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1. WORKHOUSE—COUNTY HAS NO WORKHOUSE—COUNTY COMMISSIONERS—MAY CONTRACT WITH MUNICIPAL CORPORATION IN ANOTHER COUNTY TO RECEIVE PERSONS CONVICTED BY MUNICIPAL COURT OF VIOLATING STATE STATUTE—EXPENSE—SECTIONS 13451-13, 4141 G. C. —
2. MUNICIPALITY—NO WORKHOUSE—MAY CONTRACT WITH MUNICIPALITY IN ANOTHER COUNTY TO RECEIVE PERSONS CONVICTED OF VIOLATING MUNICIPAL ORDINANCES—EXPENSE.
3. HOSPITALIZATION—LIABILITY FOR COST AND EXPENSE—PERSONS CONFINED IN WORKHOUSE OF MUNICIPALITY PURSUANT TO CONTRACT—COUNTY OR MUNICIPALITY HAVING NO WORKHOUSE—AGREEMENT OF CONTRACTING PARTIES GOVERNS—COMMITMENT.

SYLLABUS:

1. Under the provisions of Sections 13451-13 and 4141, General Code, the county commissioners of a county having no workhouse are authorized to contract with a municipal corporation located in another county and having a workhouse to receive, at the expense of such contracting county, persons convicted by a municipal court of violating state statutes.

2. Under the provisions of Sections 13451-13 and 4141, General Code, a municipality having no workhouse is authorized to contract with municipality located in another county having a workhouse to receive, at the expense of the municipality having no workhouse, persons convicted of violating ordinances of such municipality.

3: The liability for the cost and expense of hospitalization of persons confined in the workhouse of a municipality pursuant to contract made with a county or a municipality having no workhouse, under the provisions of Sections 13451-13 and 4141, General Code, is governed by the agreement of the contracting parties, as contained in the respective contract covering such commitment.

Columbus, Ohio, February 11, 1952

Hon. Richard P. Faulkner, Prosecuting Attorney
Champaign County, Urbana, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The City of Urbana, Ohio, has a contract with the Columbus Work House for the commitment of prisoners sentenced from

the Municipal Court of Urbana, whereunder the said workhouse will receive all prisoners committed to said workhouse by courts of competent jurisdiction in the City of Urbana, under sentence to the workhouse, at the rate of \$1.00 per day for maintenance.

“The question has arisen as to whether or not the City of Urbana, or Champaign County, is liable for the maintenance of prisoners committed from the city when they are committed for violation of state statutes.

“Will you kindly give me an opinion as to whether prisoners committed by the Municipal Court of Urbana to the Columbus Work House for violation of state statutes should be maintained by the county or the city?

“I should also like an opinion as to whether or not, if such prisoners become hospitalized, the city or the county is liable for hospitalization for said prisoners committed by the city for violation of state statutes.”

The first portion of your request involves, to a large extent, the same basic considerations discussed in Opinion No. 1138, issued this day to the Prosecuting Attorney of Logan County. The question presented therein was whether the responsibility for the board and maintenance of persons confined in a county jail as the result of conviction of violating a state statute is that of the county or of the municipality, if such conviction is had in a mayor's court or a municipal court.

It was my opinion that such board and maintenance is the responsibility of the county. In the process of arriving at this opinion, I concluded that in the absence of a specific statute to the contrary, a municipality is *only* responsible for the board and maintenance of persons confined as the result of a violation of a *municipal ordinance*; that the county, on behalf of the state, is responsible for the board and maintenance of all persons confined as the result of conviction of a violation of a *state statute*; and that such basic responsibility is not affected by the fact that such confinement for violating a state statute results from conviction in a mayor's court or a municipal court. For a more detailed statement for my reasons for such conclusion, your attention is directed to said Opinion No. 1138.

It follows, therefore, in the absence of a statute providing otherwise, that the lack of county facilities to receive and maintain prisoners convicted of violating state statutes, including persons convicted thereof by a municipal court, does not relieve the county from its basic obligation to

provide for the board and maintenance of such prisoners and does not impose such obligation on the municipality wherein the convicting court sits. In this connection it should be remembered that common pleas courts, probate courts and juvenile courts also hold court within a municipality. The fact that they hold court in the county seat obviously would not impose any obligation for board and maintenance on such municipality and I believe that this is also true, in the absence of a statute to the contrary, in case of conviction in a municipal court, which court, of course, is also created as a part of the state judicial system by act of the General Assembly.

The right of a municipal workhouse in a neighboring county to receive such prisoners is provided by Section 4141, General Code, which reads:

“Any city or district having a workhouse, may receive as inmates thereof persons sentenced or committed 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. Convicts so received shall in all respects be and remain under the control of such director or board of workhouse directors, and subject to the rules, regulations and discipline of such workhouse, the same as other convicts therein detained.” (Emphasis added.)

It will be noted that this section authorizes the municipality having a workhouse to agree with the commissioners of a neighboring county, or to agree with the council of a municipality in such neighboring county. This statute, I believe, recognizes the fact that the neighboring county is basically responsible for the board and maintenance of certain prisoners, while the council of a municipality in such neighboring county is basically responsible for the board and maintenance of other prisoners.

