the land is fixed at 4%, whereas the rental in the renewal leases is fixed at 6%, and, as pointed out above, the city is not required to pay to the state any rental on these renewal leases.

As to the other class of leases, the city of Dayton must pay the rental to the state upon the appraised value of the land, notwithstanding the state may be collecting rent under the unexpired leases. While Section 10 provides that these unexpired leases may be assigned to the city of Dayton, yet if they are so assigned the city of Dayton will be required to pay an additional rental upon the appraised value of the leases. It is difficult to see how there will be any advantage to the city of Dayton in taking an assignment of these unexpired leases. It is entirely probable that the general assembly did not intend to create such a situation, but I am unable to find any authority in the act for any other conclusion.

Respectfully,
EDWARD C. TURNER,
Attorney General.

971.

APPROVAL, BONDS OF MEAD TOWNSHIP, BELMONT COUNTY—$18,000.00.

COLUMBUS, OHIO, September 8, 1927.

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

972.

ARREST ON SUSPICION—CHARGE MUST BE FILED BEFORE PROPER COURT OR MAGISTRATE WITHIN REASONABLE TIME—COST OF FEEDING SUCH PRISONERS WHO ARE HELD—COUNTY JAIL.

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.

COLUMBUS, OHIO, September 8, 1927.

HON. LESLIE S. WARD, *Prosecuting Attorney, Wauseon, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows:

> "The county commissioners and the auditor will not allow the sheriff any money for boarding prisoners that are arrested and detained on suspicion. Please advise by return mail whether or not the sheriff is entitled to board for prisoners that are arrested and held on suspicion."

In a later communication setting forth the circumstances which prompted your inquiry, you state:

> "That it is necessary at times when a crime has been committed to detain people for investigation. They are booked by the sheriff on a charge of suspicion and held for investigation. For example, some time last year the sheriff of our county was notified of a couple of suspicious characters selling shoes and clothing in one of the rural neighborhoods of our county. These men were taken by the sheriff, booked on a charge of suspicion and after three or four days of investigation it was found that they had robbed a general store and that they had stolen an automobile. They were turned over to the public authorities where the crime was committed. Sometimes when people are held they are released after investigation. In cases such as these the commissioners and auditor have refused to allow the sheriff any money for boarding such prisoners."

By the terms of Section 2997, General Code, it is provided that county commissioners of each county shall make quarterly allowances to the sheriff for keeping and feeding prisoners in the county jail. This section reads in part as follows:

> "In addition to the compensation and salary herein provided, the county commissioners shall make allowances quarterly to each sheriff for keeping and feeding prisoners as provided by law. * * * "

Section 2850, General Code, reads in part as follows:

> "The sheriff shall be allowed by the county commissioners the actual cost of keeping and feeding prisoners or other persons confined in the jail, at a rate not to exceed seventy-five cents per day of three meals each. * * * All food shall be purchased by the sheriff under rules and regulations to be prescribed by the county commissioners. On the fifth day of each month the sheriff shall render to the county commissioners an itemized and accurate account with all bills attached showing the actual cost of keeping and feeding prisoners and other persons placed in his charge. * * * Such bills when approved by the county commissioners shall be paid out of the county treasury on the warrant of the county auditor * * * ."

Section 3157, General Code, provides that:

"The sheriff shall have charge of the jail of the county, and all persons confined there, keep them safely, attend to the jail, and govern and regulate it according to the rules and regulations prescribed by the court of common pleas."

In early times no provision was made for the feeding of prisoners at public expense. They were required to provide for their sustenance while confined in prison from their own resources. If they had no means of their own they were dependent on their friends or on charity, or on the proceeds which might be derived from work provided for them. Soon after the organization of the Northwest Territory, however, there was passed by the governor and judges two acts under date of August 1, 1792, providing for the regulation of prisons and the reimbursement of the sheriff for feeding and keeping the prisoner confined therein from public funds.

Chase's Statutes, page 124, Chapter 28, Regulation of Prisoners, Section 29, read as follows:

"The sheriff shall keep separate rooms for the sexes except where they are lawfully married, and be responsible that his jailer at all times provides proper meat and drink for all criminals committed to the prison of the county if such prisoners have no other convenient way of supplying themselves with provisions which always pass to them through the keeper's hands. And in every case where the sheriff or jailer shall be at the expense of furnishing meat, drink or firewood to a prisoner in jail for a crime, or at the suit of the United States, who is not of sufficient ability in point of property to repay or indemnify such sheriff or jailer the reasonable expense and charges for supplying such prisoner, in every such case the sheriff or jailer shall make out his account therefor, and on oath shall testify the truth of the same before the justices of the court of general quarterly sessions of the peace, who shall tax the same as they shall think just and reasonable and lay the amount thereof in the yearly estimate of county charges to be submitted to the legislature for their allowance."

