

the same may be used in such election precincts within the county or municipality as the board of elections may direct, *but the additional voting machines necessary to supply all precincts shall be purchased and installed at the next preceding election; * * **" (Italics ours.)

I am informed that in the case of your county that there are no means immediately in sight by which this section can be complied with.

Reaching this conclusion it is unnecessary to pass upon the question as to whether or not the absence of public bidding as required by statute or the absence of a proper certification of funds by the county auditor also render these proposed contracts invalid.

Specifically answering your question, it is my opinion that:

Under the holding of the Supreme Court of Ohio in the case of State, ex rel. Fisher, v. Sherman et al., 135 O. S., 458 (1939), since the board of county commissioners of Trumbull County has not authorized the purchase of voting machines for the entire county, and since there has been no adoption of voting machines by the electorate of such county, the board of elections may not lawfully enter into a contract or contracts providing for the purchase of one or more voting machines for less than the entire county and the renting of an additional number sufficient to supply the entire county.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

869.

PRISONER—TRANSFER FROM ONE COUNTY JAIL OF SECOND COUNTY—DUTY OF SHERIFF TO FURNISH NECESSARY SURGICAL SERVICE, MEDICAL CARE—EXPENSE BORNE BY COUNTY WHERE PRISONER IS LAWFULLY CONFINED IN JAIL—SECTION 3170, G. C.

SYLLABUS:

It is the duty of the sheriff to furnish, at county expense, such surgical service as may be necessary to the health of a prisoner who has been transferred to such county from the county jail of a second county, under the provisions of Section 3170, General Code.

COLUMBUS, OHIO, July 10, 1939.

HON. LLOYD JONES, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

“An adjoining county, fearing mob violence, transfers a prisoner to the county jail in our county for safe keeping. While in our county the prisoner attempts suicide and is rushed to the hospital where hospital officials call a local physician to perform an emergency operation.

In such case, which county is responsible for the surgical expense?”

The statutory provisions governing the transfer of prisoners from one county jail to another under certain circumstances are contained in Title X, Division IV, Chapter 5 of the General Code of Ohio, under the heading of “Use of Jails of Other Counties.” The sections of said Chapter which are pertinent to your inquiry follow :

Section 3170.

“In a county not having a sufficient jail, or when the jail is in danger of being broken into by a mob, the sheriff shall convey any person charged with the commission of an offense or sentenced to imprisonment in the county jail, or in custody upon civil process, to the jail of any county which he may deem most convenient and secure. Such officer may call such aid as is necessary in guarding, transporting or returning such person. Whoever neglects or refuses to render such aid, when so called upon, shall forfeit and pay the sum of ten dollars, to be recovered by an action in the name and for the use of the county. Such officer and his assistants shall receive such compensation for their services as the auditor of the county from which such person was removed deems reasonable, payable from the county treasurer on the warrant of the auditor.”

Section 3171.

“The sheriff of the county to which such prisoner has been removed, on being furnished a copy of the process or commitment, shall receive him into his custody and be liable for escapes, or other neglect of duty in relation to such prisoner, as in other cases. Such sheriff shall receive from the treasury of the county from which he was removed such fees as are allowed by law in other cases.”

Section 3172.

“The sheriff of such adjoining county shall not receive such prisoner unless there is deposited in his hands, in addition to all fees allowed him by law, fifty cents per week for the use of such jail, for each prisoner so committed, and a like sum for a period

of time less than one week. If such prisoner be discharged before the expiration of the term for which he was committed, the excess advanced shall be refunded."

By virtue of the above quoted sections, under the circumstances set forth in Section 3170, *supra*, a prisoner of one county jail may be transferred to the jail of another county upon the sheriff's compliance with the procedure set forth in ensuing sections.

In answering your request, I am assuming that the transfer of the prisoner mentioned in your letter was in conformity with the statutory requirements referred to above.

The county sheriff has charge of the county jail and all prisoners confined therein. Section 3157, General Code, imposes upon him the duties to keep the prisoners safe, attend to the jail and to govern and regulate it according to the rules and regulations prescribed by the court of common pleas. Section 3158, General Code, requires the sheriff to keep a jail register and to enter therein what sickness has prevailed in the jail and the cause thereof. Under the provisions of Section 2850, General Code, the sheriff is further required to furnish at county expense to all prisoners confined in the jail "nursing when required and other necessities as the court in its rules shall designate."

Although there exists no specific statutory provision authorizing the type of medical care set forth in your letter, I feel that the provisions of Section 2850, *supra*, are sufficiently broad to include it. In support of this position, I direct your attention to Opinion No. 2246, Opinions of the Attorney General for 1928, in which the then Attorney General, in discussing a similar question, said at page 1510 as follows:

"Medical or surgical services are not expressly enumerated in this section (2850) but it certainly could not be contended that such services are not necessary for a prisoner who is ill or who has been wounded, and it is my opinion that the terms of section 2850 are broad enough to include such services." (Figures in parenthesis the writer's.)

Being of the opinion that the sheriff is under the duty to furnish at county expense necessary surgical care to inmates of the county jail, it must now be determined whether such duty extends to a prisoner who has been transferred from another county in accordance with the provisions of Section 3170, *supra*.

In the instant opinion we are considering the case of a prisoner transferred to your county jail from an adjoining county because of fear of mob violence which might arise in the latter county. As stated earlier in this opinion, the statutes of this state permit such transfer under that circumstance. Any and all requirements to effect it are set forth in Sec-

tions 3170 to 3176, inclusive, General Code. On compliance therewith, a transfer of a prisoner may be accomplished thereby placing him in the custody of the sheriff of the county to which he was removed. Once such removal has been made, the prisoner is then lawfully confined in the county jail to which he has been removed and must thereafter be cared for in the same manner as other prisoners lawfully confined in that county jail. The rendition of surgical treatment is a part of the care which a sheriff must afford to inmates of the county jail, regardless of whether they were originally placed there or transferred from an adjoining county. This view is in accord with the 1928 opinion, *supra*, as stated in the second branch of the syllabus as follows:

“It is the duty of the sheriff to furnish, and the county commissioners to provide at the expense of the county, such medical, surgical and other like services as may be necessary to the health of prisoners *lawfully confined* in the county jail.”
(Italics the writer’s.)

Other than the fees referred to in Section 3171, *supra*, the additional charge for use of the jail set forth in Section 3172, *supra*, and the contingent liability which may arise by reason of damage done to property of the county to which a prisoner has been removed (see Section 3176, General Code), the county which seeks to transfer a prisoner is under no statutory duty to reimburse the county accepting such prisoner for any expenses incurred in connection with such prisoner’s confinement. Since the Legislature did not see fit to provide expressly for payment by the county removing a prisoner for the type of service rendered in the instant case, it would follow that such expense must be borne by the county to which he was removed in the same manner as to other prisoners lawfully confined in the county jail.

In view of the foregoing, I am therefore of the opinion that it is the duty of the sheriff to furnish, at county expense, such surgical service as may be necessary to the health of a prisoner who has been transferred to such county from the county jail of a second county, under the provisions of Section 3170, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.