OPINION NO. 88-058

Syllabus:

In the exercise of discretion pursuant to R.C. 307.01, a board of county commissioners may pay the cost of utilities furnished to a sheriff's residence that is located in the county jail, provided that the county commissioners determine that the provision of such utilities is for the best interest of the public and necessary either for the proper performance of the sheriff's duties or for the proper care and maintenance of the building. (1911 Op. Att'y Gen. No. 154, vol. I, p. 216, followed. 1933 Op. Att'y Gen. No. 1889, vol. III, p. 1777; 1930 Op. Att'y Gen. No. 1732, vol. I, p. 564; and 1912 Op. Att'y Gen. No. 475, vol. I, p. 268, overruled to the extent that they are inconsistent with this opinion.)

To: John E. Shoop, Lake County Prosecuting Attorney, Painesville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 9, 1988

I have before me your request for an opinion on the question whether a board of county commissioners may, in the exercise of discretion pursuant to R.C. 307.01, provide at no cost to the sheriff the utilities for the sheriff's residence in the county jail. You have informed me that your county has, for the last eighty-seven years, provided the county sheriff with a residence located in the county jail, and has also provided the sheriff with all utilities for that residence. In 1960, the sheriff's residence was remodeled and heating and lighting were updated. Costs of utilities for the jail, including the residence, continued to be billed through single meters to the board of county commissioners and paid upon submission of the bills to the county auditor. State audits over the last fifty years have not resulted in any findings against the sheriff or the board of the county commissioners with regard to this practice. It is the board's position that it has been carrying out its duties under R.C. 307.01 to insure proper care and maintenance of buildings under its control, and that it has properly exercised its discretion in determining the necessity for single

meters for utility services and in determining that the utilities used by the sheriff in his residence are expenses of the sheriff's office and the county jail. The board is building a new jail, to be completed in 1989, that will contain no residence for the sheriff, and wishes to continue its current policy with regard to utility payments until the new jail is opened.

You have indicated that your research has disclosed inconsistencies in authorities considering the legality of providing utilities for a sheriff's residence in the county jail. Accordingly, you have asked for clarification on the question whether a county may properly pay such utility expenses.

R.C. 307.01 imposes upon a board of county commissioners the responsibility of providing, *inter alia*, a county jail and offices for county officers, "when, in its judgment, any of them are needed." R.C. 307.01 (A) states, in part:

> *A* courthouse, *jail*, public comfort station, *offices for county officers*, and a county home *shall be provided by the board of county commissioners when, in its judgment, any of them are needed. The buildings and offices shall be of such style, dimensions, and expense as the board determines.* All new jails and renovations to existing jails shall be designed, and all existing jails shall be operated in such a manner as to comply substantially with the minimum standards for jails in Ohio promulgated by the department of rehabilitation and correction. *The board shall also provide equipment, stationery, and postage, as it considers reasonably necessary for the proper and convenient conduct of county offices, and such facilities as will result in expeditious and economical administration of such offices.* (Emphasis added.)

The board of county commissioners is, thus, required to provide certain equipment and facilities for county offices. *See, e.g., Campanella v. Cuyahoga County*, 57 Ohio Misc. 20, 23, 387 N.E.2d 254, 257 (C.P. Cuyahoga County 1977) ("R.C. 307.01 places a mandatory obligation on the board of county comissioners to provide equipment and facilities as it deems necessary for the proper and convenient conduct of county offices and as will result in expeditious and economical administration of such offices"); 1986 Op. Att'y Gen. No. 86-104. The board has, however, been granted discretion in determining when such county facilities are required and, if required, what expense will be involved and what style and dimensions the facilities will have, with the limitation that jails must comply substantially with minimum standards promulgated by the Department of Rehabilitation and Correction.[1] *See, e.g.*, 1985 Op. Att'y Gen. No. 85-066; 1968 Op. Att'y Gen. No. 68-099; 1959 Op. Att'y Gen. No. 963, p. 653; 1919 Op. Att'y Gen. No. 706, vol. II, p. 1309; *see also* R.C. 307.02 ("[t]he board of county commissioners of any county, in addition to its other powers, may purchase...construct, enlarge, improve, rebuild, equip, and furnish...county offices, jail...").

