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1. JAIL, COUNTY—PRISONER ARRESTED BY CITY POLICE OFFICER—HELD IN JAIL PENDING FILING OF FORMAL CHARGES—ULTIMATELY CHARGED WITH VIOLATION OF STATE LAW—COST OF FEEDING PRISONER MUST BE BORNE BY COUNTY.
2. PRISONER ARRESTED—HELD IN COUNTY JAIL PENDING FILING OF FORMAL CHARGES—ULTIMATELY CHARGED WITH VIOLATION OF MUNICIPAL ORDINANCE—COST OF FEEDING PRISONER MUST BE BORNE BY MUNICIPALITY.

SYLLABUS:

1. Where a prisoner arrested by a city police officer is held in the county jail, pending the filing of formal charges, and is ultimately charged with the violation of a state law, the cost of feeding such prisoner during such confinement must be borne by the county.

2. Where a prisoner who has been arrested is held in the county jail, pending the filing of formal charges, and is ultimately charged with violation of a municipal ordinance, the cost of feeding such prisoner during such confinement, must be borne by the municipality.

Columbus, Ohio, July 30, 1955

Hon. E. Raymond Morehart, Prosecuting Attorney
Fairfield County, Lancaster, Ohio

Dear Sir :

I have before me your request for my opinion reading as follows :

“A dispute has arisen between the Board of County Commissioners of Fairfield County and the City of Lancaster as to which is to pay for the board of prisoners arrested by the city police and confined in the county jail pending the filing of formal charges.

“Which should pay the board of the prisoners for the period of confinement in the county jail until formal charges are filed :

“1. If the prisoner is ultimately charged with violation of a state law?

“2. If the prisoner is ultimately charged with violation of a municipal ordinance?”

The general policy of the law appears clearly to provide in the first instance that prisoners confined in any prison or jail are to be fed and maintained by the officers in charge of that prison or jail, whether it be municipal or county. Section 753.01, Revised Code, reads as follows :

“The marshal of a village or chief of police of a city shall provide all persons confined in a prison or station house with necessary food during such confinement, and see that such places of confinement are kept clean and made comfortable for the inmates.”

Section 341.01, Revised Code, reads as follows :

“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 rules and regulations prescribed by the court of common pleas.”

While this section does not specifically mention food, yet it is certainly safe to assume that the legislature meant that the sheriff must see that the prisoners confined in the county jail are fed. If there were any doubt on this subject, it would be clarified by the provisions of Section 311.20, Revised Code, which provides in part :

“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. * * *.”

(Emphasis added.)

These provisions, however, only relate to the primary duty, which would doubtless arise from the principle of humanity, independent of any law and do not determine the question of ultimate liability which, I take it, is the essence of your inquiry.

While your question as presented involves two propositions, it appears to me that the first practically answers itself. That proposition is based on the statement that a prisoner has been arrested by the city police and confined in the county jail pending the filing of charges; and the question is, in the event that such prisoner is ultimately charged with the violation of a state law, who is responsible for the cost of his food during his confinement in the county jail up to the time the formal charges are filed? On the face of it, it would appear that the municipality does not enter into the picture at all, unless it be considered that the fact that the prisoner was arrested by the city police in some way makes him a municipal prisoner.

It must be borne in mind that an arrest either for a misdemeanor or a felony may be made by a number of different officers, whether municipal or otherwise. Under Section 2935.03, Revised Code, a sheriff, deputy sheriff, marshal, deputy marshal, watchman, police officer, or a constable within his township, shall arrest and detain a person found violating a law of this state or an ordinance of a municipal corporation until a warrant can be obtained. Section 2935.04, Revised Code, provides that when a felony has been committed, or there is reasonable ground to believe that a felony has been committed, any person, without a warrant, may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained.

When a warrant is issued by a proper tribunal for an arrest it may be directed to and executed by any of the officers named in Section 2935.03 supra.

Accordingly, it seems very clear that the class into which the prisoner will fall, whether a county prisoner, or a municipal prisoner, is in no way affected by the character of the officer making the arrest.

Under the facts stated as to your first proposition, the prisoner is plainly a county prisoner and under no circumstances could the cost of his care while in the county jail be charged against the municipality.

