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COUNTY COMMISSIONERS — CONTRACT WITH JAIL MATRON, SHERIFF — §341.20 RC — PREPARATION OF FOOD, STATEMENTS — LIMITATIONS OF §311.20 RC — COSTS OF FUEL ELEMENTS OF “ACTUAL COST” TO SHERIFF, §311.20 RC—COMPENSATION OF JAIL MATRON TO BE COMMENSURATE WITH DUTIES — PRIVATE CONTRACT, MATRON AND COOK.

SYLLABUS:

1. In absence of regulations to the contrary by the common pleas court pursuant to Section 341.06 (J), Revised Code, and/or the county commissioners pursuant to Section 311.20, Revised Code, the sheriff may contract with a matron, who may or may not be his wife, for the *preparation* of food for feeding prisoners in the county jail under the authority contained in Section 341.20, Revised Code. Such a contract does not require the approval of the county commissioners.

2. Under a contract between the sheriff and a matron of a county jail for the preparation of food by the authority contained in Section 341.20, Revised Code, such matron may render to the sheriff for submission to the county commissioners a statement showing the actual number of meals served, dates and price per meal for its preparation, subject to the limitations of Section 311.20, Revised Code.

3. The cost of the fuel and the use of the facilities furnished by the county for the preparation of food, according to the provisions of Section 341.20, Revised Code, are proper elements to be considered by the county commissioners in determining the “actual cost” to the sheriff for which he may be reimbursed as provided by Section 311.20, Revised Code.

4. The salary of a jail matron acting in such capacity must be paid solely by the county and must be commensurate with her duties in such capacity; the compensation of a matron acting as a cook under a contract for the preparation of food pursuant to Section 341.20, Revised Code, is a separate matter between such cook and the contracting matron governed only by the law of contracts generally.

Columbus, Ohio, July 22, 1957

Hon. H. Dennis Dannley, Prosecuting Attorney
Medina County, Medina, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

“In our County the Sheriff’s wife is the Jail Matron and the Board of County Commissioners has asked me to obtain

your opinion concerning the legality of the following questions in connection with the feeding of prisoners in the County Jail:

"1. May the Sheriff contract with his wife for the preparation of food for the feeding of prisoners under authority of Section 341.20 of the Revised Code and is it necessary that the Board of County Commissioners approve such contract?

"2. If such a contract is proper, is it necessary for the Jail Matron, furnishing food under such contract, to render to the Sheriff an itemized and accurate account with all of her food and material bills attached, or may she render to the Sheriff, for submission to the Board of County Commissioners, a statement in form showing the actual number of meals served, dates and price per meal under the contract?

"3. The facilities of the jail are used for preparing the meals and all of the gas used for the building comes through one meter. May the cost of the gas and the use of the facilities for preparing the food under contract be estimated by the County and considered in the price per meal as established by contract?

"4. The County has an Assistant Jail Matron who will also act as a cook in the preparation of meals under this contract. Is it permissible to pay $\frac{1}{2}$ of her salary by the county for services as Jail Matron with the other $\frac{1}{2}$ to be paid by the Sheriff's wife as cook's salary?"

Your attention is invited to Opinion No. 1183, Opinions of the Attorney General for 1927, page 2089, the syllabus of which reads in part 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."

That the sheriff may contract with his wife was reaffirmed in Opinion No. 1608, Opinions of the Attorney General for 1928, page 168.