Chapter 36, pages 133 and 137, Chase's Statutes, is as follows:

"An act establishing and regulating fees for the several officers and other persons therein mentioned, jailer fees (page 137) for turning the key on the commitment of each prisoner, fifteen cents in and fifteen cents out, for dieting each person, such sums weekly as the court of sessions shall deem reasonable."

It is apparent that under these early statutes there was no justification or authority for reimbursing the sheriff or jailer for the cost of feeding prisoners unless "such prisoners have no other convenient way of supplying themselves with provisions." Now, however, the law directs that the commissioners shall made allowances to the sheriff for feeding all prisoners confined in the county jail regardless of the ability of the prisoner to provide himself with food or have the same provided for him by others.

An exception is made to this rule in cases where the prisoner is confined by reason of commitments growing out of civil actions as provided by Sections 11789 et seq., General Code. In such cases the persons who cause the commitment are liable for the jail fees and the sheriff or jailer may discharge a person imprisoned on mesne or final proceedings issued in a civil cause when there is no money in his hands to pay for the sustenance of the prisoner, or he may detain the prisoner and hold the adverse party liable for such sustenance.

The commissioners in making allowances to the sheriff as provided by Sections 2997 and 2850, supra, for the sustenance of prisoners, should exercise the same supervision as becomes their duty in other instances where they are empowered to expend public funds.

It has been repeatedly held that in the expenditure of public funds the officers authorized to disburse such funds are held to a strict accountability for their disbursement, and they are never justified in making any expenditure unless they are either specifically or impliedly authorized to do so.

It cannot be supposed that the authorization to make allowances quarterly to the sheriff for "keeping and feeding prisoners" is sufficient authority to justify making allowances for keeping and feeding all prisoners in the county jail, whether there is proper justification for being there or not, and in my opinion the commissioners not only have the right to make such investigation as they may think necessary as to the lawfulness of the confinement of prisoners for whose feeding and keeping they are to pay for, but it is their duty to do so and they have no right to expend public money for the keeping and feeding of prisoners unless such prisoners are confined by authority of law, any more than they have a right to expend public money for any other unauthorized purpose.

The mere fact that persons are held as prisoners in the county jail does not in and of itself justify the commissioners in paying for their keep. The sheriff and his jailer have no right to receive and confine persons at public expense unless there is lawful authority to do so and the mere fact that the request for the detention and confinement of persons comes from an officer clothed with power to make arrests, has no more significance in and of itself than though the presentation for imprisonment were made by some private individual. The jailer acts at his peril and if he unauthorizedly receives and confines persons without any right to do so, he not only must bear the expense of the confinement, but may be subjected to a suit for damages as well. See *Leger et al.* vs. *Warren,* 62 O. S. 500; *Washer* vs. *Iler,* 29 C. C. 319.

It remains, therefore, to determine who may be lawfully committed to the county jail. For those who are not so lawfully committed to the jail the commissioners have no right to make allowances from public funds for their sustenance. It therefore becomes not only the right of the commissioners, but their duty as well, to inquire into the lawfulness of the commitment of persons to the county jail and to exercise such supervision over allowances made for the sustenance of persons confined in the county jail as to preclude making allowances for prisoners who are in the jail without warrant of law.

It must not be understood that the commissioners are authorized to pass on the guilt or innocence of persons in the jail or that even though a person may be innocent and may be later discharged because his guilt has not been proven, justifies the refusal to pay for his keep while confined. If the confinement in the first place be lawful even though the prisoner may be innocent, the sheriff should be reimbursed for the expense of the sustenance of the prisoner, but if the confinement be unlawful then the sheriff cannot be so reimbursed.

The county jail, formerly called the common goal, 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.

Sections 13492, 13493, 13494, 13506 and 13507 read as follows:

> Sec. 13492. "A sheriff, deputy sheriff, constable, marshal, deputy marshal, watchman or police officer, 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."

