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APPROVAL, BONDS OF PERRY COUNTY, \$126,000.00, TO CONSTRUCT CERTAIN PORTIONS OF INTER COUNTY HIGHWAY.

COLUMBUS, OHIO, June 13, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

445.

WORKHOUSE—MUNICIPALITIES IN COUNTY IN WHICH CITY MAINTAINS WORKHOUSE MAY NOT COMMIT PERSONS FOR VIOLATIONS OF STATE LAWS OR VILLAGE ORDINANCES.

SYLLABUS:

Municipalities in a county in which a city maintains a workhouse, may not commit persons for violations of state laws or municipal ordinances to a workhouse situated in another county.

COLUMBUS, OHIO, June 13, 1923.

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

GENTLEMEN:—This department is in receipt of your recent communication as follows:

“Section 4128 of the General Code provides in part that:

‘When a person over sixteen years of age is convicted of an offense under the law of the state or an ordinance of a municipal corporation, and the tribunal before which the conviction is had is authorized by law to commit the offender to the county jail or corporation prison, the court, mayor or justice of the peace, as the case may be, may sentence the offender to the workhouse, if there is such house in the county. * * *

“The city of Cleveland operates and maintains a municipally owned workhouse, which is situated in Cuyahoga County. The mayors of certain of the villages within the borders of said county have been committing persons for violations of state laws to the workhouse at Canton, Ohio.

Question:

May villages in a county in which a city maintains a workhouse, commit prisoners for violations of state laws to a workhouse situated in another county? May such commitment be made for violation of ordinances?”

Section 4128, General Code, in part provides:

“When a person over sixteen years of age is convicted of an offense under the law of the state or an ordinance of a municipal corporation,

and the tribunal before which the conviction is had is authorized by law to commit the offender to the county jail or corporation prison, the court, mayor, or justice of the peace, as the case may be, may sentence the offender to the workhouse, if there is such house in the county. * * *

Section 4141, General Code, in part provides:

"Any city or district having within its limits, a workhouse, may receive as inmates thereof persons sentenced thereto, as provided by law, from counties other than the one in which such workhouse is situated, upon such terms and during such length of time as agreed upon by the commissioners of such counties, or by the council of such municipality, and the council of the city, or the board of the district workhouse, or other authority having the management and control of such workhouse.
* * *

It will be seen that section 4128 provides that when a person over sixteen years of age is convicted of an offense punishable by commitment to the county jail or corporation prison, he may be sentenced to the workhouse if there is such within the county. Section 4141 provides that any city or district having a workhouse, may receive as inmates "persons sentenced thereto, as provided by law" from counties other than the one in which such workhouse is situated.

Section 12384, General Code, provides in part:

"The commissioners of a county, or the council of a municipality, wherein there is no workhouse, may agree with the city council or other authority having control of the workhouse of a city in any other county, or with the board of district workhouses having a workhouse, upon what terms and conditions persons convicted of misdemeanors, or of the violation of an ordinance of such municipality having no workhouse, may be received into such workhouse under sentence thereto. * * *

Section 12386, General Code, provides in part:

"When a person has been convicted of a misdemeanor, or of the violation of an ordinance of a municipality, by a court or magistrate in a county or municipality having no workhouse, and the commissioners of such county, or council of such municipality, have made provisions as allowed by law, for receiving persons so convicted into the workhouse of a city in any other county or district in the state, such court or magistrate, where imprisonment in the county or municipal jail may lawfully be imposed in punishment of such offense, may sentence such person to such workhouse for a period not exceeding the maximum period of confinement in the county or municipal jail allowed by statute or ordinance for the offense. * * *

The section quoted above, 12386, seems to be the only section providing for sentencing a person to a workhouse in another county and then only when provision has been made for receiving such person by the county commissioners or council with the authority having control of said workhouse.

Section 12384, which is the section authorizing county commissioners or a council of a municipality having no workhouse to make arrangements with the

authority having custody of a workhouse in a city in another county, for receiving persons convicted of misdemeanors or violation of ordinances, is not clear as to whether it applies to municipalities without workhouses, in which county there is no county workhouse, but situated in a county in which there is another municipality having a workhouse.

In the case of *Salem v. State*, 18 O. C. C. (N. S.) 538, in which it was contended that the county commissioners had no authority to make a contract for the care of persons convicted of misdemeanors in a workhouse of a municipality within the county, the court says:

"The point appears to be well taken on the face of the statute, which is now General Code section 12384, and in fact reads as follows:

'The commissioners of a county, or the council of a municipality wherein there is no workhouse, may agree with the city council, or other authority having control of the workhouse of a city in any other county, or with the board of district workhouses, having a workhouse, upon what terms and conditions persons convicted of misdemeanors or of the violation of an ordinance of such municipality having no workhouse, may be received into such workhouse under sentence thereto.'

"Of course, this result was not intended by the legislature. Its purpose was to authorize county commissioners to contract with the authorities of workhouses within the county if any, or without the county, if none within. This seems clear from an inspection of section 4128, General Code, which reads:

'When a person is convicted of an offense under the law of the state and the tribunal before which the conviction is had is authorized by law to commit the offender to the county jail, the court may sentence the offender to the workhouse, if there is such in the county.'

In the case of *Kimbleawecz v. State*, 51 O. S., 228, it was held:

"A defendant convicted in Cuyahoga county under section 8092-18, of the Revised Statutes, of keeping open a saloon on Sunday contrary to law, should be sentenced to the Cleveland workhouse, and not to the county jail."

In view of the above decisions and a careful search of all related sections of the statutes, I am of the opinion that villages in a county in which a city maintains a workhouse, may not commit persons for violations of state laws or village ordinances to a workhouse situated in another county.

Respectfully,

C. C. CRABBE,

Attorney General.