infirmary site, and that if they see fit so to do, may use such part of this additional land as they deem proper for cemetery purposes for the indigent (poor,) who are county charges.

Specifically answering your question, in view of the foregoing discussion, it is my opinion that:

1. It is the duty of the board of county commissioners to pay the burial expenses of indigent county charges; and in the discharge of this duty the commissioners may provide burial lots in public or private cemeteries, or may set aside a part of the real estate, upon which the county home is situated, as a burial ground for such deceased persons.

2. The board of county commissioners of a county is without authority to purchase from a cemetery association a plot of ground, which does not adjoin the existing site of the county home, for the purpose of providing a place to bury the indigent poor who are county charges at the time of their death.

3. By the terms of Section 2433, General Code, as amended (112 v. 364), county commissioners may purchase or appropriate such real estate adjoining the existing site of the county home as they deem necessary for infirmary purposes.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2246.

COUNTY COMMISSIONERS—LIABLE FOR MEDICAL BILLS OF PRISONERS CONFINED IN JAIL—HOLD STATE LAW VIOLATORS A REASONABLE TIME ONLY TO SECURE PROPER COMMITMENT FROM COMPETENT MAGISTRATE.

SYLLABUS:

1. *Persons arrested by peace officers for violating state laws may lawfully be confined in the county jail for such a period of time as is reasonably necessary, under all the circumstances of the case, to procure a proper warrant or commitment from a magistrate of competent jurisdiction.*

2. *It is the duty of the sheriff to furnish, and the county commissioners to provide at the expense of the county, such medical, surgical and other like services as may be necessary to the health of prisoners lawfully confined in the county jail.*

3. *If the Common Pleas Court has, by virtue of Section 3162, General Code, prescribed rules governing the employment of medical or surgical aid when necessary for prisoners in the county jail, such rules must be adhered to in furnishing such services.*

COLUMBUS, OHIO, June 18, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I acknowledge receipt of your request for my opinion reading as follows:

"We respectfully request you to furnish this department your written opinion upon the following:

Upon a warrant issued by the mayor of the city of Troy, Ohio, a person

who was a resident of that city was arrested by a police officer, the warrant charging a violation of the so-called Crabbe Act. The arrest was made during the night season and the police were taking the man to the county jail pending arraignment before the mayor the next day; when in the act of turning him over to the sheriff, he broke away and ran. The police officers in pursuing him shot and seriously wounded him. The regularly employed physician to the jail was called and he directed that the person be taken to the hospital at Piqua. The authorities of the hospital and the attending physicians have presented bills for his care and treatment.

Question: Should these bills be paid by the County Commissioners of Miami County or should they be paid by the proper authorities of the city of Troy?"

The answer to your question depends upon whether or not the prisoner, who was wounded as described in your letter, was, as a matter of law, a prisoner in the county jail at the time the medical and hospital services referred to were rendered. If he were lawfully a prisoner in the county jail it is the duty of the county commissioners of Miami County to pay the bills in question, while the contrary is true if he were not such a prisoner.

In Opinion No. 972, rendered under date of September 8, 1927, to the Prosecuting Attorney at Wauseon, it was held as follows:

"A board of county commissioners is without authority to make allowances to sheriffs for the keeping and feeding of persons confined in the jail at the instance of arresting officers and other persons lawfully making arrests, for a longer period than is reasonably necessary for such person making the arrest to take the prisoner before a proper magistrate and procure a lawful commitment for him."

In the opinion it was said as follows:

"The county jail, formerly called the common gaol, is for the confinement of persons lawfully committed thereto by some competent tribunal and *for the use of peace officers and others who are authorized to make arrests for the purpose of holding the persons arrested until commitment by such competent tribunal may be procured.*"

Sections 13492, 13493, 13494, 13506 and 13507 were then quoted, as was a part of the following statement of the law taken from 5 Corpus Juris 430:

"It has long been recognized that when an officer makes an arrest under a warrant it is his duty to dispose of the prisoner in the manner directed by the warrant, provided such direction is legal. * * * It is the duty of an officer making an arrest, either with or without warrant, to take the prisoner, within a reasonable time, before a justice of the peace, magistrate, or other proper judicial officer having jurisdiction, in order that he may be examined and held, or dealt with as the case requires. It is sometimes said that this must be done immediately, or forthwith, or without delay. These requirements mean no more than that it must be done promptly and within a reasonable time under all the circumstances. The officer may detain the person arrested in custody a reasonable time until he can conveniently and safely take him before a magistrate, when the circumstances preclude an immediate

examination, hearing, or trial, as where the arrest was made at night, on Sunday, or when the court was not in session, or the person arrested was ill, drunk, or himself occasioned the delay, or the arresting officer was unable to find a judicial officer; but to detain the person arrested in custody longer than is necessary or for any purpose other than taking him before a magistrate is illegal. * * * *In a proper case for delay the prisoner may be taken to jail.* * * *"*

As authority for the sentence above in italics the cases of *Wiggins* vs. *Norton,* 89 Ga. 148, 9 S. E. 607; *State* vs. *Shirley,* 233 Mo. 335, 135 S. W. 1; *Kent* vs. *Miles,* 69 Vt. 379, 37 Atl. 115, and *In re Durant,* 60 Vt. 176, 12 Atl. 650, were cited.

