

1711.

PROSECUTING ATTORNEY—EMPLOYMENT OF GUARDS—SECTION  
3004, GENERAL CODE, DISCUSSED.

*SYLLABUS:*

*A prosecuting attorney may not use the fund provided by Section 3004, General Code, to pay the compensation of a guard employed by a sheriff to guard prisoners confined in a county jail.*

COLUMBUS, OHIO, February 14, 1928.

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

DEAR SIR:—This will acknowledge your letter dated February 8, 1928, which reads:

“Owing to the condition of our County Jail, it has been necessary for us to keep a guard at night, since we have so many persons charged with first degree murder confined therein.

Will you please advise me if I could pay this guard from my funds which are allowed me under Section 3004 of the General Code, or would it be better that the Sheriff put this in with his expense account and be paid by the County Treasurer?”

Section 3004, General Code, in so far as pertinent, provides:

“There shall be allowed annually to the prosecuting attorney in addition to his salary and to the allowance provided by Section 2914, an amount equal to one-half the official salary, to provide for expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice, not otherwise provided for. \* \* \*”

Your attention is also directed to the following sections of the General Code, which, in so far as pertinent, provide:

Sec. 3157. “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.”

Sec. 3161. “The sheriff may appoint one of his deputies to be keeper of the jail.”

Sec. 2831. “The sheriff shall be responsible for neglect of duty or misconduct in office of each of his deputies.”

Sec. 2981. “Such officers (sheriff, etc.) may appoint and employ necessary deputies, assistants, clerks, bookkeepers, or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office.”

By Section 3157, *supra*, it is provided that the sheriff shall have charge of the jail of the county and all persons confined therein and keep them safely. As

provided by Section 3161, supra, he may appoint one of his deputies to be keeper of the jail. Section 2981, supra, authorizes a sheriff to appoint and employ necessary deputies, assistants and other employes for the proper conduct of his office and to fix their compensation, although such compensation must not exceed in the aggregate the amount fixed by the county commissioners for such office.

You will note that Section 3004, supra, provides for a fund for expenses which may be incurred by the prosecuting attorney in the performance of his official duties and in the furtherance of justice, not otherwise provided for. Obviously, the safe keeping of prisoners confined in a county jail is not an official duty of the prosecuting attorney. Although it may be said that the safe keeping of prisoners in county jails is in furtherance of justice the expense therefor is otherwise provided for. The manner of providing deputies for the safe keeping of prisoners in county jails being specifically provided for by law such expense may not be paid from the fund provided by Section 3004, supra. In other words, Section 3004, supra, provides a fund different and in addition to all other funds to be used by the prosecuting attorney for expenses incurred by *him* in the performance of his official duties and in the furtherance of justice, the expense therefor not being otherwise provided by law.

Answering your question specifically, it is my opinion that a prosecuting attorney may not use the fund provided by Section 3004, General Code, to pay the compensation of a guard employed by a sheriff to guard prisoners confined in a county jail.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

1712.

GASOLINE TAX—FUEL PURCHASED FOR USE OF OHIO NATIONAL  
GUARD—EXEMPT FROM TAX.

*SYLLABUS:*

*Motor vehicle fuel purchased by the United States property and disbursing officer for Ohio with Federal funds for the use of The Ohio National Guard is exempt from the payment of the motor vehicle fuel tax.*

COLUMBUS, OHIO, February 14, 1928.

*The Tax Commission of Ohio, Columbus, Ohio.*

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

“An inquiry was made at this office by Mr. G. C. Price of the Standard Oil Company, Fourth and Long Streets, Columbus, Ohio, as to whether the Ohio National Guard could purchase motor vehicle fuel without the Ohio 3c motor vehicle fuel tax and in answer to that inquiry we wrote to Mr. Price under date of January 19, 1928, as follows:—

‘The Standard Oil Co., 4th. & Long Sts., Columbus, Ohio.

Att: Mr. Price

Dear Sir:—

With reference to your inquiry as to whether the Ohio National Guard