R.C. 341.01 imposes upon the sheriff the responsibility of taking charge of the county jail. It states: "*The sheriff shall have charge of the county jail* and all persons confined therein. *He shall* keep such persons safely, *attend to the jail*, and govern and regulate the jail according to the minimum standards for jails in Ohio promulgated by the department of rehabilitation and correction." (Emphasis added.) *See* 1949 Op. Att'y Gen. No. 568, p. 275 at 281 ("the powers of control conferred on the sheriff by virtue of [G.C. 3157, now R.C. 341.01] extend to all rooms, spaces and areas contained within [the jail] building," including areas used as residences for the sheriff and the jail matrons).

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1 R.C. 325.07 provides expressly that the board of county commissioners shall allow the sheriff "his actual transportation expense and telephone tolls expended in serving civil processes and subpoenaing witnesses in civil and criminal cases and before the grand jury." The sheriff is required to file a monthly report containing a full, accurate, and itemized account of his actual and necessary expenses, including telephone tolls, before the expense is allowed. R.C. 325.07.

No statute expressly authorizes a board of county commissioners to provide the sheriff with residential facilities that constitute part of the county jail. It has, nonetheless, been commonly accepted for a number of years that the board may, in the proper exercise of its discretion, determine that the provision of such a residence is appropriate under R.C. 307.01 to enable the sheriff to perform his duties under R.C. 341.01. *See* 1956 Op. Att'y Gen. No. 7574, p. 919 (issued Jan. 3, 1957) (syllabus, paragraph one) ("[c]ounty commissioners may, in the exercise of a sound discretion, provide living quarters for the sheriff in the county jail"); 1911 Op. Att'y Gen. No. 154, vol. I, p. 216; *see also State ex rel. L.E., B.G. & N. Railway Co. v. Toan*, 13 Ohio Cir. Ct. (n.s.) 276, 280 (Wood County 1910) ("[i]t is true, that in most counties the jail buildings are so built as to furnish a residence for the sheriff, and so far as our information goes in no county is the sheriff expected to pay anything as a rental for the building which he occupies"); 1930 Op. Att'y Gen. No. 1732, vol. I, p. 564; 1919 Op. Att'y Gen. No. 385, vol. I, p. 635 at 636 ("[t]here is no specific authority...for the sheriff to occupy rooms in the jail building as his residence, but this is a common practice throughout the state, sanctioned by the courts..."). The provision of a residence for the sheriff at the jail has, thus, been found to come within the county commissioners' proper exercise of discretion, and you are not questioning that aspect of the arrangement in effect in your county.

In the situation that you have presented, the county commissioners have determined that, even as it is appropriate for the county to provide residential facilities for the sheriff at the county jail, it is also appropriate for the county to pay the utility costs that are incidental to the provision of the residential facilities. This conclusion is consistent with the authority granted to the county commissioners by R.C. 307.01 to provide county officers with "such facilities as will result in expeditious and economical administration" of their offices. The county commissioners may properly determine that the provision of the residence at the jail will enable the sheriff to perform his duties more effectively. *See, e.g.*, 1956 Op. No. 7574 at 921 ("[t]he...justification for providing living quarters for the sheriff *at* the jail is to enable the sheriff to have full charge of the jail and of the persons therein confined"); 1919 Op. No. 385 at 636–37 ("[t]he authority to provide...quarters [in the jail building] for the sheriff seems necessarily implied in consideration of the character of the services required and responsibilities placed upon the county sheriff..."); 1911 Op. No. 154. The county commissioners may, similarly, properly determine that the provision of utilities for the residence is necessary for the performance of such duties or for the proper care or maintenance of the building. *See, e.g.*, R.C. 305.07 ("[a]t a regular or special session, the board [of county commissioners] may make any necessary order or contract in relation to the building, furnishing, repairing, or insuring [of] the public buildings..."); *Gorman v. Heuck*, 41 Ohio App. 453, 460, 180 N.E. 67, 70 (Hamilton County 1931) ("[t]he intent of the Legislature [in adopting G.C. 2419, now R.C. 307.01] was to authorize the county commissioners to provide such physical aids and help as might assist the officers in efficiently conducting their offices; that they should be furnished with suitable space, proper equipment, necessary supplies..."); *Burkholder v. Lauber*, 6 Ohio Misc. 152, 154, 216 N.E.2d 909, 911 (C.P. Fulton County 1965) ("the [county] commissioners are trustees of county property and may perform such acts as trustees may legally perform in regard to such property"); *Dall v. Cuyahoga County Building Commission*, 14 Ohio N.P. (n.s.) 209, 211 (C.P. Cuyahoga County 1913) (a board of county commissioners "is representative and guardian of the county, having the management and control of its property and financial interests"); 1987 Op. Att'y Gen. No. 87-039 at 2-262 ("[i]mplicit in the power to preserve and protect county buildings is the power to institute policies and procedures that reduce fire risks and insure the safe operation of facilities within the buildings"); 1983 Op. Att'y Gen. No. 83-081; 1973 Op. Att'y Gen. No. 73-057 at 2-218 (county commissioners have implied authority "to perform acts to preserve the corporate property of the county over which they have control"); 1949 Op. No. 568 at 280 ("in addition to the duty to provide such jail, when in the judgment of the county commissioners it is needed, as imposed by [G.C. 2419, now R.C. 307.01,] it may be implied that [the county commissioners] have the added duty of maintaining the same once it is provided"); 1934 Op. Att'y Gen. No. 3311, vol. II, p. 1456. Even as the board of county commissioners may provide the residence, it may provide the utilities that are incidental to the residence. As was stated in 1911 Op. No. 154, at 217:

