

In view of my conclusions as stated above, I do not feel warranted in approving these issues and advise you to reject the same.

Respectfully,

EDWARD C. TURNER,

Attorney General.

360.

DISAPPROVAL, BONDS OF VILLAGE OF WORTHINGTON, FRANKLIN COUNTY, OHIO—\$9,000.00.

COLUMBUS, OHIO, April 14, 1927.

Re: Bonds of village of Worthington, Franklin county, \$9,000.00.

Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Upon examination of the transcript for the above bond issue I note that while the declaratory resolution stated that the assessments were to be levied by the foot front, and the subsequent assessment notice so states, the ordinance determining to proceed, and the assessment ordinance provided that the assessments were to be made in proportion to the special benefits.

The bond issuing ordinance was passed the same time as this assessing ordinance. Subsequently, in October and November the bonds were sold. All this was predicated upon assessment, which, by the terms of the ordinance was in accordance with special benefits, whereas, by the resolution and the notice of assessment the assessments were to be by the foot front.

Subsequent to the sale of the bonds the error was evidently discovered and the ordinance determining to proceed and the assessing ordinance were amended so as to provide for an assessment by the foot front.

In view of the fact that, at the time of the passing of the bond ordinance there was in reality no legal assessment, I feel that there is doubt as to the validity of the bonds so sold.

Under the curative provisions of Section 3902 of the General Code, the assessment can doubtless be corrected, but it would appear that new proceedings should be had from the time of the first deviation from the correct method of procedure. This carries with it, of course, the necessity of a new bond ordinance.

For these reasons I feel that there is such a doubt in regard to the validity of the bonds as to compel me to advise their rejection.

Respectfully,

EDWARD C. TURNER,

Attorney General.

361.

COUNTY SHERIFF—DUTIES AS TO FEEDING OF PRISONERS—AUTHORITY OF COUNTY COMMISSIONERS—AMENDED SENATE BILL No. 28, CONSTRUED.

SYLLABUS:

1. *Under the provisions of Amended Senate Bill No. 28 amending Section 2850, General Code, sheriffs in all counties are required to render on the fifth day of each calendar*

month 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 regardless of the number of prisoners confined in the county jail during the year next preceding.

2. Under the provisions of Amended Senate Bill No. 28 amended Section 2850, General Code, sheriffs in all counties shall be allowed by the county commissioners the actual cost of keeping and feeding prisoners and other persons confined in the county jail at a rate not to exceed seventy-five cents per day of three meals each, regardless of whether or not the average number of prisoners or other persons confined in the county jail during the next preceding year exceeded twenty in number.

3. 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.

4. Under the provisions of Amended Senate Bill No. 28 the sheriff is required to file with the county commissioners each month an itemized and accurate account with all bills attached showing the actual cost of keeping and feeding prisoners and other persons placed under his charge and the said bills when approved by the county commissioners shall be paid by them direct to the persons presenting the bills on warrants of the county auditor.

COLUMBUS, OHIO, April 21, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads as follows:

“You are respectfully requested to furnish this department with your written opinion upon the following question, arising under the provisions of Section 2850 of the General Code as amended by Amended Senate Bill No.28, passed at the present session of the General Assembly, copy of which is enclosed herewith.

Under this section as amended are all sheriffs, including those in counties where the daily average number of prisoners or other persons confined in the county jail, do not exceed twenty in number, required to render to the county commissioners an itemized account with all bills attached showing the actual cost of keeping and feeding the prisoners during the month, or are the sheriffs of counties having an average of less than twenty prisoners not required to file such account?

Second question: May the county commissioners allow sheriffs in counties having an average of less than twenty prisoners in jail, not less than .15 nor more than .25 per meal regardless of the actual cost of feeding such prisoners?

Third question: Does this act authorize the county commissioners to determine the menu which the sheriff shall furnish to the prisoners or what is meant by the provision that all food shall be purchased by the sheriff under rules and regulations to be prescribed by the county commissioners?

Fourth question: This act provides that the sheriff shall file on the 5th day of each month 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 further provides such bills when approved by the county commissioners shall be paid out of the county treasury on warrant of the county auditor. Do these provisions mean that the county commissioners are to pay the sheriff for the amount of bills presented or are the

allowances to be made to the persons presenting the bills and the warrants of the county auditor issued to such persons?"

Your first and second questions have been answered in a former opinion of this department rendered under date of April 11th, 1927, to Honorable John W. Dugan, prosecuting attorney, New Lexington, Ohio, a copy of which opinion I am enclosing herewith.

Before proceeding to discuss the questions presented in your third and fourth inquiries I deem it advisable to set out Section 2850 as amended by Amended Senate Bill No. 28, which will become effective June 16, 1927, unless sooner repealed or amended, and Section 2850, General Code, as it now reads, as well as other pertinent sections of the Code to which I will have occasion to refer.

