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A TOWNSHIP CONSTABLE IS NOT LIABLE FOR THE COST OF CONFINING A PERSON IN A MUNICIPAL JAIL—§§509.01, 2935.03, 2937.32, 1905.29, 753.02, R.C.

SYLLABUS:

Where a township police constable, appointed pursuant to Section 509.01, Revised Code, arrests a person for violation of a state statute, and said person is confined in a municipal jail pending trial, the township which said police constable serves is not liable for the costs of confinement.

Columbus, Ohio, November 7, 1962

Hon. John S. Ballard, Prosecuting Attorney
Summit County, Akron, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“We respectfully request your opinion on the following question which, though small in itself, may have a wide application throughout the State.

“The township police constable arrests and conveys to the jail of a municipality which has jurisdiction over his township and charges the prisoner with a misdemeanor. The prisoner is held in jail overnight, and the following day appears before the judge of the municipal court. Does the township have any liability to the municipal corporation for costs in keeping this prisoner prior to appearance before the municipal judge? In event there is a liability to the township, is the amount thereof determined by statute or is it determined by a reasonable estimate of the cost by the municipal corporation?

“We attach on separate sheet a memorandum of particular facts and additional information for such value as it may be to you.”

In the memorandum which you forwarded with your letter you pose a fact situation as follows:

1. A certain township is located within the jurisdiction of a municipal court, which court is located in the city of “C.”
2. A person is arrested by the township police constable on a charge of violation of a state statute.

3. The person is detained in the municipal jail of the city of "C" until his appearance before the municipal court of the charge.

The question is whether the township is liable for the costs of keeping the prisoner in the municipal jail and, if so, how is the cost ascertained?

Section 509.01, Revised Code, provides for the appointment of township police constables by the board of township trustees. As to the duties of a constable, Section 509.10, Revised Code, states:

"Each constable shall apprehend, on view or warrant, and bring to justice, all felons, disturbers, and violators of the criminal laws of this state, and shall suppress all riots, affrays, and unlawful assemblies which come to his knowledge, and shall generally keep the peace in his township."

Also pertinent is Section 2935.03, Revised Code, which reads, in part, as follows:

* * * * *

"A constable within the limits of the township in which said constable has been appointed or elected, shall arrest and detain a person found by him in the commission of a misdemeanor, either in violation of a law of this state or an ordinance of a village, until a warrant can be obtained."

Thus, a township constable, within the township, is empowered to arrest for violations of state laws and for violations of ordinances of a village.

Chapter 2935., Revised Code, contains the procedure to be followed when a person is arrested. Under Section 2935.05, Revised Code, a person arrested without warrant must be taken without unnecessary delay before a court or magistrate having jurisdiction of the offense, and an affidavit must be filed. Section 2937.32, Revised Code, provides:

"If an offense is not bailable or sufficient bail is not offered, the accused shall be committed to the jail of the county in which he is to be tried or, in the case of offense against a municipality, in the jail of said municipality if such there be."

It would appear that when the constable takes a person before a court or magistrate and files an affidavit pursuant to Section 2935.05, Revised Code, the disposition of said person in the event that bail is not made is the concern of the court or magistrate, not the constable. Under

the terms of Section 2937.32, Revised Code, the accused in such a case should be committed to the county jail in a state case, and to the municipal jail in the case of offense against a municipality; and here it will be remembered that the constable's authority to arrest in ordinance cases is limited to a village (Section 2935.03, *supra*).

Also to be considered in this question is Section 1905.29, Revised Code, which provides:

“The mayor of a municipal corporation, and in his absence, the president of the legislative authority of the municipal corporation, may grant to magistrates of adjoining or contiguous townships the temporary use of the municipal corporation prison, station house, or watchhouse, to confine criminals, or other persons dangerous to the peace of the community, until they can be safely removed to the county jail, or other place of security.”

While said Section 1905.29 appears to allow the confinement of prisoners other than as provided by Section 2937.32, *supra*, it is apparent that this section is intended for emergency situations only, and prisoners jailed thereunder are jailed only temporarily until they can be removed to the proper place of confinement. It will also be noted that the statute contains no provision that the magistrate reimburse the municipal corporation for costs incurred, and, in fact, I know of no authority by which a magistrate could make such reimbursement.

Regarding the costs of the keeping of prisoners in a municipal jail, Section 753.02, Revised Code, provides:

“The legislative authority of a municipal corporation shall provide by ordinance for sustaining all persons sentenced to or confined in a prison or station house at the expense of the municipal corporation, and in counties where prisons or station houses are in quarters leased from the board of county commissioners, may contract with the board for the care and maintenance of such persons by the sheriff or other person charged with the care and maintenance of county prisoners. On the presentation of bills for food, sustenance, and necessary supplies, to the proper officer, certified by such person as the legislative authority designates, such officer shall audit the bills under the rules and regulations prescribed by the legislative authority, and draw his order on the treasurer of the municipal corporation in favor of the person presenting such bill, but the amount shall not exceed seventy-five cents a day from any person so confined.”

Section 753.02, *supra*, refers to the sustaining of persons sentenced or confined at the expense of the municipal corporation. Certainly, a person

confined in a village jail while awaiting trial for violation of a village ordinance should be confined at the expense of the village.

In case of violation of a state statute, Section 2937.32, *supra*, provides for confinement in the county jail while awaiting trial. In the instant case, the accused was confined in the municipal jail although a state statute was involved, such posing a question as to whether the confinement was appropriate. In any event, however, I have found no authorization by which the municipal corporation could be reimbursed for the costs of confinement, either by the township where the constable serves, or any other agency.

In conclusion, it is my opinion and you are advised that where a township police constable, appointed pursuant to Section 509.01, Revised Code, arrests a person for violation of a state statute, and said person is confined in a municipal jail pending trial, the township which said police constable serves is not liable for the costs of confinement.

Respectfully,

MARK McELROY

Attorney General