OPINION NO. 81-042

Syllabus:

1. Where county prisoners are incarcerated in the workhouse of a city, whether inside or outside the county, the board of county commissioners is not bound to expend county funds for the payment of expenses incurred in connection with such incarceration in the absence of a written contract between the county and the proper authority of the jurisdiction receiving and housing such prisoners.

2. Where the jail of a county is insufficient to house prisoners of that county who have been sentenced to incarceration in jail, the county sheriff is authorized by R.C. 341.12 to determine where such sentence is to be carried out.

3. R.C. 341.13 and R.C. 341.14 do not authorize the sheriff of a county to enter into contracts to receive and care for prisoners committed to the jail of the county pursuant to R.C. 341.12; rather, the sheriff must charge fees as are allowed in other cases, which are limited by R.C. 311.20 to actual costs of incarceration (subject to a per meal minimum applicable in certain instances), plus fifty cents per week for each prisoner so committed. (1937 Op. Att'y Gen. No. 523, vol. I, p. 872, second paragraph of the syllabus, approved and followed.)

4. Where prisoners of one county who have been sentenced to incarceration in jail are committed by a municipal court to the jail of a second county, without a determination under R.C. 341.12 by the sheriff of the first county that such incarceration is appropriate, the board of county commissioners of the first

county is not bound to expend county funds for the payment of the expenses incurred in connection with such incarceration.

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio
By: William J. Brown, Attorney General, July 23, 1981

I have before me your request for an opinion concerning the power of a municipality or a municipal court to bind the county of which the municipality is a part to the payment of the costs of incarcerating county prisoners in penal institutions operated by jurisdictions other than the county. You have indicated in conversations between your office and members of my staff that your concern is with prisoners of Montgomery County who are being committed by municipal court judges to jails of other counties and to workhouses both within and without the county. Specifically, you have stated that, based upon contracts between the municipality where sentence is imposed and each jurisdiction providing a penal facility, prisoners of Montgomery County are being committed to serve their sentences in one of the following four institutions: the Warren County Jail, the Greene County Jail, the Dayton Rehabilitation Center and the Columbus City Workhouse. Further, it is my understanding that the Dayton Rehabilitation Center was known as the Dayton City Workhouse until 1978 at which time its name was changed to reflect certain philosophical attitudinal changes.

Based upon conversations between your office and members of my staff, it is my understanding that a municipal court judge issues orders to a municipal law enforcement officer specifying the particular institution to which a county prisoner is to be taken and the length of time for which such prisoner is to be held. Copies of these orders are then delivered to the jurisdiction which is to house the prisoner and to the sheriff of Montgomery County. The municipality is billed and pays the expenses incurred in housing county prisoners so committed and subsequently bills Montgomery County for reimbursement of the expenses incurred.

With this factual background in mind, you ask the following question:

> May a municipality, or a municipal court thereof, unilaterally bind a county treasury to the payment of expenses incurred by such municipality and/or its municipal court, in housing persons [convicted of] violations of state criminal statutes to a penal institution located in another county, [where] the county which is to bear these expenses has [not] consented to the payment of same through written contract (properly certified by the county auditor) with the jurisdiction [wherein] the person[s] [convicted of] such violations are to be incarcerated?

The power to make contracts on behalf of the county is vested in the board of county commissioners and no other officer can bind the county by contract, unless by reason of some express provision of law. Burkholder v. Lauber, 6 Ohio Misc. 152, 216 N.E.2d 909 (C.P. Fulton County 1965). I am not aware of any Ohio statute which grants a municipality, or a municipal court, the power to bind the county in which the municipality is located to a contract which provides for the incarceration of prisoners of that county in jails of other counties or in city workhouses. Thus, in the situation you have described, regardless of any agreement which a municipality or a municipal court may have made with a foreign county or a city providing for the incarceration of Montgomery County prisoners in the jail or workhouse of such county or city, where Montgomery County is not a party to the contract it has no contractual obligation to pay the expenses incurred by such county or city in housing Montgomery County prisoners.