Section 311.20, Revised Code, as amended, and effective October 2, 1953, reads as follows:

"The sheriff shall be allowed by the board of county commissioners the actual cost of keeping and feeding prisoners or other persons confined in the county jail, but at a rate not to exceed one dollar and fifty cents per day of three meals each. The board shall allow the sheriff the actual cost but not to exceed one dollar and fifty cents each day of three meals each for keeping and feeding any idiot or lunatic placed in the sheriff's charge. *All food shall be purchased by the sheriff under rules and regulations prescribed by the board.* On the fifth day of each month the sheriff shall render to the board 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. The number of days for which allowance shall be made shall be computed on the basis of one day for each three meals actually served. In counties where the daily average number of prisoners or other persons confined in the county jail during the year next preceding, as shown by the statistics compiled by the sheriff under sections 341.02 and 341.03 of the Revised Code, did not exceed twenty in number, the board shall allow the sheriff not less than twenty-five cents nor more than fifty cents per meal. Such bills, when approved by the board, shall be paid out of the county treasury on the warrant of the county auditor. The sheriff shall furnish, at the expense of the county, to all prisoners or other persons confined in the jail, fuel, soap, disinfectants, bed, clothing, washing, and nursing, when required, and other necessities as the court, in its rules, designates. The jail register and the books of accounts, together with bills for the feeding of prisoners and other persons in the jail, shall be open to public inspection at all reasonable hours." (Emphasis added)

Section 341.06, Revised Code, provides in part as follows:

"The court of common pleas shall prescribe rules for the regulation and government of the county jail upon the following subjects:

"* * *

"(J) Other rules necessary to promote the welfare of the prisoners."

In considering the latter part of the first question you present, Informal Opinion No. 323 of my predecessor addressed to the prosecuting attorney of Brown County, Ohio, on December 22, 1953, reads in pertinent part as follows:

"* * *, I shall have to assume that neither the common pleas court, pursuant to Section 341.06, subdivision (J), (Revised

Code), nor the county commissioners pursuant to the authority of Section 311.20, (Revised Code), has promulgated regulations * * *. Such rules and regulations would, of course, be controlling. Lacking said regulations, the sheriff may provide for the purchase and preparation of food, and the feeding of prisoners in such manner as is not otherwise contrary to law.”

Since Section 311.20, *supra*, provides for rules and regulations by the board of county commissioners applicable only to the *purchase of food* by the sheriff, it follows that approval of a contract for the *preparation of food* only is not within the province of such board.

In regard to your second question, Opinion No. 1183, *supra*, states at pages 2092, 2093 :

“* * *

“While Section 12910, General Code, is a penal section and must therefore be strictly construed, it seems clear to me that even though we apply the rules of strict construction to the statute, it must be said that anyone agreeing to furnish meals for prisoners in the county jail, would be ‘interested in the contract for the purchase of supplies for the county’ which is clearly prohibited by Section 12910, *supra*, and as a jail matron is an agent or servant or employe of the sheriff, a jail matron who did so contract, would be amenable to the provisions of the statute. It of course follows that a county sheriff can not be authorized to contract with his wife for the supplying of meals to the prisoners if she be the matron of the jail.

“* * *

Although Opinion No. 1183, *supra*, viewed as illegal a contract between the sheriff and a matron of a county jail for the *furnishing* of meals for the prisoners in such jail, the sheriff presently may contract with a matron for the *preparation* of food for the feeding of such prisoners as expressly provided for by Section 341.20, Revised Code. As amended, and effective October 2, 1953, this section reads as follows :

“The sheriff may appoint not more than six jail matrons, who shall have charge over and care for the insane, and for all female and minor persons confined in the county jail. The board of county commissioners shall provide suitable quarters in such jail for the use and convenience of the matrons while on duty. Such appointment shall not be made, except on the approval of the probate judge. The compensation of such matrons shall be payable monthly from the general fund of such county, upon the warrant of the county auditor and upon the certificate of the

sheriff. No matron shall be removed from such position except for cause, and then only after hearing before the probate judge.