> The county commissioners are vested, by the virtue of [G.C. 2419, now R.C. 307.01], with a wide discretion in building a county jail,

> and they have determined in this case that in order to carry out the provisions of [G.C. 3157, now R.C. 341.01], it is for the best interest of the public that the residence of the sheriff should be located in said jail. If in the judgment of said county commissioners it is for the best interest of the county that a telephone for the use of the sheriff and the public shall be located in the jail for the proper performance of the duties of said sheriff, they may so locate one, and it is also discretionary with them as to the exact location of said telephone in said jail.
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> My opinion, therefore, is that the rent of the telephone in the sheriff's residence where said residence is in and a part of the county jail, is a legal charge against the county, provided the county commissioners shall determine that it is for the best interest of the public and necessary for the sheriff in the proper performance of his duties that such a telephone shall be so located in the jail.

See also 1959 Op. No. 963 (a board of county commissioners may, in the exercise of discretion, pay part of the cost of rent and lighting of the private office of the prosecuting attorney in order to furnish the prosecutor with an office for his official duties). *See generally* 1965 Op. Att'y Gen. No. 65-91; 1961 Op. Att'y Gen. No. 2715, p. 735. I conclude, accordingly, that a county may properly pay the cost of utilities furnished to a sheriff's residence that is located in the county jail, provided that the county commissioners determine that the provision of such utilities is for the best interest of the public and necessary either for the proper performance of the sheriff's duties or for the proper care and maintenance of the building.

Your question was raised on the basis of several authorities that suggest a contrary conclusion to this question. I respectfully suggest that, while those authorities may have been valid when issued, they do not reflect the current understanding of the necessity of the provision of various utility services and, accordingly, do not operate to prevent a board of county commissioners from exercising its discretion to provide the sheriff with utility services for a residence that is located in the county jail. In 1910, the Circuit Court of Wood County held that county commissioners were without authority to pay for the expense of lighting the part of the county jail that was used by the sheriff as a residence. In *State ex rel. L.E., B.G. & N. Railway Co. v. Toan*, the court recognized that, even though there was no express statutory authority for providing a sheriff's residence as part of the jail, that practice was common and acceptable. The court declined, however, to find related authority to pay for lighting that residence. The *Toan* case was cited and applied in several Attorney General opinions. *See* 1933 Op. Att'y Gen. No. 1889, vol. III, p. 1777 (syllabus, paragraph three) ("[c]ounty commissioners are without authority to provide for the expense of lighting that part of the county jail which is used by the sheriff as a residence. County commissioners are unauthorized to pay for the electric current used to prepare the meals of the sheriff and his family but may pay for the electric current used to prepare the meals of the prisoners in the county jail"); 1930 Op. No. 1732 (syllabus) ("[t]he county commissioners may not legally pay from the county funds the bill for furnishing light to the part of the jail used as the residence of the jailer"); 1912 Op. Att'y Gen. No. 475, vol. I, p. 268 (syllabus) ("[a] contract by the county commissioners with the sheriff providing for the furnishing by the former of light, heat, water, fuel, telephones and cooking utensils for the residence of the latter...is unauthorized and void").

