

58.

SHERIFF—MAY EMPLOY COOK FOR FEEDING PRISONERS—TOTAL COST MAY NOT EXCEED SEVENTY-FIVE CENTS PER DAY PER PRISONER—LIMIT FIXED BY SECTION 2850, G. C.—COURT OF COMMON PLEAS—RULES AND REGULATIONS FOR COUNTY JAILS.

*SYLLABUS:*

1. *A sheriff may employ a cook to prepare provisions purchased for the purpose of feeding prisoners, provided the total cost of feeding such prisoners does not exceed the limit fixed by Section 2850, General Code, to wit, seventy-five cents per day per prisoner.*

2. *The court of common pleas in promulgating rules for the regulation and government of county jails may in such rules provide for the feeding of the prisoners confined in such jail and the manner of accounting for the cost of such feeding. Such rules may provide that the cost of the feeding of prisoners shall include the cost of the preparation of the food so that it will be wholesome and suitable to serve to human beings.*

COLUMBUS, OHIO, February 9, 1927.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—I have an inquiry from one of the common pleas judges of this state, with reference to the promulgation of rules for the government of county jails which I consider of such general interest that I am rendering a formal opinion on the question submitted, addressed to your bureau, and am sending a copy of the same to the judge who forwarded the inquiry.

In his communication, the judge in question refers to the case of Kohler, Sheriff vs. Powell, et al., 115 O. S. 418; Volume XXV, O. L. B. & R., January 17, 1927, page 285, and asks, "Is the sheriff entitled to employ a cook to see that the provisions purchased are properly cooked for the prisoners?" He also inquires as to the legality of a rule of court which he proposes making, which is as follows:

"The sheriff shall keep an accurate account, as near as possible, of the actual cost of the provisions purchased for the feeding of the prisoners, and at the end of each quarter, insert it, with an itemized statement in his budget for reimbursement or payment therefor; shall employ a competent cook to prepare in a wholesome manner, said provisions, the actual cost, itemized, also to be included therein, but the total cost is not to exceed seventy-five cents per day for each prisoner."

By Section 3162 of the General Code of Ohio, it is provided that:

"The court of common pleas shall prescribe rules for the regulation and government of the jail of the county, not inconsistent with the law, upon the following subjects:"

then follow ten specified matters that are to be covered by the rules. None of these specifically refer to the diet of the prisoners, but the tenth reads as follows:

"Other regulations necessary to promote the welfare of the persons."

The Supreme Court in its recent opinion in the case of Kohler vs. Powell and

others, *supra*, referring to this tenth provision of the section above quoted in part, says:

"We have no difficulty in reaching the conclusion that the legislature clearly and definitely intended by these provisions to commit to the court of common pleas the entire matter of promulgating rules for the government of the county jail and of the persons therein confined, *including the matter of diet.*"

The first section of the syllabus of this case is as follows:

"Section 3162 of the General Code confers upon the common pleas court full, complete, and exclusive authority to promulgate rules and regulations for the management and control by the sheriff of the county jail and the persons confined therein, including the feeding of the prisoners."

The question of how the cost and expense of feeding prisoners shall be met is also considered by the court in the opinion in the same case.

Reference is therein made to Sections 2850 and 2997 of the General Code, providing in substance that allowances shall be made to the sheriff quarterly for keeping and feeding prisoners, in no case to be at a less rate than forty-five cents nor more than seventy-five cents per day per prisoner, those limits, in the opinion of the court, being in accordance with the general welfare of the prisoners and intended to prevent both extravagant overfeeding and niggardly underfeeding.

Upon consideration of the provisions of these statutes, the court comes to the conclusion set out in the second section of the syllabus 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 corollary of this opinion is that the sheriff should, within the limits fixed by the statute, be reimbursed for the full amount of expenditures made or indebtedness incurred for the feeding of the prisoners.

It follows that he should not be required to pay any part of the cost of such feeding from his own private means so long as he keeps within the limit of seventy-five cents per day per prisoner. The preparation of the food and the serving of the same must necessarily in my opinion, be considered a part of the cost of feeding. It would not be reasonable to suppose that food can be served to prisoners without preparation, and consequently the cost of the preparation of the food must necessarily be included in the cost of feeding.

For the reasons stated, I am of the opinion that a sheriff is authorized to employ a cook to prepare provisions for the purpose of feeding prisoners, provided the total cost of feeding does not exceed the limit fixed by Section 2850, General Code, to wit, seventy-five cents per day per prisoner. And, I am further of the opinion that Rule 9, *supra*, as formulated by the judge requesting this opinion, is a proper one.

Respectfully,

EDWARD C. TURNER.

*Attorney General.*