The third headnote in the Wiggins case, supra, reads as follows:

"If a prisoner cannot be brought before a justice on the night of his arrest, the sheriff is authorized to place him for the night in jail, where other prisoners who are not under bond are placed."

In the opinion the court said:

"* * * It is the duty of an arresting officer, when he arrests a prisoner, to carry him without delay before some officer authorized to inquire into the accusation; and if he willfully or negligently fails to do this, and detains the prisoner for an unreasonable length of time without carrying him before the magistrate, he would be guilty of false imprisonment, and would be liable to damages therefor. But if he arrests him, and takes him to the place where the magistrate resides, and arrives there about night, and at a time when the magistrate is not accessible, he has a right to place the prisoner in jail during the night for safe-keeping, and he would not be liable for placing him in jail. * * *"

The second headnote in the case of *State* vs. *Shirley,* supra, reads:

"While a constable is not expressly authorized by the statute to take a prisoner arrested under warrant to a county jail without a process commanding him to do so, he is given such power by the several statutes when construed together."

In the opinion this language was used:

"* * * The law does not make the justice of the peace a jailer, and, if defendant was arrested by the constable upon a warrant regularly issued on a criminal charge, he remained in the custody of such constable until released under recognizance, discharged by order of the justice, or delivered to the jailer of the county. While the constable is not by express terms authorized to take a prisoner to the county jail without a process commanding him so to do, when the various provisions of the law are read together, we think he is clearly invested with that power. The constable is but an arm of the justice's court through which its processes and orders are executed. * * * "

Like conclusions were reached by the Supreme Court of Vermont in the case of *In re Durant,* above cited, which was approved and followed in the case of *Kent* vs. *Miles,* supra, the second headnote in the Miles case reading:

"An officer directed by a warrant to arrest a person, and have him forthwith to appear before the court, may, the court not being in session when he arrives, commit him to jail for safe-keeping till court again convenes."

While there is no express statute authorizing an arresting officer to place a person charged with crime in the county jail where the circumstances are such that it is not reasonably possible forthwith to take the accused before a competent magistrate for examination and commitment or release, it is my opinion that such officers have that power and authority, although as said in Opinion No. 972, supra:

"* * * the power of detaining the person so arrested or restraining him of his liberty in such a case is not a matter within the discretion of the officer making the arrest. He cannot legally hold the person arrested in custody for a longer period of time than is reasonably necessary under all circumstances of the case to obtain a proper warrant or order for his further detention from such tribunal or officer authorized under the law to issue such warrant or order. If the person arrested is detained or held by the officer for a longer period of time than is reasonably required under the circumstances without such warrant or authority, he will have a cause of action for false imprisonment against the officer and all others by whom he has been unlawfully detained. See *Brock* vs. *Stinson,* 108 Mass. 520; *Green* vs. *Kennedy,* 48 N. Y. 653; *Tubbs* vs. *Tukey,* 3 Cush. 48; *Leger, et al.* vs. *Warren,* 62 O. S. 500."

You state in your letter that the prisoner in question was arrested in the night season, and I assume from this statement that it was not possible under the circumstances immediately to have the prisoner before a magistrate, and that he was being taken to the county jail to be held until the next morning. If this be true, the police officer making the arrest was authorized to deliver the prisoner to the county jail to be held in custody for such time as was reasonably necessary under all the circumstances to obtain a commitment from the magistrate, and when so delivered such prisoner became a prisoner lawfully confined in the county jail.

The further question arises in the instant case, however, as to whether or not the prisoner had been delivered to the sheriff so as to become either actually or constructively a prisoner in the county jail. From your statement of facts, I am inclined to the opinion that the prisoner in question was, as a matter of law, a prisoner in the county jail and was lawfully in the custody of the county sheriff. He was arrested upon an affidavit charging a violation of a state law and escaped when being delivered to the sheriff. After he was shot the regularly appointed jail physician was called, who directed that the prisoner be taken to the hospital in Piqua. This physician apparently had been appointed for the jail pursuant to the provisions of Section 3177, General Code, which reads in part as follows:

"The county commissioners, at the expense of the county, shall provide suitable means for warming the jail, and its cells and apartments, frames and sacks for beds, nightbuckets, fuel, bed, clothing, washing, nursing when required, and such fixtures and repairs as are required by the court. They may appoint a physician for the jail, at such salary as is reasonable, to be paid from the county treasury. Such physician, or any physician or surgeon employed in the jail, shall make a report in writing whenever required by the commissioners, the grand jury or the court. * * * "