Inherent in your question, however, is the issue of Montgomery County's obligation to honor claims for services rendered in housing Montgomery County prisoners in the absence of a contract. R.C. 307.55 empowers a board of county

commissioners to allow claims against the county and provides in pertinent part as follows:

> No claims against the county shall be paid otherwise than upon the allowance of the board of county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the auditor upon the proper certificate of the person or tribunal allowing the claim.

In 1949 Op. Att'y Gen. No. 807, p. 492 at 496 one of my predecessors followed the holding in Jones v. Commissioners of Lucas County, 57 Ohio St. 189, 48 N.E. 882 (1897), and opined as follows: "in allowing a claim, it becomes the duty of the county commissioners to be sure that the claim is based upon some statute or rises out of the performance of some authorized contract and is not a mere demand unsupported by law" (emphasis added). Where prisoners of one county are to serve their sentences in a workhouse operated by another jurisdiction, the legislature has authorized the county commissioners to agree by contract to the terms of such arrangement.

R.C. 2947.19 specifically authorizes a county to pay the expenses incurred in maintaining its prisoners who have been ordered to serve sentences in a workhouse of a city located within the county, provided that the county has agreed upon the terms of such maintenance. R.C. 2947.19 provides as follows:

> In any county which has no workhouse, but which contains a city which has a workhouse maintained by the city, the board of county commissioners may agree with the proper authorities of such city upon terms under which persons convicted of misdemeanors shall be maintained in the city workhouse at the expense of the county. In any such case persons committed to the city workhouse for the violation of a law of this state, whether such commitment is from the court of common pleas, magistrate's court, or other court, the cost of maintaining persons so committed shall be paid out of the general fund of the county, on the allowance of the board of county commissioners, provided that all persons committed to the city workhouse for the violation of ordinances of the city shall be maintained in such workhouse at the sole cost of the city. (Emphasis added.)

Where a county and city have agreed upon terms of maintenance of county prisoners, the county may pay the costs incurred in connection with such confinement out of the general fund of the county. R.C. 2947.19 clearly contemplates that payment of these costs will be honored based upon terms agreed upon by the board of county commissioners and not by a municipality or municipal court. Additionally, R.C. 341.23, which is set forth below, grants to the board of county commissioners the authority to contract on behalf of the county in this situation. In the absence of such an agreement by the county commissioners, neither R.C. 2949.19, R.C. 341.23, nor any other statute of which I am aware authorizes the payment of the expenses incurred by a city in housing in its workhouse prisoners of the county in which it is located. Since, in the absence of a contractual agreement, a county is not authorized to compensate the city in which such incarceration takes place, it is certainly not authorized to reimburse another city which purports to pay these expenses on behalf of the county. Therefore, the Board of Commissioners of Montgomery County is not bound to pay the expenses incurred by a municipality or a municipal court in housing Montgomery County prisoners in the Dayton Rehabilitation Center where no agreement has been entered into in accordance with R.C. 2947.19.

Similarly, Montgomery County is not bound to pay the expenses incurred in housing its prisoners in the Columbus City Workhouse unless the board of county

commissioners has agreed upon the terms of such maintenance with the proper authority of the City of Columbus pursuant to R.C. 341.23. R.C. 341.23 authorizes the board of county commissioners of any county to enter into an agreement with the proper authority having control of a workhouse located within or without the county to provide for the incarceration of county workhouse prisoners and permits the expenditure of funds for the expenses incurred under such agreement. The plain language of R.C. 341.23 permits the board of county commissioners of any county to enter into such an agreement and does not limit this power to counties wherein there are no workhouses. R.C. 341.23 provides in pertinent part as follows:

> The board of county commissioners of any county or the legislative authority of any municipal corporation in which there is no workhouse, may agree with the legislative authority of any municipal corporation or other authority having control of the workhouse of any other city, or with the directors of any district of joint city and county workhouse or county workhouse, upon terms on which persons convicted of a misdemeanor by any court or magistrate of a county or municipal corporation having no workhouse, may be received into such workhouse, under sentence of the court or magistrate. Such board or legislative authority may pay the expenses incurred under such agreement out of the general fund of such county or municipal corporation, upon the certificate of the proper officer of such workhouse. (Emphasis added.)

