

But the county is not liable for interest on each collection made for the city, from the date of such collection, but is liable only when the city demands payment of any sums due to it which have actually been collected and not paid over by the county.

A city or other municipality may maintain an action at law against a county which has collected taxes for it and failed to pay them over, as soon as the liability of the county becomes fixed and absolute, and upon a presentation of its claims in appropriate form, and within the time limited by law for such proceedings."

It would seem clear that to permit the Ashtabula township rural school district to be enriched from taxes collected from territory lying in another school district would be most unfair and inequitable. There are many authorities cited in support of the text above quoted from Cyc. Without reviewing these authorities, it is my opinion that the city school district of Ashtabula should be paid the taxes collected upon the property located within the entire district, and any of such tax moneys which were inadvertently paid to the wrong district should be returned to the Ashtabula city school district. If action were instituted therefor, recovery could only be had for such an amount as had been wrongfully diverted from the district during the six years prior to the institution of such action.

I am advised by the Bureau of Inspection and Supervision of Public Offices that similar situations have frequently arisen over the state and, although there was no direct statutory authority for so doing, the officials have uniformly been advised that the financial transactions, with respect to taxes collected and inadvertently paid to the wrong political subdivision, should be adjusted in a fair and equitable manner and, in making such adjustment, reimbursement from one political subdivision to another might lawfully be spread out in such a manner and over such a period of time as to not make it unduly burdensome to the taxing subdivision which was required to reimburse the subdivision which had wrongfully been deprived of its proper share of the taxes.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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345.

COUNTY COMMISSIONERS—POWER TO ADOPT RULES REQUIRING  
SHERIFF TO FILE REQUISITIONS FOR FOOD FOR PRISONERS—  
SHERIFF PRESCRIBES MENU IN ABSENCE OF SUCH REGULATION  
BY COMMON PLEAS COURT.

*SYLLABUS:*

1. *A board of county commissioners may lawfully adopt rules requiring the sheriff to file with that board requisitions for the food to be purchased for feeding the State prisoners in the county jail, as well as for the compensation of persons for cooking and serving such food.*

2. *The authority given to county commissioners, by the provisions of Section 2850, General Code, to prescribe rules and regulations with reference to the sheriff purchasing food for State prisoners and other persons confined in the county jail, does not extend to the making of rules regulating the diet of such persons or prescribing the menu to be served. In the absence of rules and regulations with reference to diet*

*made by the Common Pleas Court as prescribed by law, the sheriff should be the judge of what should be included in such menu, so long as the cost thereof is kept within the limits allowed by law.*

COLUMBUS, OHIO, April 24, 1929.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

“Section 2850 of the General Code, relating to the boarding of prisoners in the county jail contains the following:

‘All food shall be purchased by the sheriff under rules and regulations to be prescribed by the county commissioners.’

Question 1. May the board of county commissioners under this provision and under the provisions of Section 5625-33 of the General Code, require the sheriff to file with that board requisitions for the food to be purchased as well as for the compensation of persons to cook and serve such food?

Question 2. May the board of county commissioners in the absence of any action of the Court of Common Pleas in prescribing a menu to be served, eliminate from such requisitions such items of food as they do not believe to be necessary to serve to such prisoners and may the board control the amount which is to be paid to the person or persons for cooking and serving the food?”

In 1927 your Bureau, after referring to Section 2850, General Code, as amended by the 87th General Assembly, submitted to the then Attorney General for his consideration the following question:

“Does this act authorize the county commissioners to determine the menu which the sheriff shall furnish to the prisoners or what is meant by the provision that all food shall be purchased by the sheriff under rules and regulations to be prescribed by the county commissioners?”

In response to which inquiry the Attorney General rendered his opinion under date of April 21, 1927, Opinions of the Attorney General for 1927, page 612. In the course of the opinion the Attorney General said:

“Coming now to the consideration of your third question, it will be helpful to consider a recent case decided by the Supreme Court of Ohio, viz., the case of *Kohler, Sheriff, vs. Powell et al.*, 115 O. S. 418; Vol. XXV, The Ohio Law Bulletin and Reporter, January 17, 1927, page 285. In this case the court had under consideration the construction and relative significance of Sections 2850, 2997 and 3162 of the General Code. In the course of the opinion Judge Kinkade said:

‘Section 3162 of the General Code confers on 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.’

The court in this opinion, when considering the tenth specified subject about which the Common Pleas Court was empowered to make rules, the language of the statute being: ‘Other regulations necessary to promote the welfare of the persons,’ made this comment:

'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.'