In the *Toan* case, the court declined to accept the conclusion of the lower court that the statutory authority for furnishing light for the jail was broad enough to justify furnishing light for the sheriff's residence within the jail. The *Toan* court discussed the lower court decision by Judge Baldwin as follows:

> Judge Baldwin treated the term "jail" as described in the statute as being broad enough—comprehensive enough in its proper definition—to include that portion of the jail building used as the residence of the sheriff, and consequently the statutory authority for furnishing light for the jail was broad enough to justify furnishing light for the residence portion of the jail, and that being his view of the situation, he ordered the writ to issue.

> There is no case in Ohio that we know of in which this question has been directly raised and decided. We do not know of any authority under the statute for authorizing the lighting of any portion of the jail, other than that which is properly designated as a jail, and while we might be in accord with Judge Baldwin's opinion as to what the definition of "jail" is, at the same time we are inclined to think that the decision reached in this case is not warranted under the statute. As I have said, we know of no statute, no authority that would justify the lighting of the sheriff's residence. It is true, that in most counties the jail buildings are so built as to furnish a residence for the sheriff, and so far as our information goes in no county is the sheriff expected to pay anything as a rental for the building which he occupies. It is furnished to him by the county in that way, but we can see no reason why the county should pay for the lighting of the residence part of the jail simply because it happens to be under the same roof, any more than the county should pay for it if it were in a separate building.

State ex rel. L.E., B.G. & N. Railway Co. v. Toan, 13 Ohio Cir. Ct. (n.s.) at 280. The Circuit Court was unwilling to find implied authority to pay for the cost of lighting the residence, which it apparently viewed as an expense personal to the sheriff, rather than an expense incidental to the provision of the residence. The court stated: "It might be wise for the Legislature to so provide [for payment by the county for the lighting of the residence part of the jail], but they have not done so, and without some authority upon the subject we do not feel warranted in entering the order [for the auditor to pay the full amount of the bill, including the amount applicable to the residence portion of the jail]." *State ex rel. L.E., B.G. & N. Railway Co. v. Toan*, 13 Ohio Cir. Ct. (n.s.) at 280. *See* 1912 Op. No. 475 at 269 ("where can the commissioners find authority for furnishing the sheriff's residence with light, heat, water, fuel, telephones and cooking utensils? Why not add provisions?"); *cf.* 1936 Op. Att'y Gen. No. 6071, vol. III, p. 1392 (syllabus) ("[c]ounty commissioners are unauthorized to pay the expenses of a telephone in the private residence of the deputy sheriff, when such residence is not at the county jail").

The court's decision in *Toan* may have been proper when rendered. *But see* 1930 Op. No. 1732 at 564 (discussing the *Toan* case and stating that "the distinction between the two services rendered to the sheriff [provision of living quarters and provision of lighting for living quarters] is difficult to define"). Subsequent legislation has, however, indicated that the county commissioners have authority to provide certain utility services to all county buildings. In particular, G.C. 2431-1, approved May 17, 1910, four days after the decision in the *Toan* case, stated:

> The commissioners of any county may, at any time, either before or after the completion of any county building, invite bids and award contracts for supplying such building with light, heat and power, or any of the same, for any period of time and not exceeding ten years; but none of the provisions of [G.C. 5660, dealing with the appropriation and expenditure of money and with the certification of the availability of funds] shall apply to any such contracts.

1910 Ohio Laws 258 (S.B. 222, approved May 17, 1910). The provisions of G.C. 2431-1 now appear in R.C. 307.04 and refer to R.C. 5705.41 and 5705.44, which contain successor provisions to G.C. 5660 and also govern continuing contracts. It is apparent that R.C. 307.04 is directed primarily to the nature and funding of a contract for the particular utilities mentioned therein. It does, however, contain express authorization for the board of county commissioners to provide light, heat and power to all county buildings. The board may, accordingly, provide such utilities for the sheriff's residence where that residence is part of a county building, even though it does not come within a narrow definition of "jail."

