

OPINION NO. 77-093**Syllabus:**

A county sheriff may not provide for the feeding of prisoners in his charge by contracting with private, commercial firms for the purchase and preparation of food, unless the board of county commissioners joins in said contract.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, December 19, 1977

I have before me your request for my opinion on the following questions:

1. May county sheriffs provide for the feeding of prisoners in their charge by contracting with private, commercial concerns for such feeding?

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2. If the sheriff may not so contract, may the cook, appointed by the sheriff pursuant to Section 341.20, Revised Code, contract with private, commercial concerns for prisoners' feeding as a part of her responsibility under Section 341.20, Revised Code, for having "charge over the preparation of food for the feeding of prisoners and other persons placed in the sheriff's charge"?

It should be noted that prior to September 6, 1965, the county sheriff possessed authority to effect both the purchase and preparation of food for prisoners in his charge. On that date, Am. S.B. No. 187, which amended, inter alia, R.C. 341.19, 341.20, and 311.20 became effective. R.C. 341.19, as amended, provides as follows:

The board of county commissioners, at the expense of the county, shall provide:

. . . .

(D) Suitable means for the preparation or purchase of food and the purchase thereof;

(E) Food for the prisoners and other persons placed in the sheriff's charge; . . .

R.C. 311.20 states that:

On or before the twenty-first day of June of each year, the sheriff shall prepare and submit to the board of county commissioners a budget estimating the cost of operating the jail and feeding its inmates for the ensuing fiscal year.

Am. S.B. No. 187 deleted from R.C. 311.20 a provision conferring authority upon the sheriff to purchase food for prisoners. The sheriff is still permitted, pursuant to R.C. 341.20, to appoint a cook to be in charge of the preparation of the prisoners' food. Yet, by virtue of the deletion of the sheriff's authority to purchase food by the General Assembly, it is apparent that the duties in this area are bifurcated, with purchasing responsibilities lodged with the commissioners and preparation duties with the sheriff. The nature of the service contemplated by your request transcends the dividing line established by the General Assembly. Therefore, a contract by a sheriff with a private commercial concern to provide and prepare food for prisoners would be a usurpation of the statutory authority of the board of county commissioners and thus unlawful.

However, this does not preclude the commissioners and the sheriff from acting in concert to enter into such a contract. Since, together, they have the authority to provide and feed prisoners, they would together have the requisite power to provide such services through contracting with a private concern.

Therefore, it is my opinion, and you are so advised, that a county sheriff may not provide for the feeding of prisoners in his charge by contracting with private, commercial firms for the purchase and preparation of food, unless the board of county commissioners joins in said contract.