named.”

The arrest of a person under a warrant is governed by Sections 13432-8, 13432-9 and 13432-19, General Code. Section 13432-8, General Code, reads:

“Any judge, or clerk of a court of record, or of any municipal court, or a magistrate may issue a process for the arrest of any person charged with an offense returnable in the court having jurisdiction thereof.”

Section 13432-9, General Code, provides:

“When an affidavit charging a person with the commission of an offense is filed with a judge, clerk or magistrate, if he has reasonable ground to believe that the offense charged has been committed, he shall issue a warrant for the arrest of the accused; if the offense charged is a violation of the laws of the state, such warrant may be directed to and executed by any officer named in Section 1 of this chapter, but if the offense charged is a violation of the ordinance or regulation of a municipal corporation, such process shall be directed to and executed by the officers of such corporation.”

Section 13432-19, General Code, reads:

“A warrant shall contain a copy of the affidavit inserted therein, or annexed thereto, or shall recite the substance of the accusation and command the officer to whom issued, forthwith, to take the accused and bring him before the magistrate or court issuing such warrant, or other magistrate of the county having cognizance of the case, to be dealt with according to law. The following shall be sufficient form of warrant: The State of Ohio, _____ County, ss: To the Sheriff (or other officer) greeting: Whereas, there has been filed with me an affidavit, of which the following is a copy (here copy affidavit): These are therefore to command you to take the said E. F., if he be found in your county, or, if he is not found in your county, that you pursue after him in any other county in this state, and take and safely keep the said E. F., so that you have his body forthwith before me or some other magistrate of said county, to answer the said complaint, and be further dealt with according to law. Given under my hand this.....day of, 19..... A. B., Justice of the Peace.”

The arrest of a person under a search warrant issued by a court of record for a violation of the Liquor Laws of this state (Section 6064-61, General Code, and Opinions of the Attorney General for 1934, Vol. II, page 1587) is regulated by Sections 13430-4 and 13430-5, General Code.

Section 13430-4, General Code, provides:

“The warrant for search shall be directed to the proper officer, and, by a copy of the affidavit inserted therein or annexed and referred to, shall show or recite all the material facts al-

leged in the affidavit, and particularly describe the thing or things to be searched for, the house or place to be searched, and the person, if any, to be seized. Such warrant shall command the officer to search such house or place for the property or other things, and if found, to bring them, together with the person to be seized, before the judge or magistrate. The command of the warrant shall be that the search be made in the day time, unless there is urgent necessity for a search in the night, in which case a search in the night may be ordered. Such search warrant shall be returned by the officer holding the same and not later than three days after the issuance of the same."

Section 13430-5, General Code, reads:

"A warrant for search substantially in the form following, shall be sufficient:

State of Ohio,.....County, ss:

To the Sheriff (or other officer) of said County, greeting:

Whereas there has been filed with me an affidavit, of which the following is a copy (here copy the affidavit).

These are, therefore, to command you in the name of the State of Ohio, with the necessary and proper assistance, to enter, in the day time (or in the night time) into (here describe the house or place as in the affidavit) of the said.....of the township of.....in the County aforesaid, and there diligently search for the said goods and chattels, or articles, to-wit: (here describe the articles as in the affidavit) and that you bring the same or any part thereof, found on such search, and also the body of E. F., forthwith before me, or some other judge or magistrate of the county having cognizance thereof, to be disposed of and dealt with according to law. Given under my hand, this.....day of.....

A. B., Justice of the Peace."

It is evident that the police officer, acting pursuant to a warrant issued under Section 13432-8, General Code, or under a search warrant issued by a court of record by virtue of Section 6064-61, General Code, is required by both Sections 13432-19, General Code, and 13430-5, General Code, to take the person arrested under such process either to the court or magistrate issuing the process or before some other court or magistrate having jurisdiction of the offense if the issuing court or mag-

istrate is not available. There is no provision in either Sections 13432-19 or 13430-5, General Code, which confines the arresting officer in executing a warrant to bring and convey the arrested person only before the court issuing the writ of warrant. The language in both Sections 13432-19 and 13430-5, General Code, is explicit that the arresting officer in the execution of the warrant shall forthwith bring the arrested person either before the court or magistrate which issued the warrant or before a court or magistrate having jurisdiction of the offense. If a person is arrested by an Inspector of the Department of Liquor Control under a search warrant issued by virtue of Section 6064-61, General Code, it is the duty of the officer to forthwith take the prisoner before the judge of the court of record which issued the search warrant or before some other court or magistrate in the county if the judge of the court of record which issued the warrant is not available. The same is true if the search warrant is executed by a sheriff of a county. In the event the judge of the court of record which issued the search warrant or some other judge, court or magistrate is not available or accessible, the sheriff of a county would have the power to hold the prisoner so arrested for safe-keeping until he could promptly convey the prisoner before a judge or magistrate having jurisdiction of the offense.

Concluding it is my opinion that:

1. A person arrested without a warrant under the conditions set forth in Section 13432-1, General Code, must be promptly taken by the arresting officer before a court or magistrate having jurisdiction of the offense, and an arresting officer, including an Inspector of the Department of Liquor Control, does not have the power or authority in such a case to detain the prisoner until a particular court or magistrate becomes available if some other court or magistrate having jurisdiction of the offense is available and accessible at the time.

2. A person arrested without a warrant can be detained in a county jail for safe-keeping only until a charge can be filed against him by the arresting officer with a court or magistrate having jurisdiction of the offense and available and accessible at the time to the arresting officer.

3. A person arrested under a warrant or search warrant can be detained in a county jail by a sheriff for safe-keeping on behalf of the arresting officer only for such time as will permit the arresting officer to safely take the prisoner before the court or magistrate issuing the warrant or to some other court or magistrate having jurisdiction of the offense if the issuing court or magistrate is not available.

4. A person arrested for violation of the laws of this state pertaining to the manufacture, sale and distribution of beer and intoxicating liquors, under a warrant either by a sheriff or an Inspector of the De-

partment of Liquor Control, cannot be detained by such officers until the prisoner can be taken before the court or magistrate issuing the warrant if some other court or magistrate having jurisdiction of the offense is available at the time to the arresting officers and the court or magistrate issuing the warrant is not.

5. A sheriff, as the jailer of the county, can, without a commitment or court order accept and hold for safe-keeping for a reasonable time only, a person arrested by an Inspector of the Department of Liquor Control either without a warrant under the conditions prescribed in Section 13432-1, General Code, or with a warrant.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5702.

APPROVAL—BOND FOR THE FAITHFUL PERFORMANCE OF
HIS DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTOR—S. H. STOUFFER.

COLUMBUS, OHIO, June 9, 1936.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted a bond in the penal sum of \$5,000, with sureties as indicated, to cover the faithful performance of the duties of the official as hereinafter listed:

S. H. Stouffer, Resident District Deputy Director, Paulding County—The Ohio Casualty Insurance Company.

The above listed bond is undoubtedly executed pursuant to the provisions of sections 1183 and 1182-3, General Code, which state, in so far as pertinent:

“Sec. 1183. * * * Such resident district deputy directors shall * * * give bond in the sum of five thousand dollars * * *.”

“Sec. 1182-3. * * * All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their respective positions, and such bonds * * * shall be approved as to the sufficiency of the sureties by the director (of highways) and as to legality and form by the attorney general and be deposited with the secretary of state. * * *” (Words in parenthesis the writer’s.)