

3769.

APPROVAL, BONDS OF BUTLER COUNTY, OHIO—\$5,000.00.

COLUMBUS, OHIO, November 17, 1931.

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

3770.

APPROVAL, BONDS OF CITY OF ELYRIA, LORAIN COUNTY, OHIO—
\$7,500.00.

COLUMBUS, OHIO, November 17, 1931.

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

3771.

COSTS—PRISONER COMMITTED TO ANOTHER COUNTY UNDER AN
UNCONSTITUTIONAL STATUTE—ASSESSED AGAINST COUNTY
OF COMMITMENT.*SYLLABUS:**Where a county has an agreement with a municipal workhouse located outside of the county, for the commitment of persons convicted of certain offenses, the cost of maintaining such prisoners committed to such workhouse under a statute which has been held unconstitutional and repealed, should be charged back to the county of commitment.*

COLUMBUS, OHIO, November 17, 1931.

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

GENTLEMEN:—This will acknowledge receipt of your communication, which reads:

“Where a county has a contract with a municipal workhouse located outside of the county and the municipal court of a city in the county sends prisoners to such workhouse and the mittimus shows that the sentence was under the vagrancy act, which act prior to such commitment was repealed and held unconstitutional;

Question: Have the workhouse authorities the legal right to receive such prisoners and charge the county for keeping them under their contract?”

Subsequent information from your department discloses the commitments in question were made in 1930.

As you state in your communication, the vagrancy act was declared uncon-

stitutional in the case of *Ex Parte Smith*, 13 O. N. P. (n. s.) 278, and subsequently repealed in 113 O. L. 685.

Section 4141, General Code, reads in part as follows:

"Any city or district having a workhouse, may receive as inmates thereof persons sentenced or committed thereto, as provided by law, from counties other than the one in which such workhouse is situated, upon such terms and during such length of time as agreed upon by the commissioners of such counties, or by the council of such municipality, and the council of the city, or the board of the district workhouse, or other authority having the management and control of such workhouse."

Section 13451-13, General Code, reads in part as follows:

"When a person has been convicted of a misdemeanor, including a violation of a municipal ordinance, by a court or magistrate in any county or municipality having no workhouse, and the commissioners of such county or council of such municipality have made provisions as allowed by law for receiving prisoners so convicted into the workhouse of a city in any other county or district in the state, such court or magistrate where imprisonment in jail may lawfully be imposed in such case, may sentence such person to such workhouse for a period within the terms of the law."

While I am not unmindful of the fact that the above sections presuppose valid commitments, which here was not the case, since the statute under which the prisoners were convicted was not in existence at the time of trial, nevertheless, I believe that the authorities of the workhouse have no authority to refuse to accept the same, and therefore the cost of maintaining such prisoners can legally be charged back to the county of commitment under the terms provided in their contract. For the workhouse authorities to refuse to accept the same would be a usurpation of the judicial function since their action would be in effect a reversal of the trial court. Undoubtedly, a proper method of redress, in the event a court has sentenced a person for a violation of an unconstitutional or repealed section, is by applying for a writ of habeas corpus in a proper court.

In view of the foregoing, I am of the opinion that where a county has an agreement with a municipal workhouse located outside of the county, for the commitment of persons convicted of certain offenses, the cost of maintaining such prisoners committed to such workhouse under a statute which has been held unconstitutional and repealed, should be charged back to the county of commitment.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3772.

COUNTY COMMISSIONERS—UNAUTHORIZED TO CONTRIBUTE TO
COMMUNITY FIRE TRUCK PURCHASE—MAY CONTRACT FOR
FIRE PROTECTION FOR COUNTY BUILDINGS.

SYLLABUS:

1. *A board of county commissioners may not contribute to a community fire truck purchase.*
2. *A board of county commissioners may enter into a reasonable agree-*