I agree with the conclusion reached in 1949 Op. No. 807 wherein the then Attorney General opined at 492: "Where prisoners sentenced for misdemeanors by a court of a county not having a workhouse are sent to a workhouse of a municipality in another county, the expense of the transportation and maintenance of such prisoners may not be legally paid from county funds in the absence of a written contract providing for such payment." That opinion was based upon G.C. 13451-13 which is now R.C. 2947.18. R.C. 2947.18 authorizes a court or magistrate in any county, or in any municipality having no workhouse, to sentence persons to imprisonment in a workhouse located outside the county where provision for such sentencing has been made by the board of commissioners of the county or the legislative authority of the municipality. It provides as follows:

> Where the board of county commissioners of a county, or legislative authority of a municipal corporation having no workhouse, has made provisions for receiving prisoners into the workhouse of a city in any other county or district in the state, a court or magistrate, where imprisonment in jail may lawfully be imposed in such case, may sentence persons convicted of a misdemeanor, including a violation of a municipal ordinance, to such workhouse.

Based on the foregoing, the Montgomery County Commissioners may agree with the proper authority of the City of Columbus upon the terms according to which its prisoners may be received into the Columbus City Workhouse. The board is then authorized by R.C. 341.23 to pay the expenses incurred under such agreement out of the general fund of the county treasury. The Board of Commissioners of Montgomery County is not bound to reimburse a municipality or a municipal court for the expenses incurred in maintaining Montgomery County prisoners in the Columbus City Workhouse where no agreement has been entered into pursuant to R.C. 341.23 by Montgomery County and the authority having control of the workhouse.

Unlike the statutes dealing with workhouses, the statutes which authorize the incarceration of prisoners of one county in the jail of another county do not require that contracts be negotiated; rather, they set forth statutory fees which are to be charged in such cases. See 1937 Op. Att'y Gen. No. 523, vol. I, p. 872 (sheriff has no authority to contract to receive and care for prisoners committed pursuant to G.C. 3170, 3171 and 3172 (now R.C. 341.12, 341.13 and 341.14) as fees are fixed by statute). Since, in this situation fees are fixed by law and not by contract, the absence of a

contract would not affect the ability of a board of county commissioners to expend county funds for the payment of the expenses incurred in housing county prisoners in jails of other counties.

However, in the absence of a contractual agreement authorizing the payment of a claim against a county, a board of county commissioners must determine that the payment of the claim is authorized by law. In conversations between your office and members of my staff, you have indicated that the situation involving imprisonment of Montgomery County prisoners in jails outside the county has arisen as a result of the lack of space in the county jail. Such a situation has been specifically provided for by R.C. 341.12, which authorizes the sheriff to convey any person in his custody to the jail of another county, and by R.C. 341.13 and R.C. 341.14, which authorize a sheriff to receive persons so conveyed. Thus, it is clear that where prisoners of one county who have been sentenced to imprisonment in jail are, thereafter, incarcerated in the jail of another county pursuant to R.C. 341.12 to R.C. 341.14, a claim by the incarcerating county would be authorized by law. R.C. 341.12 sets forth the procedure as follows:

> In a county not having a sufficient jail, or when the jail is in danger of being broken into by a mob, the sheriff shall convey any person charged with the commission of an offense, sentenced to imprisonment in the county jail, or in custody upon civil process, to the jail of any county which the sheriff deems most convenient and secure. (Emphasis added.)

Where the prisoners of one county are incarcerated in the jail of another county pursuant to R.C. 341.12, fees are imposed by R.C. 341.13. Thus, as I stated above, there is no need for a contract in order for a county to be liable for the costs incurred in housing its prisoners in jails of other counties, and any contract providing an alternative rate of compensation would be void as contrary to law. R.C. 341.13 provides as follows:

> The sheriff of the county to which a prisoner has been removed as provided by section 341.12 of the Revised Code, shall, on being furnished a copy of the process or commitment, receive such prisoner into his custody, and shall be liable for escapes or other neglect of duty in relation to such prisoner, as in other cases. Such sheriff shall receive from the treasury of the county from which the prisoner was removed, such fees as are allowed in other cases. (Emphasis added.)[1]

