

1608.

FEEDING PRISONERS—SHERIFF MAY CONTRACT WITH WIFE FOR  
FURNISHING OF FOOD—USE OF COUNTY PROPERTY—COST PER  
DAY OF MEALS.

*SYLLABUS:*

1. *By the provisions of Section 2850, General Code, boards of county commissioners have authority to prescribe rules and regulations governing the purchase of food by sheriffs for prisoners confined in the jails of their respective counties. In the absence of rules to the contrary, or if rules were prescribed permitting it, a sheriff may contract with his wife, providing she be not a matron of such county jail, for the furnishing of prepared meals for the prisoners in such jail, providing the cost thereof does not exceed seventy-five cents per day of three meals each.*

2. *Whether or not the property of a county, including the necessary room or rooms, stoves, utensils and fuel may be used by one who contracts with a sheriff to furnish meals already prepared, is a matter purely within the discretion of the county commissioners. In any event by the terms of Section 2850, General Code, the total actual cost of feeding prisoners cannot exceed seventy-five cents per day of three meals each per prisoner, including the cost of the raw material, the necessary fuel, the use of the necessary property and the personal services to prepare such raw materials for consumption as food.*

COLUMBUS, OHIO, January 21, 1928.

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

GENTLEMEN:—This will acknowledge your letter dated January 14, 1928, which reads:

“You are respectfully requested to furnish this department your written opinion upon the following question:

“When the sheriff makes a contract with his wife, or other person, to furnish meals to the prisoners in the jail at 25c per meal, are the county commissioners required to pay the amount stipulated in the contract, or may they under the provisions of that part of Section 2850, G. C., which authorizes them to prescribe rules and regulations for the purchase of all food by the sheriff require that the sheriff purchase all food, have it prepared and served, presenting itemized bills for the food and service on the 5th day of each month as provided by Section 2850, G. C. The specific case that we have in mind may be more clearly presented to you by the enclosed letter from the county commissioners of Marion county and the form of contract entered into by the sheriff with his wife.”

You enclose a letter from the board of county commissioners of Marion county, Ohio, which reads as follows:

“We are submitting herewith draft of a contract as executed by and between Jas. A. Deal, sheriff of Marion County, and his wife, Eva M. Deal, for the feeding of prisoners in the Marion County jail during the ensuing fiscal year, and are asking you to submit same to the Attorney General of Ohio on the question of its being in conformity with Section 2850 of the General Code.

At the time the section named went into effect, about June 16, 1927, the commissioners fitted up a kitchen at the county jail and since July of last year have been paying for food consumed by the prisoners at the jail upon original invoices therefore as approved by the sheriff, with an allowance of \$25.00 per week for a cook who prepared and served the meals with the equipment furnished by the county for that purpose.

This arrangement has resulted in a very considerable saving to the county. The sheriff being dissatisfied with this arrangement has had executed a contract between himself and his wife whereby he is to pay her 25c per meal for each and every meal served. He says the approval of the board of commissioners thereto is not necessary but as a courtesy to that body he is submitting the instrument for the board's approval.

The sheriff states that in this matter he is following a ruling of the Attorney General.

Question No. 1. Does this contract conform to the provisions of Section 2850?

Question No. 2. The section quoted (Section 2850) says: '-----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 person during the preceding month.  
\* \* \*'

How are we to construe this portion of this section?"

In considering the question that you present your attention is directed to Opinion No. 833, dated August 5, 1927, addressed to you, the syllabus of which reads:

"By the terms of Section 3162, General Code, the Court of Common Pleas has full, complete and exclusive authority to promulgate rules and regulations for the feeding of prisoners and other persons confined in county jails. In the absence of any such rule to the contrary, a sheriff may lawfully purchase food already prepared for consumption from a restaurant or other persons, subject however, to such rules and regulations relating to the *purchasing* of food as may be prescribed by the county commissioners and to the limitations of Section 2850, General Code, that he shall be allowed only the actual cost of feeding such inmates but at a rate not to exceed seventy-five cents per day of three meals each."

Your attention is also directed to Opinion No. 1183, dated October 21, 1927, addressed to the prosecuting attorney of Delaware County, Ohio, the syllabus of which reads as follows:

"1. The relation of husband and wife is such that the relation alone does not engender an interest of the husband in the contracts of the wife; and where a county sheriff contracts with his wife for the furnishing of meals to the prisoners in the county jail, to be paid for from county funds, he does not thereby become interested in a contract for the purchase of supplies for the

use of the county, in violation of Section 12910, General Code. Nor can he be said thereby to secure a private personal profit out of the feeding of the prisoners confined in the jail.