Sec. 13493. "When a felony has been committed, any person without warrant, may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained. If such warrant directs the removal of the accused to the county in which the offense was committed, the officer holding the warrant shall deliver the accused to a magistrate of such county, to be dealt with according to law. The necessary expense of such removal, and reasonable compensation for his time and trouble, shall be paid to such officer, out of the treasury of such county, upon the allowance and order of the county auditor."

Sec. 13494. "Justices of the peace, police judges and mayors of cities and villages may issue process for the apprehension of a person charged with an offense and execute the powers conferred and duties enjoined in this title."

Sec. 13506. "When the officer holding the warrant arrests the accused, he shall take him before the proper magistrate, and, having indorsed and signed a proper return on the warrant, shall deliver it to the magistrate."

Sec. 13507. "If it is necessary, for just cause, to adjourn the examination of the accused, the magistrate may order such adjournment and commit him to the jail of the county, until such cause of delay is removed, but the entire time of such confinement in jail shall not exceed four days. The officer having custody of such person, by the written order of the magistrate may detain him in custody in a secure and convenient place other than the jail, to be designated by such magistrate in his order, not exceeding four days. The officer in whose custody any person is detained shall provide for the sustenance of such prisoner while in custody."

It is said in Corpus Juris, Vol. V, page 430:

"It is the duty of an officer after making an arrest either with or without a warrant to take the prisoner within a reasonable time before a justice of the peace, magistrate, or other proper judicial officer having jurisdiction, in order that he may be examined and held or dealt with as the case requires. It is sometimes said that this must be done immediately or forthwith or without delay. These requirements mean no more than that it must be done promptly and within a reasonable time under all circumstances. An officer may detain the person arrested in custody until he can conveniently and safely take him before a magistrate. When the circumstances preclude an immediate examination, hearing or trial, as where the arrest was made at night, or Sunday, or when the court was not in session, or the person arrested was ill, drunk or himself occasioned the delay, or the arresting officer was unable to find a judicial officer, but to retain the person arrested in custody longer than is necessary or for any purpose other than to take him before a magistrate is illegal."

Some states have enacted statutes which specifically direct that persons arrested must promptly be advised of the charge against them and be given the opportunity to furnish bail. Section 165 of the Code of Criminal Practice of New York states:

"The defendant must in all cases be taken before a magistrate without unnecessary delay and he may give bail at any hour of the day or night."

In considering this statute the court in the case of *Davis* vs. *Carroll*, 159 N. Y. S., 568, says:

"So far as we are aware, the provisions of this section first appear in statutory form in this state in the code of Criminal Procedure as adopted in 1881, but we think it affected no change in the common law: Green vs. Kennedy, 46 Barb. 16; Matter of Kennedy, 29 How. Parceice 185; Pratt vs. Hill, 16 Barb. 116 * * *

The policy of the statute seems to be that a police officer shall have no discretionary power to hold suspicious persons under arrest unless he takes the person at the first reasonable opportunity before a magistrate and obtains the authority or instruction of the magistrate as to his further procedure."

In Blackstone, Chapter I, Section 137, it is said:

"To make imprisonment lawful it must either be by process from the courts of judicature or from warrant from a legal officer having authority to commit to prison, which warrant must be in writing under the hand and seal of the magistrate and express the causes of the commitment in order to be examined into, if necessary, upon a habeas corpus. If there be no cause expressed the jailer is not bound to detain the prisoner for the law judges in this respect, sayeth Sir Edward Coke, like Festus, the Roman governor, that it is unreasonable to send a prisoner, and not to signify withal the crimes alleged against him."

To the same effect may be found the principles set forth by Lord Coke in Chapter 29 of the Second Institutes.

In Hawkins, Pleas of the Crown, Chapter XVI, Section 3, it is said:

"It seems to be agreed by all the old books, that wheresoever a constable, or private person, may justify the arresting another for a felony or treason, he may also justify the sending or bringing him to THE COMMON GOAL; and that every private person has as much authority in cases of this kind as the sheriff or any other officer, and may justify such imprisonment by his own authority, but not by the command of another. But inasmuch as it is certain that a person lawfully making such an arrest may justify bringing the party to the constable, in order to be carried by him before a justice of peace, inasmuch as the statutes of 1 and 2 Ph. and Mary, c. 13, and 2 and 3 Ph. and Mary, c. 10, which direct in what manner persons brought before a justice of peace for felony shall be examined by him in order to their being committed or bailed, seem clearly to suppose, that all such persons are to be brought before such justice for such purpose; and inasmuch as the statute of 31 Car. 2, commonly called the Habeas Corpus Act, seems to suppose, that all persons who are committed to prison are there detained by virtue of some warrant in writing, which seems to be intended of a commitment by some magistrate, and the constant tenor of the late books, practice, and opinions, are agreeable hereto: it is certainly most advisable at this day, for any private person who arrests another for felony, to cause him to be brought, as soon as conveniently he may, before some justice of peace, that he may be committed or bailed by him."