“A matron may enter into a contract with the sheriff for the preparation of food for the feeding of prisoners and other persons placed in the sheriff’s charge. The provisions of sections 2919.08 and 2919.09 of the Revised Code shall not apply to such contracts, but nothing in this section shall affect the provisions of section 311.20 of the Revised Code.” (Emphasis added)

Thus, in absence of regulations by the county commissioners or the common pleas court to the contrary, the sheriff may contract with a matron, who may or may not be his wife, for the *preparation of food* as distinguished from *its purchase*. It follows that such matron would be required only to submit to the sheriff the cost of the preparation of the meals *in any manner* which would enable the sheriff to show his “actual cost” for this item. This cost should be shown on his monthly account, along with a statement of “actual cost” incurred in the *purchase* of food, and such account must be rendered “with bills attached,” which bills require approval of the county commissioners in compliance with Section 311.20, *supra*.

It is apparent that the rendering by the matron to the sheriff of “an itemized and accurate account with all of her food and material bills attached” is not feasible since the sheriff may contract with the matron for the *preparation of food* only, pursuant to Section 341.20, *supra*. However, there would be no objection to the rendering “to the sheriff for submission to the board of county commissioners, a statement in form showing the actual number of meals served, dates and price per meal under the contract,” if such price per meal related exclusively to the *preparation* of the food, subject to the limitations of Section 311.20, *supra*.

Opinion No. 1608, *supra*, at page 171, pertinent in part to your third question, reads as follows:

“* * * 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. * * *”

You will note that Section 307.01, Revised Code, allows the county commissioners, when they deem it necessary, or when required to do so by the common pleas court, to furnish facilities and equipment to feed the prisoners.

It follows that the cost of the gas and the use of the facilities furnished by the county for preparing the food under contract may be estimated by the county commissioners and considered in the price per meal as established by such contract. Such a consideration would appear necessary in the determining of “actual cost” to the sheriff by the terms of Section 311.20, *supra*.

Regarding your fourth question, Section 341.20, quoted above, provides for the compensation of jail matrons. Assuming from your inquiry that the assistant jail matron is one of the six jail matrons allowed by this section, it is apparent that the salary of such assistant jail matron acting in such capacity must be paid solely by the county and *must be commensurate with her duties in such capacity*, subject to the limitations of this section. Since the contract for the preparation of food is by the sheriff with the matron, subject to the limitations of Section 311.20, *supra*, it follows that the compensation of the assistant jail matron as a cook under such contract is a *separate matter* between the matron and the assistat jail matron governed only by the law of contracts generally. She may not be compensated directly by the county for the preparation of prisoners’ meals if the entire cost of such preparation is paid to the matron who has contracted with the sheriff for that purpose.

In specific answer to your fourth question, the preceding discussion would be controlling. However, it is not beyond the realm of possibility that the assistant jail matron’s compensation could amount to one-half of her total income, the other one-half being paid by the jail matron as cook’s salary.

It is my opinion and you are advised that:

1. In absence of regulations to the contrary by the common pleas court pursuant to Section 341.06 (J), Revised Code, and/or the county commissioners pursuant to Section 311.20, Revised Code, the sheriff may contract with a matron, who may or may not be his wife, for the *preparation*

of food for feeding prisoners in the county jail under the authority contained in Section 341.20, Revised Code. Such a contract does not require the approval of the county commissioners.

2. Under a contract between the sheriff and a matron of a county jail for the preparation of food by the authority contained in Section 341.20, Revised Code, such matron may render to the sheriff for submission to the county commissioners a statement showing the actual number of meals served, dates and price per meal for its preparation, subject to the limitations of Section 311.20, Revised Code.

3. The cost of the fuel and the use of the facilities furnished by the county for the preparation of food, according to the provisions of Section 341.20, Revised Code, are proper elements to be considered by the county commissioners in determining the "actual cost" to the sheriff for which he may be reimbursed as provided by Section 311.20, Revised Code.

4. The salary of a jail matron acting in such capacity must be paid solely by the county and must be commensurate with her duties in such capacity; the compensation of a matron acting as a cook under a contract for the preparation of food pursuant to Section 341.20, Revised Code, is a separate matter between such cook and the contracting matron governed only by the law of contracts generally.

Respectfully,
WILLIAM SAXBE
Attorney General