

1488.

APPROVAL, NOTES OF HOPEWELL TOWNSHIP RURAL SCHOOL DISTRICT, MUSKINGUM COUNTY—\$89,000.00.

COLUMBUS, OHIO, February 4, 1930.

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

1489.

DETENTION HOME—HOW SUPERINTENDENT TO BE PAID FOR SUSTENANCE OF CHILDREN.

SYLLABUS:

The superintendent of the detention home cannot be allowed a fixed amount per meal for the sustenance of the children in the home, but on the other hand allowances may be made only for the actual sums expended for such purposes.

COLUMBUS, OHIO, February 4, 1930.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent communication which reads:

“Section 1670 of the General Code with reference to detention homes in counties having a population in excess of 40,000, provides that the compensation of the superintendent and matron and the expense of maintaining the home shall be paid from the county treasury on the warrant of the county auditor, which shall be issued upon itemized vouchers sworn to by the superintendent and certified to by the judge.

Question: May the superintendent of the detention home be paid a fixed amount, such as 25c per meal for the sustenance of the children in the home, or can he only be paid the actual cost of such sustenance?”

The pertinent part of Section 1670 of the General Code, as last amended (113 O. L. 530), which is necessary to be considered in connection with your inquiry, reads:

“In counties having a population in excess of forty thousand, the judge may appoint a superintendent and matron who shall have charge of said home, and of the delinquent, dependent and neglected minors detained therein. Such superintendent and matron shall be suitable and discreet persons, qualified as teachers of children. Such home shall be furnished in a comfortable manner as nearly as may be as a family home. So far as possible delinquent children shall be kept separate from dependent children in such home. The compensation of the superintendent and matron shall be fixed by the county commissioners. Such compensation and the expense of maintaining the home shall be paid from the county

treasury upon the warrant of the county auditor, which shall be issued upon the itemized voucher, sworn to by the superintendent and certified by the judge."

In analyzing the provisions of the above section, it seems clear that "the expense of maintaining the home" shall be paid from the county treasury. It being the duty of the superintendent and matron to properly keep the children placed in their custody, and there being no other specific provision made for the feeding of such children, it is clear that the providing of the necessary provisions to properly feed such children would be a proper maintenance expense. It therefore appears that the sole inquiry you present is whether a fixed amount for each meal for the sustenance of the children may be paid to reimburse the superintendent of such home or whether only the actual cost of the provisions furnished may be recovered.

In connection with your inquiry, you are referred to the case of *Kohler, Sheriff, vs. Powell*, 115 O. S. 418, where it was held, as disclosed by the second branch of the syllabus:

"The sheriff has no right to collect from the county to reimburse himself for expenditures made or indebtedness incurred for feeding the prisoners confined in the county jail any sum in excess of such disbursement or indebtedness so incurred. The law does not permit the sheriff to secure a private personal profit out of the feeding of the prisoners confined in the jail."

The conclusion of the court in the above case was reached notwithstanding that the statutes fixed a minimum of forty-five cents per day and a maximum of seventy-five cents per day, as an allowance to the sheriff for keeping and feeding prisoners. However, the court indicated that said maximum and minimum amounts were for the purpose of preventing both extravagant over-feeding and the under-feeding of prisoners. Therefore it was concluded that the sheriff could not be allowed a sum that might result in his being paid more than his actual expenditure. By analogy it is believed that the principles propounded by the court in the above case are equally applicable to the question you present. It is obvious that a fixed amount per meal might result in the superintendent being paid more than was actually expended for such provisions. On the other hand, such a system might encourage the under-feeding of children in order to make a profit in view of the fixed allowance.

Without further discussion, and in specific answer to your inquiry, it is my opinion that the superintendent of the detention home cannot be allowed a fixed amount per meal for the sustenance of the children in the home, but on the other hand allowances may be made only for the actual sums expended for such purposes.

Respectfully,

GILBERT BETTMAN,
Attorney General.