

3002.

FEEDING PRISONERS—COUNTY JAIL UNDER MANAGEMENT AND CONTROL OF SHERIFF—COURT OF COMMON PLEAS HAS AUTHORITY TO REGULATE DIET—WITHIN CERTAIN PECUNIARY LIMITATION — COUNTY COMMISSIONERS MAY PRESCRIBE METHOD AND MANNER OF PURCHASE—ACTUAL PURCHASING DONE BY SHERIFF.

SYLLABUS:

1. *The court of common pleas has 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 regulation of the diet of the prisoners, providing the same does not exceed the limitation of seventy-five cents per day of three meals each, provided for in section 2850, General Code, as amended in 112 O. L. 62.*

2. *The county commissioners have the exclusive authority to prescribe the rules and regulations with reference to the sheriff purchasing food for prisoners confined in the county jail.*

3. *By virtue of section 2850, General Code, as amended in 112 O. L. 62, the county commissioners may prescribe, by their rules and regulations, the method and the manner in which food shall be purchased by the sheriff, but the sheriff shall do the actual purchasing of the food, subject to the rules and regulations prescribed by the county commissioners.*

COLUMBUS, OHIO, February 26, 1931.

HON. CARL J. CHRISTENSEN, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date, which reads as follows:

“I am writing you for a further opinion relative to your recent opinion No. 2858 on certain questions raised by our Common Pleas Judges.

Our Common Pleas Judges have raised questions in view of the opinion rendered by the Supreme Court of the State of Ohio in *Kohler, Sheriff, vs. Powell, Chief Justice, et al*, 115 O. S. 418 and in view of Sections numbers 3157, 3158 and 3162, and an opinion of the Attorney General rendered in 1928 No. 1608.

The Court is of the opinion that the above quoted sections and the opinions of the Attorney General are in conflict as to the authority vested either in the Board of County Commissioners or the Common Pleas Judges as pertains to rules and regulations of the jail. In other words, do the

(1) Board of County Commissioners solely have the power to establish rules and regulations for the maintenance of the County Jail and the regulation of the diet of prisoners and the purchasing of food, or,

(2) Do the Common Pleas Judges solely have the power to establish the rules and regulations for same, or,

(3) Do the Judges and the County Commissioners jointly have the power to prescribe the rules and regulations and what rules and regula-

tions, in your opinion, may be prescribed by either the Board of County Commissioners or the Common Pleas Court?

Both the County Commissioners and the Common Pleas Judges are interested in an early opinion as to the regulation and prescribing of rules applying to the purchasing of food and other necessities for the jail."

In the case of *Kohler vs. Powell*, 115 O. S. 418, the Supreme Court of Ohio held that, by virtue of section 3162, General Code, the court of common pleas had 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 the course of its opinion, at page 422, said:

"We have no difficulty in reaching the conclusion that the Legislature clearly and definitely intended by these provisions (referring to sections 3157, 3158, 3162 and 13574) 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." (Words within parentheses the writer's.) (Italics the writer's.)

Subsequent to the decision made in the *Kohler* case, *supra*, and the amendment of section 2850, General Code, in 112 O. L. 62, my predecessor, in an opinion which may be found in the Opinions of the Attorney General for 1927, at page 612, in the third paragraph of the syllabus, held as follows:

"The authority given to county commissioners by the provision of Amended Senate Bill No. 28 to prescribe rules and regulations with reference to the sheriff's purchasing of food for 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 body of the opinion the following statement was made:

"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."

To the same effect is an opinion by my predecessor to be found in the Opinions of the Attorney General for 1927, at page 1469. That part of the syllabus pertinent to your inquiry, is as follows:

"By the terms of section 3162, General Code, the court of common pleas has full, complete and exclusive authority to promulgate rules and regulations for the feeding of prisoners and other persons confined in county jails. In the absence of any such rule to the contrary, a sheriff may lawfully purchase food already prepared for consumption from a restaurant or other person, subject, however, to such rules and regulations relating to the purchasing of food as may be prescribed by the county commissioners."

In 1929 I rendered an opinion involving the construction of section 2850, as

amended, which opinion may be found in the Opinions of the Attorney General for 1929, at page 534. The syllabus is as follows:

"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."

It seems clear from the provisions of section 2850, General Code, as amended in 112 O. L., 62, and the decision in the Kohler case, *supra*, and, in addition, the opinions rendered by my predecessor and myself, that the purchase of food for prisoners confined in the county jail is entirely in the hands of the sheriff, subject to the rules and regulations prescribed by the county commissioners in making such purchase. In other words, the actual purchasing of the food must be done by the sheriff, subject to whatever regulations the county commissioners may promulgate in making such purchase. To my mind, the county commissioners, in their rules and regulations, may prescribe the manner and the method in which the sheriff should purchase the food, to be bought by him. The court of common pleas may, by its rules and regulations, prescribe the quantity, quality and kind of food to be fed by the sheriff to persons confined in jail; providing the rules and regulations so prescribed by the court do not cause the sheriff to exceed the limitation in section 2850, General Code, as amended.

Therefore it is my opinion, in specific answer to your questions, that:

1. The court of common pleas has 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 regulation of the diet of the prisoners, providing the same does not exceed the limitation of seventy-five cents per day of three meals each, provided for in section 2850, General Code, as amended in 112 O. L. 62.

2. The county commissioners have the exclusive authority to prescribe the rules and regulations with reference to the sheriff purchasing food for prisoners confined in the county jail.

3. By virtue of section 2850, General Code, as amended in 112 O. L. 62, the county commissioners may prescribe, by their rules and regulations, the method and the manner in which food shall be purchased by the sheriff, but the sheriff shall do the actual purchasing of the food, subject to the rules and regulations prescribed by the county commissioners.

Respectfully,

GILBERT BETTMAN,
Attorney General.