

4898.

APPROVAL, BONDS OF CUYAHOGA COUNTY, OHIO,
\$10,000.00.

COLUMBUS, OHIO, November 14, 1935.

State Employes Retirement Board, Columbus, Ohio.

4899.

APPROVAL, BONDS OF CUYAHOGA COUNTY, OHIO, \$5,000.00.

COLUMBUS, OHIO, November 14, 1935.

State Employes Retirement Board, Columbus, Ohio.

4900.

COUNTY COMMISSIONERS—MAY REFUSE USE OF COUNTY
JAIL TO MUNICIPALITY WHEN.

SYLLABUS:

A Board of County Commissioners, subject to the limitations of Section 4566, General Code, may refuse the use of the County jail to a municipality for prisoners convicted of violating ordinances of such municipality, by giving the ninety days' written notice, provided in Section 4565, General Code, to the council of the municipality, and it is the duty of the County Sheriff under such circumstances, upon the termination of such 90 days' notice, to refuse admittance of such prisoners to the county jail.

COLUMBUS, OHIO, November 14, 1935.

HON. GEORGE L. LAFFERTY, *Prosecuting Attorney, Lisbon, Ohio.*

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

“In one of the more recent reports of the Bureau of Inspection and Supervision of Public Offices, the examiners pointed out

and made findings against certain cities and villages in Columbiana County for amounts due from the cities and villages to the county for the care and maintenance of ordinance prisoners in the county jail, under the provisions of Sections 4564 to 4566, inclusive, of the General Code.

Last spring the County Commissioners notified the cities and villages that they would not accept at the county jail any more ordinance prisoners.

Then later, pursuant to the findings made, the Commissioners notified each of the cities and villages that they would have to enter into an agreement to pay for the care and maintenance of these ordinance prisoners while confined in the county jail, unless an agreement, a general form of which was sent to each of the villages and cities, was entered into agreeing to pay for these prisoners.

None of these municipalities have entered into an agreement although several months have elapsed since they were first notified, and between three and four months have elapsed since they were sent the form of agreement to execute.

On September 17th, 1935, the Sheriff received the following notice from the County Commissioners:

'This is to notify you not to accept any prisoners at the county jail from any city or village in Columbiana County that have violated city or village ordinances as no contracts have been signed or returned to the County Commissioners.'

We will appreciate your opinion as to whether or not the Sheriff is justified in refusing admittance to the county jail of prisoners properly committed thereto by villages and cities for violation of city ordinances.

We are somewhat at a loss in interpreting the statutes as to whether the Sheriff must receive the prisoners and the County look to the village or city for payment, and either collect from the city as a matter of right under the statute whether an agreement is entered into or not, or whether the Commissioners may refuse the use of the jail absolutely for ordinance prisoners purposes, and by notifying the cities and villages that they cannot use the jail any more, the Sheriff then be justified in refusing admittance to such prisoners."

Section 4564, General Code, provides for the imprisonment of persons convicted of violating ordinances. This section reads as follows:

"Imprisonment under the ordinances of a municipal corpor-

ation shall be in the work-house or other jail thereof, if the corporation is provided with such work-house or a jail. Any corporation not provided with a work-house, or other jail, shall be allowed, for the purpose of imprisonment, the use of the jail of the county, at the expense of the corporation, until it is provided with a prison, house of correction, or work-house. Persons, so imprisoned in the county jail shall be under the charge of the sheriff of the county, who shall receive and hold such persons in the manner prescribed by the ordinances of the corporation, until discharged by due course of law."

Relative to your inquiry, Sections 4565 and 4566, General Code, are particularly pertinent. These sections read as follows:

Section 4565:

"The county commissioners, at their discretion, on giving ninety days' written notice to the council of any corporation, may prohibit the use of the county jail for the purpose authorized in this chapter."

Section 4566:

"If within ninety days after such notice is given, the council of such corporation efficiently provides, by the passage of appropriate ordinances, and the making of the necessary contracts for the immediate erection of a prison, workhouse, or house of correction, notwithstanding the notice and prohibition provided for in the preceding section, the corporation shall continue to have the use of the county jail for the purpose of imprisonment, until such prison, workhouse, or house of correction, is erected and ready for use."