In considering the applicability of the principles of the Kohler case to the question at hand we must necessarily note that the statute (Section 2850, General Code), which was in force at the time the court decided this case did not include the provision: 'All food shall be purchased by the sheriff under rules and regulations to be prescribed by the county commissioners.' This was inserted in Amended Senate Bill No. 28 after the decision of the court in the Kohler case and we must necessarily conclude that the Legislature had in mind the decision in the Kohler case and considered the fact that under the law then in force, the Common Pleas Court was vested with the power to make rules and regulations with reference to the diet of the prisoners and that the Supreme Court based its decision with reference to the diet of the prisoners on the construction of that part of Section 3162, *supra*, wherein it is provided that the Common Pleas Court is empowered to make rules for the regulation of the county jail, including 'other regulations necessary to promote the welfare of the persons' confined in the jail, and the further provision of law contained in Section 13574, General Code, wherein it is provided that the grand jurors shall visit the county jail, inquire into the discipline and treatment of the prisoners, their habits, diet and accommodations and report to the court whether or not the rules prescribed by the court have been faithfully kept and observed.

In amending Section 2850, *supra*, by the enactment of Amendment Senate Bill No. 28, no change was made in either Sections 3162 or 13574, *supra*. It is therefore apparent that there was no intention on the part of the Legislature to change the law so far as the court's right to make rules with reference to the diet of the prisoners was concerned.

Such rules as the commissioners are empowered to make by the provision that 'all food shall be purchased by the sheriff under rules and regulations to be prescribed by the county commissioners' only go to regulating the purchasing of the food and not to the regulation of the diet of the prisoners or the prescribing of a menu to be served."

It seems clear, from the provisions of Section 2850, General Code, as amended in 1927, keeping in mind the principles of the case of *Kohler, Sheriff, vs. Powell*, 115 O. S. 418, and certain facts of contemporary history not necessary to review at this time, that the intention of the Legislature was, by this enactment, to place the control of the purchase of food for State prisoners in the county jail entirely in the hands of the county commissioners, to the end that there should be no question with reference to the sheriff's making a profit from the feeding of those prisoners. The effect of the provisions of this statute is to virtually make the sheriff merely the agent of the county commissioners with respect to the manner of the purchase of the food for State prisoners in the county jail. The terms of the statute give to the commissioners the complete and sole authority for the promulgating of rules relating to the manner of the purchase of the food for the prisoners, and the sheriff is bound to conform to those rules and regulations in the making of purchases. If the commissioners should see fit to require requisitions to be made before the purchases are made, the authority given in the statute is certainly broad enough to permit rules and regulations of that kind and, inasmuch as the entire cost of the purchase, preparation and serving of the food to the prisoners is limited by the statute, the commissioners must

necessarily have the control of the amount to be paid to the person or persons for cooking and serving the food to the extent that it is necessary to limit that amount so as to keep the entire cost of feeding the prisoners within the limitations of the statute and might lawfully promulgate a rule requiring requisitions for the cost of such cooking and serving of meals, so that they could properly determine whether or not the limits of the cost of feeding the prisoners, as fixed by statute, will be exceeded.

After all, however, the actual purchases of the food are not made by the commissioners. The mere honoring of a requisition does not constitute the making of a purchase. The actual purchases should be made by the sheriff. The statute, it will be observed, provides that "all food shall be purchased by the sheriff under rules and regulations to be prescribed by the commissioners." Therefore, there is no necessity of complying with the terms of Section 5625-33, General Code, with reference to the certificate of the auditor, when the sheriff's requisition is honored, but when the bills for the purchases are paid, upon warrant of the auditor, as provided by the statute, the terms of Section 5625-33, General Code, must be observed.

I am therefore of the opinion, in specific answer to your questions:

First: A board of county commissioners may lawfully adopt rules requiring the sheriff to file with that board requisitions for the food to be purchased for feeding the State prisoners in the county jail, as well as for the compensation of persons for cooking and serving such food.

Second: The authority given to county commissioners, by the provisions of Section 2850, General Code, to prescribe rules and regulations with reference to the sheriff purchasing food for State prisoners and other persons confined in the county jail, does not extend to the making of rules regulating the diet of such persons or prescribing the menu to be served. In the absence of rules and regulations with reference to diet made by the Common Pleas Court as prescribed by law, the sheriff should be the judge of what should be included in such menu, so long as the cost thereof is kept within the limits allowed by law.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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346.

APPROVAL, NOTES OF BENNINGTON TOWNSHIP RURAL SCHOOL  
DISTRICT, MORROW COUNTY, OHIO—\$50,000.00.

COLUMBUS, OHIO, April 24, 1929.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*