

4177

JAIL—CITY BY CONTRACT WITH COUNTY COMMISSIONERS LEASED PORTION OF CELLS IN COUNTY JAIL—CONFINEMENT OF PRISONERS SENTENCED FOR VIOLATION OF CITY ORDINANCES—COUNTY BY CONTRACT OBLIGATED TO PROVIDE FOR CUSTODY AND MAINTENANCE OF PRISONERS—AGREED CHARGE TO BE PAID BY CITY—DUTY OF COUNTY TO FURNISH AT ITS OWN EXPENSE COST OF MEDICAL OR HOSPITAL SERVICES IN ABSENCE OF AGREEMENT—SECTION 753.02 RC.

SYLLABUS:

Where, pursuant to Section 4126 of the General Code, Section 753.02, Revised Code, the commissioners of a county have entered into a contract with a city whereby the county leases to said city a certain portion of the cells in the county jail for the confinement of prisoners sentenced for violation of ordinances of said city, which contract obligates the county to provide for the custody and maintenance of such prisoners at an agreed charge to be paid by said city, and said contract contains no reference to the cost of hospital or medical services that may be required for such prisoners, it is the duty of the county to furnish such services at its own expense.

Columbus, Ohio, August 3, 1954

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Dear Sir:

I have before me your letter requesting my opinion, reading as follows:

“I am enclosing copy of the contract between the Clark County Commissioners and the City of Springfield, covering the keeping of prisoners in the Clark county jail.

“The substance of this contract, entered into under the provisions of Section 4126 G. C. (753.02 R.C.) is that the county commissioners of Clark county agree to lease jail cells Nos. 1 to 6 inclusive, together with such additional space as is necessary, in the Clark county jail, to the City of Springfield, and to receive, guard, house and maintain therein, feed, and sustain each city prisoner sentenced to or confined in said Clark county jail

during the life of such agreement, for \$1.50 per day. (\$1.10 plus \$.40).

“A city prisoner is defined as any person confined or detained in said county jail as the result of, or by virtue of a violation of any ordinance of the city of Springfield.

“One of the considerations, moving in favor of the city, is the fact that the county leases the premises known as the Municipal Court premises to the city for a period of ten years at a relatively nominal rental.

“In connection with this agreement, the question arises as to the responsibility for hospital care for city prisoners committed to county jail, where it is found necessary to remove such a prisoner to a hospital, because of illness occurring while confined in the county jail.

“It will be noted that this agreement provides for the county to receive, guard, house and maintain *therein* each city prisoner and to feed and sustain such prisoners.

“The City Solicitor maintains that under this agreement Clark county is responsible for any hospital care that may be necessary for city prisoners committed to the county jail.

“Other parties interested maintain the position that the City of Springfield should pay such hospital charges for city prisoners committed to the county jail under the terms of this agreement.

“Because of this difference of opinion between the parties interested, we are referring to you the following question:

“Under the terms of the enclosed agreement between the Clark County Commissioners and the City of Springfield, covering the receiving, guarding, housing and maintaining of city prisoners therein, and the feeding and sustaining of them, is the payment of any necessary hospital bills incurred on behalf of any such city prisoners committed to the Clark county jail, the responsibility of the Clark County Commissioners, or should such payment be made by the City of Springfield?”

Your letter gives a sufficiently complete statement of the substance of the contract referred to, so that I do not feel the necessity of restating it. I call attention to several provisions of the statutes which appear to bear on the question submitted.

Section 1905.35, Revised Code, 4564 G.C., reads as follows:

“Imprisonment under the ordinances of a municipal corporation shall be in the workhouse or other jail of the municipal cor-

poration. Any municipal corporation not provided with a workhouse, or other jail, may, for the purpose of imprisonment, use the county jail, at the expense of the municipal corporation, until the municipal corporation is provided with a prison, house of correction, or workhouse. *Persons so imprisoned in the county jail are under the charge of the sheriff.* Such sheriff shall receive and hold such persons in the manner prescribed by the ordinances of the municipal corporation, until such persons are legally discharged.” (Emphasis added.)

This section, in language substantially the same as the present reading, was part of a Municipal Code enacted in 1869, and it has not at any time undergone any amendment.

Section 753.02, Revised Code, 4126 G.C., reads as follows:

“The legislative authority of a municipal corporation shall provide by ordinance for sustaining all persons sentenced to or confined in a prison or station house at the expense of the municipal corporation, and in counties where prisons or station houses are in quarters leased from the board of county commissioners, may contract with the board for the care and maintenance of such persons by the sheriff or other person charged with the care and maintenance of county prisoners. On the presentation of bills for food, sustenance, and necessary supplies, to the proper officer, certified by such person as the legislative authority designates, such officer shall audit the bills under the rules and regulations prescribed by the legislative authority, and draw his order on the treasurer of the municipal corporation in favor of the person presenting such bill, but the amount shall not exceed seventy-five cents a day for any person so confined.”

