

stitutional in the case of *Ex Parte Smith*, 13 O. N. P. (n. s.) 278, and subsequently repealed in 113 O. L. 685.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a proper method of redress, in the event a court has sentenced a person for a violation of an unconstitutional or repealed section, is by applying for a writ of habeas corpus in a proper court.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cost of maintaining such prisoners committed to such workhouse under a statute which has been held unconstitutional and repealed, should be charged back to the county of commitment.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-*

ment with a community fire company by which fire protection will be furnished to unprotected county buildings.

COLUMBUS, OHIO, November 17, 1931.

HON. WM. M. VANCE, *Prosecuting Attorney, Urbana, Ohio.*

DEAR SIR:—This acknowledges receipt of your communication of recent date, as follows:

“Will you please give me your opinion on the following query?

1. Can county commissioners contribute to a community fire truck purchase, under a contract by which fire protection will be rendered to county buildings both outside and within municipal corporate limits?

2. Can county commissioners enter into a lease or any other form of contract with such fire company to supply their fire apparatus in case of a fire in a county building, and pay an annual fee for such service?

I find that Sections 3298-54 et seq. General Code, give these powers to townships but can find no authority in law for counties to provide for fire protection, unless such powers be implied.”

I assume, for the purpose of this opinion, that your inquiry has reference to a volunteer fire department.

It is a well settled principle of law, that county commissioners have only such powers as are expressly granted to them by law, and such incidental powers as are necessary to carry into effect those powers expressly granted. It follows that if the county commissioners in this instance are to effectuate a contract or lease such as is mentioned in your inquiry, authority therefor must necessarily exist in, or be implied from the statute.

It is also to be noted that Section 5, Article X, of the Ohio Constitution, states that “no money shall be drawn from any county or township treasury except by authority of law.” It therefore follows that if such service is to be paid for, authority therefor must be given by law.

Section 3298-54, General Code, mentioned in your inquiry, provides:

“Township trustees may establish all necessary regulations to guard against the occurrence of fires, protect the property and lives of the citizens against damages and accidents resulting therefrom, and, when a volunteer fire company has been organized for service in the township, of such character as to give assurance of permanency and efficiency, may purchase and provide, for the use of such company, such fire apparatus and appliances as may seem to the trustees advisable, in which event they shall provide for the care and maintenance thereof, and, for such purpose, may purchase, lease or construct and maintain necessary buildings; and they may establish and maintain lines of fire alarm telegraph within the limits of the township.”

Section 3298-60, General Code, provides:

“Any township, in order to obtain fire protection shall have authority to enter into a contract for a period not to exceed three (3) years with any city, village or township, upon such terms and conditions as are mutually agreed upon, for the use of its fire department and fire appara-

tus, if such contract is first authorized by the trustee of such township and the council of such city or village.

A similar contract may be made between a village and any city if authorized by the council of the village and the council of the city. Such contract shall provide for a fixed annual charge to be paid at such times as may be stipulated in the contract. All expenses thereunder shall be construed as a current expense and the taxing authority of the township or village shall make an appropriation therefor from the general funds, and shall provide for the same in their respective annual tax budgets."

From the foregoing, it is apparent that the primary obligation of providing fire protection may be assumed by the townships and municipalities of the state, and by implication there is no requirement that the county provide such protection.

It follows that if the township trustees or municipal authorities of the township or municipality in which the county building is located furnish or have contracted to furnish fire protection, then assuming that the county commissioners were empowered to enter into an agreement for fire protection, such an agreement would necessarily be a useless expenditure of public funds since such buildings in case of fire already have fire protection.

Coming now to your first question, namely the power of county commissioners to contribute to a community fire truck purchase under contract by which fire protection will be rendered to county buildings both outside and within municipal corporate limits, I am of the opinion that such a contribution is unauthorized by law and therefore can not be made by the county commissioners in question.

As to your second inquiry, namely the power of the county commissioners to enter into a lease or other form of contract with such fire company to supply their apparatus in case of fire in a county building and pay an annual fee for such service it would seem that the county commissioners are charged with the general control, custody, care, and maintenance of county buildings. *Dittrick, et al. v. Barr, et al.*, 22 O. L. R., 289.

It follows that if the county buildings in question, are located in a township or municipality where no facilities for fire protection exist, proper maintenance and care of such buildings would require that the county commissioners enter into a reasonable agreement with such community fire company for the protection of such buildings.

I am therefore of the opinion that where no facilities for fire protection are furnished by the authorities of a township or municipality in which county buildings are located, the county commissioners may enter into an agreement with a voluntary fire company to supply needed fire protection. In view of the foregoing, I am of the opinion:

First, a board of county commissioners may not contribute to a community fire truck purchase.

Second, a board of county commissioners may enter into a reasonable agreement with a community fire company by which fire protection will be furnished to unprotected county buildings.

Respectfully,
GILBERT BETTMAN,
Attorney General.