Even apart from the provisions of R.C. 307.04 governing particular types of utility contracts, it appears that the analysis contained in the *Toan* case is subject to reconsideration in light of changing circumstances. *But see* 1930 Op. No. 1732 at 564 ("over a long period of years there has been an administrative interpretation to the effect that light may [not?] be furnished to the jailer's quarters free and that

living quarters for the jailer may properly be provided. It is a well established proposition of law that an administrative interpretation of a law over a long period of time will not be disturbed except for cogent reasons"). It has generally been recognized that a board of county commissioners, as a creature of statute, may exercise only such powers as are expressly delegated by statute and such implied powers as are necessary to carry into effect the powers expressly delegated. *See, e.g., State ex rel. Kuntz v. Zangerle*, 130 Ohio St. 84, 197 N.E.2d 112 (1935); *Board of County Commissioners v. Gates*, 83 Ohio St. 19, 93 N.E. 255 (1910). As discussed above, the board of county commissioners has been given discretion to provide such facilities as will result in expeditious and economical administration of the sheriff's office and to take such actions as are necessary to protect and preserve county buildings. The actions that are necessary to protect county buildings and to enable the sheriff to perform his duties in an effective and efficient manner may, however, change as society changes and technology advances. *See generally, e.g., Boes v. Commissioners of Montgomery County*, 7 Ohio N.P. (n.s.) 76, 79 (C.P. Montgomery County 1908) (permitting the county commissioners to reimburse the sheriff ten cents for the cost of a telephone toll under a statute providing for allowance for "all expenses of maintaining horses and vehicles necessary to the proper administration of the duties of his office," stating: "He used as a vehicle for that purpose the telephone as an instrument of communication to a man at Harrisburg from whom he obtained information, which saved a trip there, and this saved the county $4.90....We think that the common sense construction of this portion of the statute would authorize such expenditures, where after proper investigation by the commissioners they find that each item was actually paid by the sheriff in the administration of justice and was a saving to the county. These items were certainly expenses for the maintaining of vehicles necessary to the proper administration of the duties of the sheriff's office"); 1931 Op. Att'y Gen. No. 2899, vol. I, p. 149 (finding that the portion of G.C. 2419, now R.C. 307.01, that authorizes a board of county commissioners to provide the office of the county treasurer with "other means of security" includes authority to provide tear gas protective equipment.) The relevant inquiry with respect to each expenditure is whether it comes within the statutory grant of authority and serves a public purpose. *See, e.g.*, 1983 Op. Att'y Gen. No. 83-042; 1982 Op. Att'y Gen. No. 82-006; 1956 Op. No. 7574 at 921 (recognizing "the power of the county commissioners to provide living quarters for the sheriff in the county jail where the commissioners deem such an arrangement to be in the best interests of the public"); 1911 Op. No. 154.

A discussion of the changing nature of public purpose appears in *State ex rel. McClure v. Hagerman*, as follows:

> The problem of deciding what constitutes public purpose has always been difficult of solution. Texts and digests are quite uniform in their treatment of the subject.
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> "What is a public use is not capable of absolute definition. A public use changes with changing conditions of society, new appliances in the sciences, and other changes brought about by an increase in population and by new modes of transportation and communication. The courts as a rule have attempted no judicial definition of a public as distinguished from a private purpose, but have left each case to be determined by its own peculiar circumstances....The modern trend of decision is to expand and liberally construe the term 'public use' in considering state and municipal activities sought to be brought within its meaning....
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> "The determination of what constitutes a public purpose is primarily a legislative function, subject to review by the courts when abused, and the determination of the legislative body of that matter should not be reversed except in instances where such determination is palpable and manifestly arbitrary and incorrect." 37 American Jurisprudence, 734, 735, Section 120.
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> "There is no universal test for distinguishing between a purpose which is public or municipal and, therefore, a proper object of municipal expenditure and one which is private and, therefore, an improper object to which to devote public money. Each case must be decided in the light of existing conditions, with respect to the objects sought to be accomplished, the degree and manner in which that object

> affects the public welfare, and the nature and character of the thing to be done; but the court will give weight to a legislative determination of what is a municipal purpose, as well as widespread opinion and general practice which regard as city purposes some things which may not be such by absolute necessity, or on a narrow interpretation of constitutional provisions.***It has been laid down as a general rule that the question whether the performance of an act or the accomplishment of a specific purpose constitutes a 'public purpose' for which municipal funds may be lawfully disbursed rests in the judgment of the municipal authorities, and the courts will not assume to substitute their judgment for that of the authorities unless the latter's exercise of judgment or discretion is shown to have been unquestionably abused." 64 Corpus Juris Secundum, 334, 335, Section 1835 b.