Authority for a municipality to enter into a contract with a county for the care and maintenance of city prisoners is expressly provided for by Sections 4126 and 4127, General Code. In your letter you do not specifically state that the County Commissioners have followed the procedure in Section 4565, General Code, *supra*, relative to their right to refuse the use of the County jail to a municipality. If Section 4565 is complied with by the County Commissioners, it is apparent that, subject to the limitations of Section 4566, General Code, the County Commissioners may refuse the use of the county jail to a municipality. A somewhat analogous question to the one presented by you was passed upon in the case of *Richland County vs. City of Mansfield*, 27 O. N. P. (n. s.) 293. The first branch of the syllabus of that case reads as follows:

"1. The statutory provision for committing persons who have been convicted of violation of city ordinances to the county jail, in cities which have no workhouse or house of correction, is mandatory, and notwithstanding no contract has been entered into between the city and county for such service, a statutory liability arises, against the city and in favor of the county, in a sum not to exceed forty cents a day for each prisoner thus provided for."

The following appears at page 298:

" * * * * * * * * * * * * * * *"

As said before G. C. 4563, 4564, 4565 and 4566 are special provisions applicable to persons committed for violation of ordinances of the corporation.

They are mandatory. If the corporation has no work-house or other jail, the corporation court must order them committed to the county jail. The city has the right by statute to such use of the county jail; the person so committed must be received and held by the sheriff under the ordinance which was the basis of their prosecution and committment.

Under G. C. 2850 and 2997, then, the sheriff shall be allowed by the county commissioners, and paid by the county for the keeping and feeding of such prisoners.

Only in one way can the county terminate this statutory right of use of the county jail by the city—on, and after ninety days' notice of such purpose and intention as provided by G. C. 4565; and this termination is limited and conditional upon the city as referred to in G. C. 4566.

Until the county commissioners act under the provisions of G. C. 4565, the city's right to commit to and use the county jail for persons fined for violation of ordinances, is absolute and supreme; but as provided by G. C. 4564 this shall be 'at the expense of the corporation, until it is provided with a prison, house of correction, or workhouse.'

* * * * * * * * * * * * * * *"

(Italics the writer's.)

From the above it would follow that the Sheriff not only could refuse to admit these prisoners but must refuse their admittance if the County Commissioners have complied with Section 4565, General Code.

Without further extending this discussion, it is my opinion that a Board of County Commissioners, subject to the limitations of Section 4566, General Code, may refuse the use of the County jail to a municipality for prisoners

convicted of violating ordinances of such municipality, by giving the ninety days' written notice, provided in Section 4565, General Code, to the council of the municipality, and it is the duty of the County Sheriff under such circumstances, upon the termination of such 90 days' notice, to refuse admittance of such prisoners to the county jail.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4901.

APPROVAL, PAPERS IN CONNECTION WITH THE CONVERSION OF THE STATE SAVINGS AND LOAN ASSOCIATION, DAYTON, OHIO, INTO STATE FEDERAL SAVINGS AND LOAN ASSOCIATION.

COLUMBUS, OHIO, November 15, 1935.

HON. WILLIAM H. KROEGER, *Superintendent of Building and Loan Associations of Ohio, Columbus, Ohio.*

DEAR SIR:—I have examined the various papers submitted by you in connection with the conversion of The State Savings and Loan Association, Dayton, Ohio, into State Federal Savings and Loan Association, and find the papers submitted and the proceedings of said The State Savings and Loan Association, as disclosed thereby, to be regular and in conformity with the provisions of section 9660-2 of the General Code of Ohio.

All papers, including two copies of the charter issued to the said State Federal Savings and Loan Association, are returned herewith to be filed by you as a part of the permanent records of your department, except one copy of the charter which the law provides shall be filed by you with the Secretary of State. The law further provides that such filing with the Secretary of State shall be within ten days after the requirements of said section 9660-2 have been complied with by The State Savings and Loan Association, and that your approval shall be endorsed on the copy so filed. You will find on the copies of the charter, form of approval for your signature.

Respectfully,

JOHN W. BRICKER,

Attorney General.