This section is part of the same Municipal Code enacted in 1869, but has undergone several changes, the last of which in 124 Ohio Laws, 127, raised the amount of the permissible expense from forty cents to seventy-five cents per day.

This section is not in its terms limited to a situation where the municipality has no prison of its own, but I see no necessary inconsistency with the earlier provision which is predicated on such condition. Accordingly, for the purpose of this opinion I am assuming that the city of Springfield has no municipal jail, and that the contract is within the law in that respect.

In the section last above quoted, the duty is placed on a municipality “to provide by ordinance for *maintaining* all persons sentenced to, or con-

fined in a prison or station house at the expense of the municipal corporation." It certainly needs no argument to show that the duty thus imposed would include provisions for the care of the health of its prisoners. The words "maintain" and "sustain" are, according to Webster's International Dictionary synonymous; and both are defined as meaning to "support." The courts have defined these words, as including much more than mere lodging and feeding. Thus, in the case of *In re. Surbeck's Estate*, 56 N.Y.S., 2d, 487, it was said: "'Maintenance' is a word of general welfare, and comprehends food, clothing and medical care." To like effect, *Eastland v. Williams Estate*, Tex. Civ. App., 45 S.W., 412.

In *State ex rel. Mastracci v. Rose*, 79 Ohio App., 556, the court construing a statute which authorized an allowance of "alimony to either of the parties for his or her sustenance," said: "There may still be a need on the part of the wife for sustenance money, such as food, clothing, medicine, etc." Whatever the word "maintaining" means, as used in Section 753.02, above quoted, relating to the obligation of a municipality toward its prisoners, that word and its synonym, "sustaining" certainly have the same meaning when used in the contract before us. And let it be noted that in that contract we find in paragraph 1, that the county agreed to "receive, house, guard and *maintain* the city's prisoners." In paragraph 3 it was provided, "the county shall *feed and sustain* each city prisoner." In paragraph 7, reference is made to the statements to be rendered monthly for the "guarding, housing, *maintaining, feeding and sustenance* of each city prisoner."

Certainly, the county definitely and fully bound itself, for the consideration stipulated, to assume whatever burden of maintenance or sustenance as had been placed by law on the municipality. That "maintenance" or "sustenance" of prisoners includes necessary medical and nursing care seems to be implicit in the laws relating to care of prisoners in the county jail. I call attention to certain statutes which appear to bear on that subject. Section 341.06, Revised Code, 3162 G.C., places certain duties on the court. In so far as pertinent, it reads:

"The court of common pleas shall *prescribe rules* for the regulation and government of the county jail upon the following subjects: * * *

"(E) The employment of medical or surgical aid, when necessary; * * *

“(J) Other rules necessary to promote the welfare of the prisoners.”
(Emphasis added.)

It will be noted that the duty here placed on the court to prescribe rules on the subjects listed, is mandatory. We may therefore assume that in the case presented, the court has authorized the employment of medical or surgical aid when necessary. Section 341.19, Revised Code, 3177, G.C., outlines the duties of the board of county commissioners as follows:

“The board of county commissioners, at the expense of the county, shall provide:

“(A) Suitable means for heating the county jail and its cells and apartments;

“(B) Frames and sacks for beds;

“(C) Nightbuckets, fuel, clothing, washing, nursing when required;

“(D) Such fixtures and repairs as are required by the court of common pleas.

“The board may appoint a physician for the jail, at such salary as is reasonable, to be paid from the county treasury. * * *”

Relative to the duties of the sheriff, I call attention to Section 341.01 et seq., of the Revised Code, 3157, G.C., Section 341.01 provides:

“The sheriff shall have charge of the county jail and all persons confined therein. He shall keep such persons safely, attend to the jail, and govern and regulate the jail according to the rules and regulations prescribed by the court of common pleas.”

Section 341.04, Revised Code, 3166, G.C., provides:

“The sheriff shall visit the county jail and examine into the condition of *each prisoner*, at least once during each month, and once during each term of the court of common pleas. He shall cause the cells and rooms used for the confinement of prisoners to be thoroughly whitewashed at least three times each year.”
(Emphasis added.)

It will be observed that these sections make no discrimination as to the classes of prisoners or the place from which these prisoners have been committed, but place the same duty on the sheriff as to every prisoner under his charge.

In the light of these provisions of the law, which are manifestly intended to guard the health of the prisoners committed to a county jail, there could hardly be any question raised as to the obligation of the county to take care of its prisoners, to the extent if necessary of providing them with hospitalization and medical and surgical care.

