

Subject to the above, I am approving the abstracts of title and warranty deeds, and return the same to you herewith, together with the quit-claim deeds and other papers above mentioned.

Respectfully,
EDWARD C. TURNER,
Attorney General.

307.

SHERIFF—FEEDING OF PRISONERS—SENATE BILL NO. 28 AND SECTIONS 3158 AND 3159, GENERAL CODE, CONSTRUED.

SYLLABUS:

1. *Under the provisions of Senate Bill No. 28 amending Section 2850 of the General Code, sheriffs in all counties shall be allowed by the county commissioners the actual cost of keeping and feeding prisoners or other persons confined in the county jail at a rate not to exceed seventy-five cents per day of three meals each.*

2. *Sheriffs in all counties are required to render on the 5th day of each calendar month 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 and the number of meals served to each such prisoner or other person during the preceding month.*

3. *Sheriffs in counties where the daily average number of prisoners or other persons confined in the county jail during the year next preceding as shown by the statistics compiled by the sheriff under the provisions of Sections 3158 and 3159, General Code, did not exceed twenty in number are directed to expend not less than an average of fifteen cents per meal for the prisoners and other persons confined in the county jail.*

COLUMBUS, OHIO, April 11, 1927.

HON. JOHN W. DUGAN, *Prosecuting Attorney, New Lexington, Ohio.*

DEAR SIR;—You have submitted for my opinion a question involving the construction of Section 2850 of the General Code as amended by Amended Senate Bill No. 28, which after its passage by the General Assembly and the signature of the Governor, was filed in the office of the Secretary of State on March 18, 1927, and will become effective on and after June 16, 1927, unless sooner repealed or amended.

Your letter reads as follows:

“Will you please advise me as to amount county commissioners can allow the sheriff of our county for feeding prisoners and other persons confined in jail? The daily average number of prisoners or other persons confined in our county jail during last year did not exceed twenty in number.

Section 2850 of the General Code, as you are aware, was amended just recently by the legislature. Under this section, as now amended, do the commissioners allow a flat rate of not less than fifteen cents nor more than twenty-five cents per meal regardless of the cost, or does this law mean that the sheriff, in a county where the average did not exceed twenty persons per day, was to feed them at cost with the provision that he is to receive not less than fifteen cents per meal nor more than twenty-five cents per meal?

If the sheriffs in counties like our own are placed on a flat rate within the limitations, is it necessary for them on the 5th day of each month, as in other counties, to file an itemized account with bills attached?

It seems to me that the object of this law is to make a distinction between the larger counties and the smaller ones. The first part of the law, as I now have it, provides that in the larger counties they are to be allowed not less than forty-five cents per day nor more than seventy-five cents per day. It would seem that unless the sheriffs in the smaller counties like our own, are placed on a flat rate regardless of the cost, but within the limitations as provided, there would be no difference made in the larger or smaller counties."

Section 2850 as amended by Amended Senate Bill No. 28, 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, but at a rate not to exceed seventy-five cents per day of three meals each. The county commissioners shall allow the sheriff the actual cost but not to exceed seventy-five cents each day of three meals each for keeping and feeding any idiot or lunatic placed in the sheriff's charge. 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 and the number of meals served to each such prisoner or other person during the preceding month. The number of days for which allowance shall be made shall be computed on the basis of one day for each three meals actually served. In counties where the daily average number of prisoners or other persons confined in the county jail during the year next preceding, as shown by the statistics compiled by the sheriff under the provisions of Sections 3158 and 3159 of the General Code, did not exceed twenty in number, the commissioners shall allow the sheriff not less than fifteen cents nor more than twenty-five cents per meal. Such bills, when approved by the county commissioners, shall be paid out of the county treasury on the warrant of the county auditor. * * *"

Before amendment, this section read in part as follows:

"The sheriff shall be allowed by the county commissioners not less than forty-five cents nor more than seventy-five cents per day for keeping and feeding prisoners in jail. * * *"

The only practical difference in so far as your question is concerned between the statute as amended and as before, is that the amended statute fixes a minimum and maximum allowance that may be made by the commissioners to the sheriff for feeding prisoners and other persons confined in the county jail in the smaller counties while the old statute fixed the same maximum and minimum for all counties. In other words, the new statute simply fixes a maximum allowance that may be made in the larger counties, while in the smaller counties a minimum is fixed as well as a maximum so that in such counties the sheriff can not be so niggardly in his feeding as to bring the actual cost below fifteen cents per meal. It was evidently recognized that the average cost per meal where only a comparatively small number of meals was served would be greater than where a larger number of meals was served and the legislature has determined that it would fix no minimum for the larger counties where a great many persons were confined in the county jail at all times, but would fix such a minimum for the smaller counties where there are only a few prisoners at practically all times, and has fixed the amount at not less than fifteen cents per meal for these smaller counties.