The "fees as are allowed in other cases," to which reference is made in R.C. 341.13, are prescribed by R.C. 311.20. R.C. 311.20 sets forth the procedure to be followed by the sheriff and board of county commissioners in dealing with the expenses incurred in keeping and feeding prisoners and other persons in the charge of the sheriff and provides as follows:

> 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

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[1] I am not aware of any Ohio statute other than R.C. 341.13 which authorizes the sheriff of a county to receive into the jail of his county prisoners of another county. It, therefore, appears that a sheriff may not accept prisoners of another county who have been sentenced to incarceration in jail unless such prisoner has been removed from his own county pursuant to R.C. 341.12. See Thurlow v. Bd. of Comm. of Guernsey County, 81 Ohio St. 447, 452, 91 N.E. 193, 194 (1910): "[A] sheriff is an officer of the particular county wherein he has been chosen, and neither he nor his county owes any special duty to incur expense or to render service for the benefit of the adjoining counties."

> 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 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 necessaries 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.

R.C. 311.20 thus sets forth the duty of the sheriff to maintain prisoners and other persons confined in the jail and states that his duty will be performed at the expense of the county. One of my predecessors opined in 1955 Op. Att'y Gen. No. 5561, p. 317, 319 that "[t]hese 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."

Although the provisions of R.C. 311.20 do not determine the question of ultimate liability, they are relevant for the purpose of determining the fees which a sheriff is generally entitled to receive for housing prisoners. Unless otherwise provided by law, R.C. 311.20 makes it clear that a sheriff is to receive only the "actual" costs incurred in maintaining persons in his charge (subject to the fifty cent per meal minimum provided in certain instances). This amount constitutes the "fees as are allowed in other cases," to which R.C. 341.13 refers. Hence, in the absence of statutory authority to the contrary, there is no need for a contract between counties when prisoners of one county are confined in the jail of another county pursuant to R.C. 341.12. 1937 Op. No. 523 (second paragraph of the syllabus) ("[a] sheriff has no authority to enter into a contract. . .to receive and care for prisoners. . . , as the sheriff's fees. . .are fixed by statute and such contract would subserve no public purpose"). Any contract between such counties providing for any amount other than the actual costs incurred in connection with the incarceration of prisoners of one county in the jail of another county would be void as contrary to law. See 1959 Op. Att'y Gen. No. 323, p. 180 (providing that the correct rate at which the county should be reimbursed for the care of military prisoners is that of actual costs as set forth in R.C. 311.20).

R.C. 341.14 provides that in addition to the fees allowed by law (R.C. 311.20), the receiving sheriff shall be allowed fifty cents per week for the use of the jail of such county. Although fifty cents per prisoner per week may be unrealistic in today's terms, it is not the province of the Attorney General to update terms set forth by the legislature. R.C. 341.14 provides as follows:

> The sheriff of an adjoining county shall not receive prisoners as provided by section 341.12 of the Revised Code unless there is deposited in his hands, in addition to all fees allowed him by law, fifty cents per week for the use of the jail of such county for each prisoner so committed, and a like sum for a period of time less than one week. If such prisoner is discharged before the expiration of the term for which he was committed, the excess of the sum advanced shall be refunded. (Emphasis added.)

The repeated use of the word "shall" in R.C. 341.13 and R.C. 341.14 indicates that the procedure set forth therein is mandatory. See Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971); Cleveland Ry. Co. v. Brescia, 100 Ohio St. 267, 126 N.E. 51 (1919).

Based on the foregoing, I conclude that neither R.C. 341.13 nor R.C. 341.14 authorizes the sheriff of a county to enter into contracts to receive and care for prisoners committed to the jail of the county pursuant to R.C. 341.12; rather, the sheriff must charge such fees as are allowed in other cases (generally, the actual costs) plus fifty cents per week for each prisoner so committed. Therefore, the absence of a contract does not prevent a county from paying the costs incurred in housing its prisoners in the jails of other counties pursuant to R.C. 341.12.