In Opinion No. 2246, Opinions of the Attorney General for 1928, page 1505, it was held:

“It is the duty of the sheriff to furnish, and the county commissioners to provide at the expense of the county, such medical, surgical and other like services as may be necessary to the health of prisoners lawfully confined in the county jail.”

The opinion quotes Section 3157, General Code, to which I have referred, which requires the sheriff to “keep safely all persons confined there;” at page 1509, of the opinion, it is said:

“While Section 3177 authorizes the county commissioners at the expense of the county to provide nursing for prisoners when required and to appoint a physician for the jail at such salary as is reasonable, to be paid from the county treasury, and while no section of the General Code expressly authorizes the sheriff to furnish medical or surgical services to a prisoner when necessary, it is my opinion that under the provisions of the sections above quoted in part, the sheriff is authorized and required to furnish, at the expense of the county, such medical or surgical aid as may be necessary for any prisoner lawfully confined in jail, except where such prisoner is confined for debt.”

In Opinion No. 869, Opinions of the Attorney General for 1939, page 1168, the question was presented as to the liability of the county for surgical services rendered to a prisoner who was in the county jail pursuant to the statute which authorizes a prisoner to be sent to another county from a county which does not have a sufficient jail or when the jail is in danger of being broken into by a mob. While so confined, the prisoner attempted to commit suicide. It was held:

“It is the duty of the sheriff to furnish, at county expense, such surgical service as may be necessary to the health of a prisoner who has been transferred to such county from the county jail of a second county, under the provisions of Section 3170, General Code.”

The then Attorney General called attention to the fact that the statute made no provision requiring the county which transfers a prisoner to the

jail of another county, to pay for any expenses incident to his confinement other than the fees stipulated by the statute for the use of the jail and for his sustenance. The opinion then proceeds:

“Since the Legislature did not see fit to provide expressly for payment by the county removing a prisoner for the type of service rendered in the instant case, it would follow that such expense must be borne by the county to which he was removed in the same manner as to other prisoners lawfully confined in the county jail.”

As already pointed out, the statute, Section 753.02, Revised Code, imposes on a municipality the primary duty of “sustaining all persons sentenced to or confined in a prison or station house,” but provides in the same section, that it “may contract with the board (of county commissioners) for the care and maintenance of such persons by the sheriff or other person charged with the care and maintenance of county prisoners.” That appears to be precisely what has been done in the case presented.

In your letter you call attention to the word “therein” used in the first paragraph of the contract, where it is stipulated that the county leases to the city certain space in the county jail and agrees to “receive, guard, house and maintain *therein* each city prisoner sentenced to or confined or detained in said county jail.” It may be inferred that there is some question whether a prisoner who has been committed to such jail and while so incarcerated is placed in a hospital, is no longer being cared for “therein,” that is, in the jail.

I cannot believe that such temporary change of his housing, made by the sheriff who is charged with his care and maintenance, would have the effect of changing his status as an inmate of the county jail. A like situation would arise if the prisoner were taken outside the walls for any purpose, such as outside work, or given some freedom as a trusty. In the 1928 opinion, to which I have referred, the factual situation was that the prisoner had been arrested for violation of a state law, on a warrant issued by the mayor of Troy and was being taken to the county jail. When in the act of being turned over to the sheriff, he attempted to escape, and was shot, whereupon the jail physician who was called, ordered the prisoner taken directly to a hospital. The Attorney General, discussing this situation, said:

“The further question arises in the instant case, however, as to whether or not the prisoner had been delivered to the sheriff so

as to become either actually or constructively a prisoner in the county jail. From your statement of facts, I am inclined to the opinion that the prisoner in question was, as a matter of law, a prisoner in the county jail and was lawfully in the custody of the county sheriff. * * *"

Referring to the contract which you present, I have no doubt that it would have been competent for the county to exact, and for the city to agree to pay such extraordinary expense incident to the commitment of a prisoner to the county jail, as possible hospital, medical and surgical expenses, but under the terms of the contract, it appears that the county assumed that obligation.

Accordingly, it is my opinion that where, pursuant to Section 4126 of the General Code, Section 753.02, Revised Code, the commissioners of a county have entered into a contract with a city whereby the county leases to said city a certain portion of the cells in the county jail for the confinement of prisoners sentenced for violation of ordinances of said city, which contract obligates the county to provide for the custody and maintenance of such prisoners at an agreed charge to be paid by said city, and said contract contains no reference to the cost of hospital or medical services that may be required for such prisoners, it is the duty of the county to furnish such services at its own expense.

Respectfully,
C. WILLIAM O'NEILL
Attorney General.