This leaves as the only question we have to consider, the matter of the ultimate liability for the cost of feeding a person accused of violating a municipal ordinance during his temporary confinement in the county jail awaiting the filing of formal charges. Section 753.02, Revised Code, appears to me to have a direct bearing. That section reads as follows :

“The legislative authority of a municipal corporation shall provide by ordinance for sustaining all persons sentenced to *or confined in* a prison or station house at the expense of the municipal corporation, and in counties where prisons or station houses are in quarters leased from the board of county commissioners, may contract with the board for the care and maintenance of such persons by the sheriff or other person charged with the care and maintenance of county prisoners. On the presentation of bills for food, sustenance, and necessary supplies, to the proper officer, certified by such person as the legislative authority designates, such officer shall audit the bills under the rules and regulations prescribed by the legislative authority, and draw his order on the treasurer of the municipal corporation in favor of the person presenting such bill, but the amount shall not exceed seventy-five cents a day for any person so confined.” (Emphasis added.)

While this section is somewhat vague, yet it appears clearly that the legislature intended to place the responsibility on the municipality for the cost of maintaining prisoners who would be the natural responsibility of the municipality, but who for one reason or another are confined and cared for in a prison or jail not maintained by the municipality. Note the generality of the language “sentenced to *or confined in*.” Section 1905.35, Revised Code, also recognizes certain circumstances under which municipal prisoners may be confined in a county jail, and places the responsibility for the cost of their maintenance on the municipality. This section provides as follows :

“Imprisonment under the ordinances of a municipal corporation shall be in the workhouse or other jail of the municipal corporation. Any municipal corporation not provided with a workhouse, or other jail, may, for the purpose of imprisonment, use the county jail, *at the expense of the municipal corporation*, until the municipal corporation is provided with a prison, house of correction, or workhouse. Persons so imprisoned in the county jail are under the charge of the sheriff. Such sheriff shall receive

and hold such persons in the manner prescribed by the ordinances of the municipal corporation, until such persons are legally discharged.”
(Emphasis added.)

Your letter does not state that the municipality in question was without a jail or workhouse, and hence, that section may not strictly be applicable to the situation you present, but it bears out my general conclusion that any prisoner who is properly the charge of a municipality but is for any reason confined in the county jail must be maintained at the ultimate cost of the municipality. In my Opinion No. 1138, Opinions of the Attorney General for 1952, page 121, I had under consideration the statute just quoted, then 4564 G. C., and a question somewhat analogous to the one we are here considering, and held:

“1. Under the provisions of Section 4564, General Code, the responsibility for the board and maintenance of prisoners sentenced to a county jail by a mayor’s court or a municipal court for violation of a municipal ordinance or confined therein for non-payment of the fine imposed for such violation is placed upon the municipal corporation.”

In the course of that opinion it was said:

“It is quite clear that under the statutes of Ohio, the counties, on behalf of the state and the municipalities, have certain responsibilities for board and maintenance of prisoners. From an examination of the many statutes touching on this subject matter, I also believe that it is quite clear that, except to the extent specifically directed by statute, a municipality has such responsibility only for ‘municipal prisoners.’ I do not find, however, any statutes or decisions of Ohio courts, or previous opinions of this office, defining precisely what is meant by ‘municipal prisoners.’ * * *

“It is my opinion that the distinction is based solely on whether the violation is that of a municipal ordinance. The fact that the convicting court is designated as a mayor’s court or a municipal court, supported at least in part by the municipal corporation, appears to be of no consequence in the consideration of this question. My opinion in this regard is in accord with what I understand has been the long accepted practice in Ohio and is fully supported by the reported authorities outside of Ohio.”

I find no statute and no decision directly dealing with the situation presented by your question, where the prisoner is for some reason held in the county jail for an offense on which he is later charged with violation of a municipal ordinance. But in the light of the statutes above noted, I must conclude that the expense of feeding the prisoners, during such confinement, should fall upon the municipality.

Accordingly, in specific answer to the questions submitted, it is my opinion :

1. Where a prisoner arrested by a city police officer is held in the county jail, pending the filing of formal charges, and is ultimately charged with the violation of a state law, the cost of feeding such prisoner during such confinement must be borne by the county.

2. Where a prisoner who has been arrested is held in the county jail, pending the filing of formal charges, and is ultimately charged with violation of a municipal ordinance, the cost of feeding such prisoner during such confinement, must be borne by the municipality.

Respectfully,

C. WILLIAM O'NEILL

Attorney General