The right of such neighboring county or municipality located therein to send prisoners to such municipal workhouse is provided by Section 13451-13, General Code, which reads:

“When a person has been convicted of a misdemeanor, including a violation of a municipal ordinance, by a court or magistrate in any 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 pris-

oners so convicted into the workhouse of a city in any other county or district in the state, such court or magistrate where imprisonment in jail may lawfully be imposed in such case, may sentence such person to such workhouse for a period within the terms of the law. In such case the court or magistrate may further order that such person stand committed to such workhouse until the costs of prosecution are paid or he is discharged as herein provided." (Emphasis added.)

Here, again, we find that the General Assembly has recognized the fact that a county is responsible for board and maintenance of certain prisoners, while a municipality is responsible for others. Sections 4141 and 13451-13, General Code, do not provide, by specific direction, that prisoners convicted by a municipal court of violating state statutes are to be maintained by the municipality in which such municipal court sits. Instead, I believe that both of these sections, by authorizing contracts either with the county commissioners or the city council, have recognized, by necessary implication, what I conceive to be the basic obligation for support, namely, that the county will support persons convicted of violating state statutes and the municipality will support persons convicted of violating its own ordinances.

This conclusion is further supported by Section 13451-14, General Code, enacted at the same time as Section 13451-13 and which, therefore, must be read in *pari materia* with the latter section. Section 13451-14 reads:

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

While Section 13451-14, by its express terms, deals with the situation where county prisoners are confined in a municipal workhouse in such

county, I believe that it is a clear-cut recognition of the basic legislative policy of this state, heretofore described. If Champaign County had a workhouse in which prisoners could be confined, it would be the obligation of Champaign County to provide the cost and expense of maintaining persons convicted by the Urbana Municipal Court of violating a state statute. Having no workhouse and, according to my understanding, having no county jail, it would appear to be the obligation of Champaign County to provide the cost and expense of maintaining such persons in a city workhouse of a neighboring county by executing a proper contract therefor in accordance with the authorization provided by Section 13451-13, General Code.

In this connection, your attention is directed to Opinion No. 807, Opinions of the Attorney General for 1949, page 492, holding that the maintenance in a neighboring workhouse of county prisoners may not legally be paid from county funds in the absence of written agreement providing for such payment. You have informed me, by a supplemental letter, that the commissioners of Champaign County do have a contract with the City of Columbus providing for the confinement of prisoners in the Columbus Workhouse. I am not acquainted with the exact provisions of such contract and, therefore, can not attempt to determine whether, by the terms of such contract, Champaign County has in fact obligated itself to pay for the board and maintenance of all of those prisoners for whose board and maintenance it is legally authorized to so contract. It is, however, my opinion that under the provisions of Sections 13451-13 and 4141, General Code, the county commissioners of a county having no workhouse are authorized to contract with a municipal corporation located in another county and having a workhouse to receive, at the expense of such contracting county, persons convicted by a municipal court of violating state statutes.

It is my further opinion that under the provisions of Sections 13451-13 and 4141, General Code, a municipality having no workhouse is authorized to contract with a municipality located in another county having a workhouse to receive, at the expense of the municipality having no workhouse, persons convicted of violating ordinances of such municipality.

Your second question involves the responsibility of the city or county, respectively, for hospitalization of prisoners received by a municipal

workhouse in a neighboring county pursuant to contract with such city or county.

A somewhat similar question was considered by one of my predecessors in Opinion No. 1424, Opinions of the Attorney General for 1937, page 2370, the syllabus of which reads as follows:

“A contract between a county and a municipality whereby the municipality agrees to incarcerate county prisoners for the periods of their respective sentences, which provides especially for reimbursement by the county for extra expense to the city on account of serious illness of any prisoners requiring special treatment, or in the event of any other occurrence causing extra expense to the city, is in accordance with Section 13451-14, General Code, and the city may recover under its terms.”

While that opinion dealt with a contract between a county and a city located within such county, made in compliance with Section 13451-14, General Code, I believe that the reasoning there contained is equally applicable to a contract made under the provisions of Section 13451-13, General Code. In other words, it is my conclusion that the county or municipality contracting with a municipality in another county may provide, in the terms of such contract, for additional payment to the receiving city on account of hospitalization. Of course, whether such has actually been done depends upon the exact terms of the contract itself. Since Section 13451-13 provides for such commitment “upon such terms” as agreed upon by the contracting parties, I believe that it must necessarily follow that the receiving municipality may legally insist upon such a provision being a part of the written contract and that the sending county or city is fully authorized to agree to such provision. On the other hand, the contracting parties may provide that a specific per diem payment will cover all cost of board and maintenance, including hospitalization and any other extraordinary expenses arising from such commitment. The decision as to which course to pursue rests solely within the sound discretion of the contracting parties.

In specific answer to your second question, it is my opinion that the liability for the cost and expense of hospitalization of persons confined in the workhouse of a municipality pursuant to contract made with a county or a municipality having no workhouse, under the provisions of Sections

13451-13 and 4141, General Code, is governed by the agreement of the contracting parties, as contained in the respective contract covering such commitment.

Respectfully,

C. WILLIAM O'NEILL
Attorney General