

This brings us then to the question as to how the fund is to be distributed. Upon the question of distribution of the fund, it is believed that Section 5846, supra, is dispositive of this question. The last sentence thereof provides:

"If the funds are insufficient to pay said claims, they shall be paid in the order allowed at the close of the next calendar month in which there is sufficient funds available in said dog and kennel fund."

The above provision, of course, indicates that the claims shall be allowed and paid monthly, which procedure evidently has not been followed in the case you present. However, the fact that such procedure has not been followed would in no wise prevent the same rule or order being followed when action is taken by the county commissioners in reference to the payment of such claims. It clearly indicates that the claims are to be paid in full in the order in which they are allowed. Therefore, when the license fee is increased, due to a deficit for the preceding year, it should be used for the payment of the claims of the previous year as well as for the year in which said fund is collected, and the claims should be paid in full for both years in so far as the fund is sufficient, in the order in which they are allowed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

64.

MATRON—COUNTY JAIL—CONTRACT WITH SHERIFF TO SERVE AS
COOK, VALID.

SYLLABUS:

The matron of a county jail cannot be required to cook or otherwise perform services in the preparation of food for prisoners in such jail as a part of her duties as matron. If, however, it is not physically impossible for the matron of the county jail in the particular case to perform the duties of both positions, it is not illegal for such matron to act as jail cook under contract of employment with the sheriff of the county.

COLUMBUS, OHIO, February 5, 1929.

HON. HOWARD GOLDSBERRY, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date in which my opinion is asked on the question therein stated, as follows:

"In this county there is a dispute between the Probate Court and the sheriff concerning the appointment of a matron. The Probate Court contends that the matron cannot hold the additional position of cook in the county jail. In your opinion will it be illegal for the matron to also hold the position as cook for the prisoners?"

Authority for the appointment of matrons of county jails is provided for by Section 3178, General Code, which reads as follows:

"The sheriff may appoint not more than three jail matrons, who shall have charge over and care for the insane, and all female and minor persons

confined in the jail of such county, and the county commissioners shall provide suitable quarters in such jail for the use and convenience of such matrons while on duty. Such appointment shall not be made, except on the approval of the probate judge, who shall fix the compensation of such matrons not exceeding one hundred dollars per month, payable monthly from the general fund of such county upon the warrant of the county auditor upon the certificate of the sheriff. No matron shall be removed except for cause, and then only after hearing before such probate judge."

In the case of *State of Ohio, ex rel., Falconer vs. Cooper*, 12 O. N. P. (N. S.) 659, it was held that a woman serving as matron of a county jail is not a public officer, but is an assistant to the sheriff, and sustains the relation of an employe similar to that of a deputy sheriff.

In an opinion of this department under date of February 9, 1927, Opinions of Attorney General, 1927, Vol. 1, page 76, it was held that a sheriff may employ a cook to prepare provisions purchased for the purpose of feeding prisoners, providing the total cost of feeding such prisoners does not exceed the limit fixed by Section 2850, General Code.

The question presented in your communication is whether a woman appointed and serving as matron of a county jail under provisions of Section 3178, General Code, may also be employed as a cook to prepare the food to be served to the prisoners confined in such jail. In this connection it is quite clear under the provisions of Section 3178, General Code, that no duties can be imposed on the matron of the jail other than those properly pertaining to her position or employment as matron, and that she cannot be required to cook or perform other work in the preparation of food for prisoners as a part of her duties as matron. As I understand your question, however, it is whether the matron of a jail by contract or agreement with the sheriff may legally be employed to act as cook in the county jail while she continues to serve as matron of the jail. This department in an opinion under date of October 21, 1927, Opinions of Attorney General, 1927, Vol. 3, page 2089, held that a contract made by the matron of a county jail with the county sheriff whereby she agrees to furnish meals for prisoners in the county jail is illegal. This conclusion was based upon the inhibitions of Section 12910, General Code, which provides as follows:

"Whoever, holding an office of trust or profit by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education or a public institution with which he is connected, shall be imprisoned in the penitentiary not less than one year nor more than ten years."

In the former opinion of this department above referred to, it was said "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 any one 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."

There is nothing in the provisions of Section 12910, General Code, above quoted, which inhibits a contract or agreement by the matron of a county jail to cook or otherwise perform services in the preparation of food for the prisoners in the county jail; and unless in the particular case it can be said that the position of jail matron

and that of jail cook under such contract of employment are incompatible, there is no legal objection to a person holding and performing the duties of both of said positions or employments. The only question with respect to the compatibility of said positions that could arise is whether it is physically possible for the matron to perform the duties of both positions or employments. This is a question of fact in the particular case.

By way of specific answer to your question I am of the opinion that if it is not physically impossible for the jail matron referred to in your communication to perform her duties as matron under the provisions of Section 3178, General Code, above quoted, and also her duties as jail cook under her contract of employment with the sheriff, and if she can perform said last named duties without neglecting her duties as matron, there is no legal objection to the employment of such matron as jail cook.

Respectfully,

GILBERT BETTMAN,
Attorney General.

65.

DISTRICT BOARD OF EDUCATION—LEGAL DUTIES—RIGHT TO PARTICIPATE IN STATE EDUCATIONAL EQUALIZATION FUND—ALL LEGAL CLAIMS PAYABLE FROM THE THEN CURRENT APPROPRIATIONS.

SYLLABUS:

1. *Boards of education are charged by law with the duty of maintaining the elementary schools of the school district for at least thirty-two weeks of each school year, and of providing necessary high school privileges for the resident youths of the district, who have completed the work of the elementary grades, either by maintaining a high school within the district or by paying the tuition for such high school pupils in other high schools. If they fail to provide such school facilities in a district of a county school district, the county board of education shall operate such schools and provide necessary school facilities to such an extent as the local board of education should have done, and the cost thereof shall be paid out of the county treasury from the general fund on vouchers signed by the president of the county board of education. The money so paid from the county treasury shall be a charge against the district for which it is paid.*

2. *When necessary, in order to enable a board of education to conduct the schools and provide necessary school privileges for the youths of the district, participation may be had in the State educational equalization fund, commonly known as State aid, by making proper application therefor and meeting the requirements of law for such participation.*

3. *All legal and enforceable claims against a school district must eventually be paid from the then current appropriations, even though the liability for such claim had been incurred in prior years.*

COLUMBUS, OHIO, February 5, 1929.

HON. G. E. KALBFLEISCH, *Prosecuting Attorney, Mansfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows:

“The clerk of the Madison Township, Rural School District, Richland