Regardless of whether or not the delivery had been effected before the shooting

of the prisoner, it would seem from the facts before me that the delivery was completed after the prisoner was wounded. From your statement, the police officer was "in the act of turning him over to the sheriff," when the prisoner broke away and ran. While your letter does not specifically so state, I assume from the fact that the regularly employed jail physician was called, the sheriff was present and in charge. If the sheriff were present, the act of delivering the prisoner to him having been interrupted by the prisoner's attempted escape, I think it would necessarily follow that after the prisoner was wounded, the sheriff either expressly or by his actions and acquiescence, directed how and where the necessary medical and surgical services should be rendered. This conclusion is supported by the fact that the regularly appointed jail physician was called and examined the prisoner and determined what medical treatment was necessary to restore him to health.

As you can see from the above discussion, the facts before me are probably not complete, but I feel that I have herein so stated the law as to enable you to determine if any other pertinent facts, which might affect the conclusion of this opinion, were present.

This brings me to a discussion of the county's duty with respect to providing the necessary medical, surgical and other like services to prisoners in the county jail.

Your attention is directed to Sections 3157, 3158, 3162 and 2850, General Code, providing in part as follows:

> Sec. 3157. "The sheriff shall have charge of the jail of the county, and all persons confined there, keep them safely, attend to the jail, and govern and regulate it according to the rules and regulations prescribed by the court of common pleas."
>
> Sec. 3158. "The sheriff shall cause to be entered in a suitable book, called the jail register, and kept in the office of the jailer, and delivered to his successor in office the following:
>
> First—The name of each prisoner, the date and cause of his commitment.
>
> Second—The date and manner of his discharge.
>
> Third—What sickness has prevailed in the jail during the year, and the cause thereof.
>
> * * * "
>
> Sec. 3162. "The court of common pleas shall prescribe rules for the regulation and government of the jail of the county, not inconsistent with the law, upon the following subjects:
>
> Fifth—The employment of medical or surgical aid when necessary.
>
> * * * "
>
> Sec. 2850. " * * * The sheriff shall furnish, at the expense of the county, to all prisoners or other persons confined in jail, * * * fuel, soap, disinfectants, bed, clothing, washing and nursing when required, and other necessaries as the court in its rules shall designate."

These sections, together with Section 3177, General Code, are in *pari materia* and must be construed together.

While Section 3177 authorizes the county commissioners at the expense of the county to provide nursing for prisoners when required and to appoint a physician for the jail at such salary as is reasonable, to be paid from the county treasury, and while no section of the General Code expressly authorizes the sheriff to furnish medical

or surgical services to a prisoner when necessary, it is my opinion that under the provisions of the sections above quoted in part, the sheriff is authorized and required to furnish, at the expense of the county, such medical or surgical aid as may be necessary for any prisoner lawfully confined in jail, except where such prisoner is confined for debt.

By the terms of Section 3157, supra, a sheriff has charge of the county jail and all persons confined therein, and is directed to keep the prisoners safely and govern and regulate the jail according to the rules and regulations described by the Court of Common Pleas. Section 3158 provides that the sheriff shall cause to be entered in the jail register the sickness prevailing in the jail and the cause thereof. Section 2850 prescribes that the sheriff shall furnish "nursing when required, and other necessaries as the court in its rules shall designate." Medical or surgical services are not expressly enumerated in this section but it certainly could not be contended that such services are not a necessary for a prisoner who is ill or who has been wounded, and it is my opinion that the terms of Section 2850 are broad enough to include such services. Especially is this true when this section is construed with Section 3162, supra, authorizing the Common Pleas Court to prescribe rules governing the "employment of medical or surgical aid when necessary."

In the case of *Kohler* vs. *Powell, Chief Justice, et al.*, 115 O. S. 418, the Supreme Court of Ohio held as follows:

> "Section 3162 of the General Code confers upon the common pleas court full, complete, and exclusive authority to promulgate rules and regulations for the management and control by the sheriff of the county jail and the persons confined therein, including the feeding of the prisoners.
> * * * "

In the opinion by Judge Kinkade, it was said as follows:

> "* * * We have no difficulty in reaching the conclusion that the Legislature clearly and definitely intended by these provisions to commit to the court of common pleas the entire matter of promulgating rules for the government of the county jail and of the persons therein confined, including the matter of diet, to be carried out by the sheriff and his deputies and employes.
> * * * "

In view of this holding, if the Court of Common Pleas has promulgated rules and regulations governing the employment of necessary medical or surgical aid for prisoners, these rules and regulations must of course be followed. If, however, no such rules have been prescribed, the sheriff may exercise his own discretion in the matter of securing such services.

In view of the foregoing and in specific answer to your question, as the facts are presented to me, it is my opinion that the bills incurred in securing the necessary medical and hospital services for the prisoner referred to in your letter should be paid by the county commissioners of Miami county.

Respectfully,
EDWARD C. TURNER,
Attorney General.