

Harry L. Dittmer, Resident District Deputy Director in Trumbull County—
Standard Accident Insurance Company.

Charles E. Kunker, Resident District Deputy Director in Warren County—
Glens Falls Indemnity Company.

These bonds appear to be in proper legal form in accordance with sections 1183 and 1182-3, General Code.

However, in the bond of Harry L. Dittmer, the power of attorney attached thereto authorizing Gustave C. Boltz to execute the bond, is dated January 18, 1933, and there is no statement with such power of attorney showing it was in full force and effect on or just prior to June 20, 1935, when the bond was executed.

In the bond of Charles E. Kunker it appears that the power of attorney attached thereto does not give authority to Dewey C. Black to execute the type of bond in this instance.

In view of the foregoing, I am approving the bond of Robert E. Jenkins, but am disapproving the bonds of Harry L. Dittmer and Charles E. Kunker. All of said bonds are herewith returned.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4368.

COUNTY COMMISSIONERS—EQUIPMENT TO FEED PRISONERS IN COUNTY JAIL.

SYLLABUS:

County Commissioners may furnish equipment to feed prisoners in the county jail when they deem it necessary and they shall furnish such equipment when required so to do by the Common Pleas Court.

COLUMBUS, OHIO, June 29, 1935.

HON. J. S. HARE, *Prosecuting Attorney, New Philadelphia, Ohio.*

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

“I respectfully request you to furnish me, as Prosecuting Attorney, a written opinion upon the following:

The duty of the County Commissioners to furnish the Sheriff with all equipment necessary to feed prisoners confined in the county jail, where there is no contract for feeding, and where the County Commissioners pay all the bills.”

Section 2419, General Code, the general section providing for the establishment and maintenance of county offices, reads as follows:

“A court house, jail, public comfort station, offices for county officers and

an infirmary shall be provided by the commissioners when in their judgment they or any of them are needed. Such buildings and offices shall be of such style, dimensions and expense as the commissioners determine. They shall also provide all the equipment, stationery and postage, as the county commissioners may deem necessary for the proper and convenient conduct of such offices, and such facilities as will result in expeditious and economical administration of the said county offices. They shall provide all rooms, fire and burglar-proof vaults and safes and other means of security in the office of the county treasurer, necessary for the protection of public moneys and property therein."

The county commissioners, as the taxing authority of the county, are charged with the duty of providing finances for necessary county functions. Although the above section does not specifically provide for equipment for county jails, it provides for their establishment and in my opinion the power to equip a jail is necessarily implied therefrom. Certainly when jails are built as provided by this section they may be equipped and the fact that this is not done at the time of construction does not divest the commissioners of their power and also their duty to do so. This section provides, in addition, that county offices shall be equipped and as the feeding of prisoners is a necessary function of the sheriff's office, there is ample authority therein to furnish equipment which the county commissioners deem necessary.

In the frequently quoted case of *Commissioners of Trumbull County vs. Hutchins*, 11 Ohio, 369, the court stated:

"It is the legal duty of the county commissioners to furnish all things coupled with the administration of justice within the limits of their own county."

In the maintenance of jails, however, the county commissioners are specifically under the ultimate control of the Common Pleas Court. Section 3177 reads as follows:

"The county commissioners, at the expense of the county, shall provide suitable means for warming the jail, and its cells and apartments, frames and sacks for beds, nightbuckets, fuel, bed, clothing, washing, nursing when required, and such fixtures and repairs as are required by the court. They may appoint a physician, or any physician or surgeon employed in the jail, shall make a report in writing whenever required by the commissioners, the grand jury or the court. The sheriff shall make a report to the commissioners annually, or oftener if they so require, of the property of the county in the jail, and the condition thereof."

In the opinions of the Attorney General for 1928, the following language appears on page 1381:

"From these cases I believe it may properly be said that courts, as a necessary incident to their power, may require that expenditure be made for such things as they deem necessary for the proper administration of justice. The duty of furnishing these necessities rests, however, in the first instance on the county commissioners."

It appears, therefore, that sections 2419 and 3177, *supra*, should be construed in *pari materia*. If the county commissioners decide that equipment to feed prisoners in

the county jail is necessary, they may provide such equipment and the duty to so provide rests primarily upon them. However, should there be a difference of opinion between the county commissioners and the court as to what is necessary, the latter would prevail. In the absence of intervention by the court, the decision of the commissioners as to the necessity of equipment for the county jail is final, provided they are acting within their statutory power.

Therefore, in specific answer to your question, it is my opinion that the county commissioners may furnish equipment to feed prisoners in the county jail when they deem it necessary and they shall furnish such equipment when required so to do by the Common Pleas Court.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4369.

SCHOOL—COUNTY BOARD OF EDUCATION REQUIRED TO PERFORM
DUTIES OF LOCAL BOARD OF EDUCATION WHEN.

SYLLABUS:

1. *Where a board of education in a school district under the jurisdiction of a county board of education fails for any reason, whether because of lack of funds or otherwise, to provide proper school privileges for the youth of school age within the district as provided by law, it is the duty of the county board of education of the county school district of which the said district is a part, upon being advised and satisfied thereof, to perform any and all such duties or acts in the same manner as the local board is authorized by law to perform them, as provided by Section 7610-1 of the General Code of Ohio.*

2. *Strictly speaking, the authority and powers of a county board of education which is performing the duties of a local board of education because of the local board's failure to do so by authority of Section 7610-1, General Code, do not cease long as the local board is derelict in its duty but of course where the dereliction is due only to a lack of funds, and funds thereafter become available it is the duty of the local board to take up the burden of maintaining the schools and the county board should insist on its doing so.*

COLUMBUS, OHIO, June 29, 1935.

HON. A. NEWTON BROWNING, *Prosecuting Attorney, Washington C. H., Ohio.*

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

“The Board of Education of Green Township Rural School District, shortly prior to January 7, 1934, requested the county board of education to take over the operation of the schools under Section 7610-1 of the General Code of Ohio, because of the fact that the funds of the local board were exhausted, and for that reason only. The board of education of said rural