

OPINION NO. 87-078**Syllabus:**

Fees charged under R.C. 341.13 for housing a prisoner of one county in the jail of another county are to be paid from the treasury of the county from which the prisoner was removed. Pursuant to 1 Ohio Admin. Code 117-1-02, amounts to pay such fees should be appropriated to the county sheriff.

To: Robert P. DeSanto, Ashland County Prosecuting Attorney, Ashland, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 15, 1987

I have before me your request for an opinion concerning the payment of the costs of housing prisoners of one county in the jail of another county. R.C. 341.12 provides for the removal of prisoners from one county to another as follows:

In a county not having a sufficient jail or staff, the sheriff shall convey any person charged with the commission of an offense, sentenced to imprisonment in the county jail, or in custody upon civil process, to a jail in any county which the sheriff considers most convenient and secure.

The sheriff may call such aid as is necessary in guarding, transporting, or returning such person. Whoever neglects or refuses to render such aid, when so called upon, shall forfeit and pay the sum of ten dollars, to be recovered by an action in the name and for the use of the county.

Such sheriff and his assistants shall receive such compensation for their services as the county auditor of the county from which such person was removed considers reasonable. The compensation shall

be paid from the county treasury on the warrant of the auditor.

R.C. 341.13 provides for payment in such circumstances, as follows:

The sheriff of the county to which a prisoner has been removed as provided by section 341.12 of the Revised Code, shall, on being furnished a copy of the process or commitment, receive such prisoner into his custody, and shall be liable for escapes or other neglect of duty in relation to such prisoner, as in other cases. Such sheriff shall receive from the treasury of the county from which the prisoner was removed, such fees as are allowed in other cases. (Emphasis added.)

As was discussed in 1981 Op. Att'y Gen. No. 81-042, "[t]he 'fees as are allowed in other cases,' to which reference is made in R.C. 341.13, are prescribed by R.C. 311.20." Op. No. 81-042 at 2-170; accord, 1986 Op. Att'y Gen. No. 86-105. R.C. 311.20 currently states, in part:

On the fifth day of each month the sheriff shall render to the board an itemized and accurate account, with all bills attached, showing the actual cost of keeping and feeding prisoners and other persons placed in his charge and the number of meals served to each such prisoner or other person during the preceding month. The number of days for which allowance shall be made shall be computed on the basis of one day for each three meals actually served.

In addition, R.C. 341.14(A) provides for a deposit of fifty cents per week to the sheriff of an adjoining county for prisoners committed under R.C. 341.12, as follows:

The sheriff of an adjoining county shall not receive prisoners as provided by section 341.12 of the Revised Code unless there is deposited with him, in addition to all fees allowed him by law, fifty cents per week for the use of the jail of such county for each prisoner so committed, and the same amount for a period of time less than one week. If such prisoner is discharged before the expiration of the term for which he was committed, the excess of the amount advanced shall be refunded.

See Op. No. 86-105; Op. No. 81-042.

In Op. No. 86-105 I considered the removal of prisoners pursuant to R.C. 341.12 and the payment of fees for such prisoners. I concluded, in paragraph 2 of the syllabus:

The sheriff of a county not having a sufficient jail or staff may, pursuant to R.C. 341.12, remove a person sentenced to imprisonment in the county jail or in custody upon civil process to a jail in another county. The sheriff receiving the prisoner shall charge the fees provided for in R.C. 341.13, and, if he is the sheriff of an adjoining county, he shall also charge the fee specified in R.C. 341.14. The board of commissioners of the county from which the prisoner was removed must allow payment of the fees

properly charged by the sheriff under R.C. 341.13 and R.C. 341.14.

There is no question but that the county from which the prisoner was removed must make payment of fees properly charged by the sheriff of the county to which the prisoner was removed. You have asked whether such fees should be paid from moneys appropriated for the use of the sheriff of the county from which the prisoner was removed or whether the county commissioners should pay the fees from other county moneys.