It is my understanding that the prisoners of Montgomery County are not being incarcerated in the jails of other counties pursuant to R.C. 341.12. You have stated that county prisoners are not merely being ordered into the custody of the sheriff of Montgomery County, but rather are being committed by a municipal court to jails of other counties selected by the court. I am not aware of any procedure by which a municipal court may so commit a prisoner. R.C. 2949.08 contemplates that "[w]hen a person convicted of a misdemeanor is sentenced to imprisonment in jail. . . , the judge or magistrate shall order him into the custody of the sheriff or constable, who shall deliver him with the record of his conviction, to the jailer or keeper. . . ." It appears that if it becomes necessary to place a person who has been convicted of a jail offense in other than the county jail, the appropriate jail is to be selected by the county sheriff in accordance with the procedure set forth in R.C. 341.12 to R.C. 341.14. Any other procedure is in apparent conflict with the intent of the legislature as set forth in R.C. 341.12. See 1937 Op. No. 523 (a municipal court is not authorized by G.C. 3170, 3171, and 3172 (now R.C. 341.12, 341.13, and 341.14) to issue an order of commitment to the sheriff of the county wherein the offense was committed, for the incarceration of a county prisoner in another county). When a statute directs a thing to be done by a specified means or in a particular manner, it may not be done by other means or in a different manner. Akron Transportation Co. v. Glander, 155 Ohio St. 471, 99 N.E.2d 493 (1951); City of Cincinnati v. Roettinger, 105 Ohio St. 145, 137 N.E. 6 (1922). Obviously, in order for a sheriff to be able to perform his duty and to exercise the discretion granted to him by R.C. 341.12, a county prisoner sentenced to incarceration in jail must be ordered by a court into the sheriff's custody without restriction as to the particular institution which is to house such prisoner. See 1918 Op. Att'y Gen. No. 1334, vol. I, p. 943 (absent specific statutory authorization county prisoners may not be sentenced or committed to counties other than the one in which the offense is committed). R.C. 341.12 seems to contemplate such action by a court, and it is clear that where a court, when imposing a jail sentence, orders that a county prisoner be incarcerated in the jail of a particular foreign county, the court may, in effect, deprive the sheriff of the opportunity to determine which jail is most convenient and secure to house prisoners for which his county is financially responsible.

In light of the foregoing, it appears that in the event of insufficiency of the county jail, the county sheriff is authorized to determine where a county prisoner who has been sentenced to incarceration in jail is to be imprisoned. I am aware of no statute or principle of law which gives a municipal court authority to bind a county to pay for the incarceration of county prisoners in jails of other counties. I conclude, therefore, that, where prisoners of one county who have been sentenced to incarceration in jail are committed by a municipal court to the jail of a second county, without a determination under R.C. 341.12 by the sheriff of the first county that such incarceration is appropriate, the board of commissioners of the first county is not bound to expend county funds for the payment of expenses incurred in connection with such incarceration.

In summary, it is my opinion, and you are hereby advised, that:

1. Where county prisoners are incarcerated in the workhouse of a city, whether inside or outside the county, the board of county commissioners is not bound to expend county funds for the payment of expenses incurred in connection with such incarceration in the absence of a written contract between the

county and the proper authority of the jurisdiction receiving and housing such prisoners.

2. Where the jail of a county is insufficient to house prisoners of that county who have been sentenced to incarceration in jail, the county sheriff is authorized by R.C. 341.12 to determine where such sentence is to be carried out.

3. R.C. 341.13 and R.C. 341.14 do not authorize the sheriff of a county to enter into contracts to receive and care for prisoners committed to the jail of the county pursuant to R.C. 341.12; rather, the sheriff must charge fees as are allowed in other cases, which are limited by R.C. 311.20 to actual costs of incarceration (subject to a per meal minimum applicable in certain instances), plus fifty cents per week for each prisoner so committed. (1937 Op. Att'y Gen. No. 432, vol. I, p. 872, second paragraph of the syllabus, approved and followed.)

4. Where prisoners of one county who have been sentenced to incarceration in jail are committed by a municipal court to the jail of a second county, without a determination under R.C. 341.12 by the sheriff of the first county that such incarceration is appropriate, the board of commissioners of the first county is not bound to expend county funds for the payment of expenses incurred in connection with such incarceration.