155 Ohio St. 320, 324–26, 98 N.E.2d 835, 838 (1951). *See also State ex rel. Bruestle v. Rich*, 159 Ohio St. 13, 110 N.E.2d 778 (1953); 1975 Op. Att'y Gen. No. 75–034; 1971 Op. Att'y Gen. No. 71–067.

The *McClure* case was cited in Op. No. 82–006 in support of the following conclusion:

> The governing body of a political subdivision other than a municipality may expend public funds to purchase coffee, meals, refreshments and other amenities for its officers or employees or other persons if it determines that such expenditures are necessary to perform a function or to exercise a power expressly conferred upon it by statute or necessarily implied therefrom and if its determination is not manifestly arbitrary or unreasonable.

Op. No. 82–006 (syllabus, paragraph three). It provides support also for the conclusion that a board of county commissioners may, in the exercise of its discretion, determine that the provision of utilities to a sheriff's residence within the county jail will serve a public purpose, rather than a private purpose, and will carry out statutory responsibilities. *See generally State ex rel. Landis v. Board of Commissioners*, 6 Ohio App. 440, 446–47 (Butler County 1916), *aff'd*, 95 Ohio St. 157, 115 N.E. 919 (1917) ("it would not be a proper exercise of the judicial powers of the court to interfere by injunction with the legitimate discretion of the county commissioners so long as that discretion is being honestly exercised by them in good faith within the limits of the powers conferred by statute"); 1987 Op. Att'y Gen. No. 87–018; 1941 Op. Att'y Gen. No. 3600, p. 190.

It is, accordingly, appropriate to recognize that a board of county commissioners, in the proper exercise of its discretion, may determine that the furnishing of utilities to a sheriff's residence located in the county jail is essential to the care and maintenance of the building or is necessary for the performance of the sheriff's duties. *See, e.g.*, Op. No. 87–039 at 2–264 (the question whether the use of certain appliances by court personnel is necessary for the proper and efficient operation of the courts is a question of fact). *See generally* 1986 Op. Att'y Gen. No. 86–037; 1985 Op. Att'y Gen. No. 85–003; 1984 Op. Att'y Gen. No. 84–046; 1983 Op. Att'y Gen. No. 83–053; 1978 Op. Att'y Gen. No. 78–042 at 2–99 ("[t]elephone equipment is by any standard essential office equipment"); 1961 Op. No. 2715; 1949 Op. Att'y Gen. No. 1085, p. 737 (syllabus, paragraph two) ("[o]ffice space without running water, toilet facilities, heat and light is not 'suitable quarters' for a general health district within the purview of [G.C. 1261–36, now R.C. 3709.34]"); 1933 Op. Att'y Gen. No. 92, vol. I, p. 87 at 89 ("[u]nder [G.C. 2419, now R.C. 307.01], it seems clear that the county commissioners are required to provide all facilities as will result in expeditious and economical administration of the county offices (including the office of the prosecuting attorney). In order to expedite business, long distance telephone calls are often necessary, and the expense of such calls seems to me to be a proper charge against the maintenance appropriation made by the county commissioners for the supplies and facilities of the office of the prosecuting attorney under this section."). The authority of the commissioners to pay for such utilities may, thus, be implied from the authority expressly granted to such commissioners in R.C. 307.01. *See generally, e.g., State ex rel. McClure v. Hagerman*; 1985 Op. Att'y Gen. No. 85–005; Op. No. 83–042; 1983 Op. Att'y Gen. No. 83–029; Op. No. 82–006.

It is, therefore, my opinion, and you are hereby advised, that, in the exercise of discretion pursuant to R.C. 307.01, a board of county commissioners may pay the cost of utilities furnished to a sheriff's residence that is located in the county jail, provided that the county commissioners determine that the provision of such utilities is for the best interest of the public and necessary either for the proper performance of the sheriff's duties or for the proper care and maintenance of the building. (1911 Op. Att'y Gen. No. 154, vol. I, p. 216, followed. 1933 Op. Att'y Gen. No. 1889, vol. III, p. 1777; 1930 Op. Att'y Gen. No. 1732, vol. I, p. 564; and 1912 Op. Att'y Gen. No. 475, vol. I, p. 268, overruled to the extent that they are inconsistent with this opinion.)