In considering your question, it is helpful to review generally the county budgeting process. Pursuant to R.C. 5705.28, the board of county commissioners is required annually to adopt a tax budget for the following fiscal year. See R.C. 5705.01(C) (defining the board of county commissioners as the "taxing authority" of a county). To assist in the preparation of the budget, the head of each department entitled to participate in any appropriation or revenue of the county files an estimate of contemplated revenue and expenditures, in the form prescribed by the county commissioners or the Auditor of State. R.C. 5705.28(C). See generally 1986 Op. Att'y Gen. No. 86-048. The tax budget presents information in such detail as is prescribed by the Auditor of State and includes a statement of operating expenses "for each department and division of the subdivision, classified as to personal services and other expenses, and the fund from which such expenditures are to be made." R.C. 5705.29(A)(1). Pursuant to R.C. 5705.38, the board of county commissioners is required to pass an appropriation measure. "Appropriation measures shall be classified so as to set forth separately the amounts appropriated for each office, department, and division, and, within each, the amount appropriated for personal services." R.C. 5705.38(C). R.C. 5705.40 provides that "[a]ny appropriation ordinance or measure may be amended or supplemented." The county commissioners are, thus, responsible for appropriating moneys to be used by the sheriff to pay expenses of the sheriff's department.

The question of precisely which moneys should be used to pay fees for housing prisoners in the jail of another county is not addressed by statute.¹ It is clear under R.C. 341.13 that the fees must be paid from the treasury of the county from which the prisoner was removed. See generally Op. No. 86-105; Op. No. 81-042. The determination as to how moneys are to be

¹ R.C. 311.20 requires the sheriff to prepare an annual budget covering the costs of operating the jail and feeding its inmates, as follows: "On or before the twenty-first day of June of each year, the sheriff shall prepare and submit to the board of county commissioners a budget estimating the cost of operating the jail and feeding its inmates for the ensuing fiscal year." There is no indication in this provision that costs of operating the jail include costs of paying for inmates housed in jails of other counties. Certain costs of staff to care for prisoners are, by statute, payable from the general fund of the county. See R.C. 341.20 (female staff and cook). See generally 1969 Op. Att'y Gen. No. 69-163; 1957 Op. Att'y Gen. No. 842, p. 333; 1931 Op. Att'y Gen. No. 3159, p. 552. Various statutory provisions indicate that money is to be made available to the sheriff for certain purposes. See, e.g.,

appropriated for such purpose is, however, a matter of accounting, rather than a matter of statutory directive. See generally 1954 Op. Att'y Gen. No. 3654, p. 143; note 1, supra.

Under the provisions of R.C. 117.43, the Auditor of State has been authorized to "prescribe by rule, requirements for accounting and financial reporting for public offices other than state agencies." See also R.C. 117.20. Pursuant to his statutory authority, the Auditor has adopted 1 Ohio Admin. Code 117-1-02, which provides for the organization of the general fund and the accounts within the general fund of each county. Rule 117-1-02 includes the following:

RECEIPT/ DISBURSEMENT	ACCOUNT CLASSIFICATION	DESCRIPTION
....		
EXPENDITURES		
....		
PROTECTION TO PROPERTY AND PERSONS SHERIFF		
....		
10. Fees	Public Safety	Filing fees to clerk of courts for appointment of deputies, section 311.04, R.C.; fees to sheriffs of adjoining

R.C. 325.07 (requiring that the board of county commissioners provide the sheriff with allowances for transportation and telephone expenses); R.C. 325.071 (providing that there shall be allowed annually to the sheriff from the general fund an amount equal to one half of his salary "to provide for expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice"); R.C. 325.17 (authorizing certain county officers, including the county sheriff, see R.C. 325.27, to fix the compensation of their employees but providing that the compensation may not exceed, in the aggregate, the amount fixed by the board of county commissioners; authorizing such county officers to contract, from moneys appropriated for their offices, for the services of fiscal and management consultants); R.C. 325.20 (providing that expenses for a county officer, deputy, or employee to attend an association meeting or convention shall, if approved by the board of county commissioners, "be paid from the moneys appropriated to such office for traveling expenses"); R.C. 325.21 (providing that a board of county commissioners may appropriate an amount for an elected county official to join an association related to county affairs). I am, however, aware of no statute specifying that the sheriff is responsible for paying, from moneys appropriated to his office, the costs of housing prisoners in jails of other counties.

counties for retention of prisoners, sections 341.12 to 341.14, R.C.; expenses incurred for prisoners sent to workhouse of another political subdivision when county does not have their own, section 341.23, R.C.; cost of habeas corpus proceedings of prisoners detained in foreign counties, section 341.17, R.C.; contract cost for prisoners sent to a work rehabilitation camp in another county, section 341.32, R.C.