The Supreme Court of Ohio in construing Section 2850, *supra*, as it read before amended, said:

"The legislature clearly intended to prevent both extravagant over-feeding and niggardly under-feeding of the prisoners." *Kohler, Sheriff, vs. Powell, Chief Justice*, 115 O. S. —; Weekly Law Bulletin and Reporter for January 17, 1927.

It will be noted that in the first few lines of Section 2850, as amended, provision is made for allowances to be made to sheriffs by county commissioners which shall be the *actual cost* of keeping and feeding prisoners and other persons confined in the county jail but at a rate not to exceed seventy-five cents per day of three meals each. This obviously applies to all counties. Later on in the statute, however, a further provision is made for the smaller counties. The sheriff's allowance in such smaller counties is to be practically the same only the legislature has fixed fifteen cents per meal as the least that the sheriff could spend in these counties for feeding prisoners, thereby saying that in its opinion proper meals could not be served in such smaller counties for less than fifteen cents each. No such minimum was fixed for the larger counties, as experience has shown that in such counties the persons might be fed for less than fifteen cents per meal, it being a matter of common knowledge that sheriffs throughout the state have been profiting by doing this very thing for many years. In fact it was this profiteering by the sheriff that brought the Kohler case before the Supreme Court. Not being able to say just what might be the least amount that prisoners in such larger counties could be fed for, the legislature did not fix any minimum at all.

It must be borne in mind that Senate Bill No. 28 was passed after the Supreme Court had decided the case of *Kohler vs. Powell*, *supra*, and the legislature must be considered as having taken this decision into account in passing the act, and in fact did incorporate in the act the vital principle of the decision as laid down by the court in this case, to-wit: "The sheriff shall be allowed by the county commissioners the *actual cost* of keeping and feeding prisoners and other persons confined in the jail."

The language of the statute as amended is in all other pertinent respects practically the same as it was before the amendment, when it was considered by the court in the Kohler case. It cannot therefore be said that the legislature intended to change the method of fixing the amount to be allowed to the sheriff for feeding prisoners and other persons from that laid down by the court in this case, wherein it was decided that the allowance made to the sheriff must be based on the *actual cost* of feeding prisoners and cannot therefore be made by the allowance of an arbitrarily fixed flat rate per day or meal.

The second section of the syllabus of the case of *Kohler vs. Powell*, *supra*, reads as follows:

"The sheriff has no right to collect from the county to reimburse himself for expenditures made or indebtedness incurred for feeding the prisoners confined in the county jail any sum in excess of such disbursement or indebtedness so incurred. The law does not permit the sheriff to secure a private personal profit out of the feeding of the prisoners confined in the jail."

The decision is largely based on the fact that the sheriff's salary is fixed at a definite amount and that the legislature did not intend when it provided for allowances for feeding prisoners to add to the amount of the sheriff's salary nor was it its intention that the sheriff make any profit in the feeding and keeping of the prisoners.

The salary of the sheriff is fixed at a definite amount in all counties of the State, both large and small. The provisions of Section 2850 are not materially changed by the enactment of Senate Bill No. 28, except as to the minimum allowance to be made

by sheriffs for feeding prisoners and other persons confined in the county jail in the larger counties.

For these reasons it is my opinion that the same rule applies to all counties of the state with reference to the allowances made to the sheriff for feeding prisoners and other persons confined in the county jail, except that in certain counties wherein the daily average number of prisoners confined in the county jail during the year next preceding did not exceed twenty in number the allowances so made to the sheriff must be within the limits of fifteen cents and twenty-five cents per meal, and that the sheriff must in all counties, on the fifth day of each month 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 and the number of meals served to each such prisoner and other persons during the preceding month. Allowances made to the sheriff for this purpose must be in accordance with the itemized account so filed by him.

Respectfully,

EDWARD C. TURNER,
Attorney General.

308.

APPROVAL, BOND FOR FAITHFUL PERFORMANCE OF DUTIES—JOSEPH
RAYMOND BURKEY.

COLUMBUS, OHIO, April 11, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, O.*

DEAR SIR:—You have submitted for my consideration an official bond of Joseph Raymond Burkey, given in accordance with the requirements of Section 1182 of the General Code, for the faithful performance of his duties as deputy state highway commissioner.

To this bond is attached a certificate of the surety company to the effect that the person signing said bond in behalf of said company is its attorney in fact, and is authorized to sign an official bond of this nature for the amount therein involved, binding upon said company.

It has been ascertained by this department that the said surety company is authorized to transact its business of fidelity and surety insurance in this state.

Finding said bond in proper legal form, and properly executed, I have noted my approval thereon, and am returning the same herewith to you.

Respectfully,

EDWARD C. TURNER,
Attorney General.

309.

COUNTY BOARD OF REVISION—SECTION 5548, GENERAL CODE, CON-
STRUED.

SYLLABUS:

1. *The County Board of Revision is unauthorized to decrease the valuation of property appraised under the provisions of Section 5548, General Code, by the county auditor,*