2. Where a sheriff is permitted to enter into a contract for the furnishing of prepared meals for the prisoners in the county jail and does so contract, the itemized monthly statements which he is required to file, showing the actual cost of the feeding of such prisoners, together with the bills therefor attached, should show the actual number of meals served and the dates thereof and the price per meal which he is required to pay, and the bills attached thereto should be the statements rendered to him by the person or persons with whom he had contracted to furnish such meals.

3. A contract made by the matron of a county jail whereby she agrees to furnish meals for the prisoners in the county jail, is in violation of Section 12910, General Code, and therefore illegal."

You will note that Section 2850, General Code, provides in part as follows:

"All food shall be purchased by the sheriff under rules and regulations to be prescribed by the county commissioners."

In Opinion No. 1183, *supra*, the following language, which is pertinent in determining the question that you present, is used:

"The law imposes a duty on the sheriffs in the several counties to feed the prisoners and other persons in their custody, subject to the rules and regulations made by the court of common pleas as authorized by Section 3162, General Code, and subject further to the rules and regulations made by the county commissioners with reference to the *purchasing* of the food.

\* \* \* \* \*

The effect of these several provisions of law is that the manner of feeding, the quality and quantity of the food, and the kind and amount of food served, subject to the limitations imposed by law as to its cost, are matters which are within the province of the court of common pleas to regulate by the promulgation of rules, while the actual purchasing, that is the time, place and manner of purchasing, and quantities to be purchased at one time are matters to be regulated by rules which the county commissioners may prescribe.

The sheriff is in fact a mere ministerial officer so far as feeding of the prisoners is concerned. That is to say, he is to do the actual feeding and purchasing of the food and the procuring of statements showing the amount and actual cost of the food purchased, subject to the rules of the court as to the manner of feeding, the kind, quality, quantity and amount of food served and subject to the rules of the county commissioners as to the place where, time when, and manner of purchasing the food.

It is provided in Section 2850, General Code, that:

"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. \* \* \* Such bills, when approved, by the county commissioners, shall be paid out of the county treasury on the warrant of the county auditor. \* \* \*

In the absence of rules of the common pleas court or of the commissioners, the sheriff being charged with the duty of providing for the sustenance of the prisoners would necessarily be required to use his discretion with reference to matters not covered by rules, and in the absence of any violation of law on the sheriff's part, his exercise of such discretion could not be questioned.

As held in Opinion No. 833, *supra*, in the absence of any rules to the contrary, or if rules were promulgated permitting it, a sheriff may purchase food for the prisoners already prepared. In such a case he should render bills therefor at the actual cost to him. If it be at the rate of a prescribed price per meal, that is what the bill should show, because that would be the actual cost to him. The bills should be rendered to the county commissioners showing the actual cost per meal and should not contain or show the cost of the materials that went into the making of the meals."

In answer to your inquiry it is my opinion that by the provisions of Section 2850, General Code, boards of county commissioners have authority to prescribe rules and regulations governing the purchase of food by sheriffs for prisoners confined in the jails of their respective counties. In the absence of rules to the contrary, or if rules were prescribed permitting it, a sheriff may contract with his wife, providing she be not a matron of such county jail, for the furnishing of prepared meals for the prisoners in such jail, providing the cost thereof does not exceed seventy-five cents per day of three meals each.

However, in connection with the above, it should be pointed out that the above opinions were written upon the theory that no county property was to be used in the preparation of meals for the prisoners. Whether or not the property of a county, including the necessary room or rooms, stoves, utensils and fuel are to be used by such contractor, is a matter purely within the discretion of the county commissioners. If the county commissioners determine that it is for the best interest of the county to permit county property to be so used and to contract only for the necessary raw materials and the necessary services in order to prepare such raw materials for consumption as food, I see no legal objection to their so doing, for the reason that the use of such county property ought necessarily to reduce correspondingly the cost of such meals. On the other hand, if the county commissioners determine that such county property should not be used for this purpose they have the legal right to do so. In any event it should always be kept in mind that the legislature has provided that the total actual cost of feeding prisoners shall not in any county exceed the sum of seventy-five cents per day per prisoner, including the cost of the raw material, the necessary fuel, the use of the necessary property and the personal services to prepare such raw materials for consumption as food. It follows that any contract calling for an expenditure of seventy-five cents per day for raw material or raw material and the required personal services alone would be contrary to law and invalid.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*