The Auditor has thus prescribed that moneys for fees due under R.C. 341.12-.14 are to be paid from the public safety account of a county's general fund and has indicated that amounts to pay such fees should be appropriated to the sheriff as part of his budget.²

A similar issue was considered in 1954 Op. No. 3645 in connection with payment of certain fees for shorthand reporters. 1954 Op. No. 3645 states, at 148:

It would seem, so far as the county budget law is concerned, that the item for this expense might with equal propriety be included in the budget and appropriation for either the prosecuting attorney, the clerk, or the common pleas court. However this may be, I am informed that the auditor of state, acting under the authority given him in Section 117.05, Revised Code [now R.C. 117.43], to prescribe a uniform system of accounting for local taxing districts, has ruled that items of expense for shorthand reporters should be included in the budget and appropriation for the court, and that such is the uniform practice in the several counties. It would appear, therefore, that the supplemental appropriation in the instant case should be thus made.

1954 Op. No. 3654 concerned a situation in which no appropriation had been made for the expense in question, and

² I am aware that certain prior Attorney General opinions have concluded, with respect to various expenses, that county commissioners have discretion either to appropriate moneys to other county officials or to expend such moneys directly. See, e.g., 1985 Op. Att'y Gen. No. 85-066; 1983 Op. Att'y Gen. No. 83-053; 1954 Op. Att'y Gen. No. 4684, p. 694. See generally 1974 Op. Att'y Gen. No. 74-032. Those opinions considered language different from that appearing in R.C. 341.13 and, further, failed to indicate whether any rules of the Auditor of State addressed the appropriation of amounts to cover the expenditures in question.

concluded that it would be appropriate to apply for a supplemental appropriation measure pursuant to R.C. 5705.40. 1954 Op. No. 3654 states, at 148:

Your question...suggests that you are confronted with a situation in which no appropriation was made, under the provisions of Section 5705.38,...presumably for the reason that such item was not included within the budget request of any of the interested county officers. If such is the situation it would appear to be a proper case in which to apply for a supplemental appropriation measure as provided in Section 5705.40, Revised Code. It may here be noted incidentally, that this section forbids the amendment of any appropriation so as to reduce it "below an amount sufficient to cover all unliquidated***obligations certified from or against the appropriation." Because the item here involved represents an expenditure made mandatory by law, it would plainly appear to be an "unliquidated obligation," and this language thus implies that there is a mandatory duty to include all such items in the budget and appropriation measure as originally prepared. Accordingly, if this item has been omitted from the budget and appropriation measure as originally made up, there would appear to be a mandatory duty on the commissioners, as the taxing authority of the county, to include it in a supplemental appropriation.

You have not indicated whether, in the situation with which you are concerned, amounts to pay the fees in question have been included by the sheriff in his budget request and appropriated to the sheriff by the county commissioners. The question of whether amounts appropriated to the sheriff include moneys to cover these fees is a question of fact that cannot be resolved by means of an opinion of the Attorney General, but should, instead, be considered by local officials who have access to all pertinent facts. See generally 1983 Op. Att'y Gen. No. 83-053; 1974 Op. Att'y Gen. No. 74-032. If amounts to pay the fees have not been appropriated to the sheriff then it appears that a supplemental appropriation measure should be sought.

In conclusion, it is my opinion, and you are hereby advised, that fees charged under R.C. 341.13 for housing a prisoner of one county in the jail of another county are to be paid from the treasury of the county from which the prisoner was removed. Pursuant to 1 Ohio Admin. Code 117-1-02, amounts to pay such fees should be appropriated to the county sheriff.