There is no statute in Ohio similar to the New York statute above referred to and we are therefore relegated to the rules of common law covering the subject of what is to be done with the prisoner between the time of his arrest and the time when a lawful commitment is made by proper magistrate.

By the rules of the common law a peace officer where he had reasonable or prob-

able cause to believe a felony had been committed might arrest the accused person without a warrant and for making such arrest he was justified, although subsequently it appeared that the party was not guilty of committing the offense. But 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* vs. *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.

Under statutes almost identical with those in Ohio, the Supreme Court of Indiana, in the case of *Horness* vs. *Steele,* 159 Ind. 286, at page 296, said:

> "An officer arresting without a warrant can not justify his action in holding and detaining a prisoner for an unreasonable time before obtaining a warrant upon the ground that such a delay was necessary in order to investigate the case and procure evidence against the accused. A detention for such a purpose, if necessary, is properly within the jurisdiction of the justices of the peace before whom he may be charged with committing the offense."

Under Section 13492, General Code, supra, an officer is authorized to arrest without a warrant any person whom he may find violating any of the penal laws of this state or an ordinance of a city or village. And by virtue of Section 13493, General Code, any person, whether an officer or not, may, when a felony has been committed, arrest another whom he has reasonable ground to believe is guilty of the offense, but the statutes are careful to provide that the detention of the person so arrested is to continue only until a legal warrant can be obtained. So far as these statutes apply to sheriffs and others therein mentioned, who were peace officers at common law, they are merely declarations or recognition of the common law rules, since under the common law it was the duty of peace officers to arrest without a warrant any persons who commit an offense, either felony or misdemeanor in their presence or within their view. In the case of *Leger, et al.* vs. *Warren,* 62 O. S. 500, it is said:

> "A person who has been arrested without a warrant cannot lawfully be held in custody for any longer period than is reasonably necessary to obtain a legal warrant for his detention. Where he is held for a longer period without such writ or other authority from a competent court, he has a right of action for false imprisonment against the officers or person who made the arrest and those by whom he has been so unlawfully held in custody."

To the same effect is the holding in the case of *Von Arx* vs. *Shafer,* 241 Fed. 652.

There are no common law crimes in Ohio and the statutes do not provide for an offense known as "suspicion." Some municipalities have what is known as "suspicious persons ordinances" and the Supreme Court of Ohio in the case of *Welch* vs. *City of Cleveland,* 97 O. S. 311, has held that such ordinances are valid.

Where such ordinances provide for confinement in the county jail as a part of the penalty for their infraction, or if in lieu of the payment of a fine and costs upon conviction under such ordinances, commitment has been made to the county jail in pur-

suance of an agreement with the county commissioners to keep the prisoners of the municipality, of course the sheriff should be allowed the cost of keeping such prisoners, but I know of no other way that prisoners could be in the county jail charged with "suspicion."

It has become a practice prevalent among some arresting officers to detain persons without first securing a warrant for their arrest and without making any reasonable effort to take such prisoners before a magistrate and place some definite charge against them as the law requires. They take them to the county jail, turn them over to the jailer for safekeeping and get a warrant at their convenience. In the meantime the prisoners are charged on the jail register with the general and comprehensive term of "suspicion," for the reason that no one has yet determined what particular crime or offense they may be suspected of. Such confinement is unlawful and if it continues for a longer time than is reasonably necessary for the arresting officer to take the person before a magistrate, place some definite charge against him and secure a lawful commitment for the prisoner, the county commissioners are not authorized to make allowances to the sheriff for the keeping and feeding of such prisoners after such reasonable time has elapsed.

From what has been said it is my opinion that:

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.

Respectfully,
EDWARD C. TURNER,
Attorney General.

973.

APPROVAL, BONDS OF THE VILLAGE OF HUBBARD, TRUMBULL COUNTY, OHIO—$100,000.00.

COLUMBUS, OHIO, September 9, 1927.

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