Section 2850, General Code, as amended by the terms of Amended Senate Bill No. 28 reads as follows:

"The sheriff shall be allowed by the county commissioners the actual cost of keeping and feeding prisoners or other persons confined in the jail, but at a rate not to exceed seventy-five cents per day of three meals each. The county commissioners shall allow the sheriff the actual cost but not to exceed seventy-five cents each day of three meals each for keeping and feeding any idiot or lunatic placed in the sheriff's charge. *All food shall be purchased by the sheriff under rules and regulations to be prescribed by the county commissioners.* On the fifth day of each month the sheriff shall render to the county commissioners 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 counties where the daily average number of prisoners or other persons confined in the county jail during the year next preceding, as shown by the statistics compiled by the sheriff under the provisions of Sections 3158 and 3159 of the General Code, did not exceed twenty in number, the commissioners shall allow the sheriff not less than fifteen cents nor more than twenty-five cents per meal. *Such bills, when approved by the county commissioners, shall be paid out of the county treasury on the warrant of the county auditor.* The sheriff shall furnish, at the expense of the county, to all prisoners or other persons confined in the jail, fuel, soap, disinfectants, bed, clothing, washing and nursing when required, and other necessaries as the court in its rules shall designate. The jail register and the books of accounts, together with bills for the feeding of prisoners and other persons in the jail, shall be open to public inspection at all reasonable hours." (Italics the writer's).

Section 2850, General Code, now in force, reads as follows:

"The sheriff shall be allowed by the county commissioners not less than forty-five nor more than seventy-five cents per day for keeping and feeding prisoners in jail, but in any county in which there is no infirmary, the county commissioners, if they think it just and necessary, may allow any sum not to exceed seventy-five cents each day for keeping and feeding any idiot or lunatic. The sheriff shall furnish at the expense of the county, to all prisoners confined in jail, except those confined for debt only, fuel, soap, disinfectants, bed, clothing, washing and nursing when required, and other necessaries as the court in its rules shall designate."

Section 2997, General Code, reads in part as follows:

"In addition to the compensation and salary herein provided, the county commissioners shall make allowances quarterly to each sheriff for keeping and feeding prisoners, as provided by law, * * *. Each sheriff shall file under oath with the quarterly report herein provided for a full, accurate and itemized account of all his actual and necessary expenses, including railroad fare, street car fare, telephone tolls and livery hire mentioned in this section before they shall be allowed by the commissioners. * * **"

Section 3162 provides in part:

"The court of common pleas shall prescribe rules for the regulation and government of the jail of the county, not inconsistent with the law, upon the following subjects: * * *

Tenth—Other regulations necessary to promote the welfare of the persons. (prisoners.)"

Coming now to the consideration of your third question, it will be helpful to consider a recent case decided by the Supreme Court of Ohio, viz., the case of *Kohler, Sheriff vs. Powell, et al.*, 115 O. S. 418; Vol. XXV, The Ohio Law Bulletin and Reporter, January 17, 1927, page 285. In this case the court had under consideration the construction and relative significance of Sections 2850, 2997 and 3162 of the General Code. In the course of the opinion Judge Kinkade said:

"Section 3162 of the General Code confers on the common pleas court 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 this opinion, when considering the tenth specified subject about which the common pleas court was empowered to make rules, the language of the statute being: "Other regulations necessary to promote the welfare of the persons," made this comment:

"We have no difficulty in reaching the conclusion that the legislature clearly and definitely intended by these provisions 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.*"

In considering the applicability of the principles of the Kohler case to the question at hand we must necessarily note that the statute (Section 2850, General Code), which was in force at the time the court decided this case did not include the provision: "All food shall be purchased by the sheriff under rules and regulations to be prescribed by the county commissioners." This was inserted in Amended Senate Bill No. 28 after the decision of the court in the Kohler case and we must necessarily conclude that the legislature had in mind the decision in the Kohler case and considered the fact that under the law then in force, the Common Pleas Court was vested with the power to make rules and regulations with reference to the diet of the prisoners and that the Supreme Court based its decision with reference to the diet of the prisoners on the construction of that part of Section 3162, supra, wherein it is provided that the Common Pleas Court is empowered to make rules for the regulation of the county jail, including "other regulations necessary to promote the welfare of the persons" confined in the jail, and the further provision of law contained in Section 13574, General Code, wherein it is provided that the grand jurors shall visit the county jail, inquire into the discipline and treatment of the prisoners, their habits, diet and accommodations and

report to the court whether or not the rules prescribed by the court have been faithfully kept and observed.

In amending Section 2850, *supra*, by the enactment of Amended Senate Bill No. 28, no change was made in either Sections 3162 or 13574, *supra*. 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.

Such rules as the commissioners are empowered to make by the provision that "all food shall be purchased by the sheriff under rules and regulations to be prescribed by the county commissioners" only go to regulating the *purchasing* of the food and not to the regulation of the diet of the prisoners or the prescribing of a menu to be served.

Taking up your fourth question it is significant to observe that before the passage of Amended Senate Bill No. 28 the law provided in Section 2997, *supra*, that quarterly allowances should be made to the sheriff for the cost of keeping and feeding prisoners confined in the county jail and that in neither said Section 2997 nor in Section 2850, *supra*, was there any requirement that the sheriff should attach to his quarterly account which he was required to file under Section 2997, *supra*, bills showing the actual cost of keeping and feeding the prisoners.

This provision was inserted in the amendment that was made to Section 2850 by Amended Senate Bill No. 28, and the time when the itemized statement with reference to food for prisoners must be filed was changed from quarterly to the requirement that it be made on or before the fifth day of each month.

As the law stood before the enactment of Amended Senate Bill No. 28 the sheriff purchased the supplies and rendered his account for them each quarter to the commissioners and the allowances were then made by the commissioners to the sheriff for the amount shown by the account if deemed correct. While in the first line of Section 2850 as amended the language is the same as before, to-wit, "the sheriff shall be allowed by the county commissioners", later on in the act it is provided that monthly accounts must be made with all bills attached showing the actual cost of keeping and feeding prisoners and "*such bills when approved by the county commissioners shall be paid out of the county treasury on the warrant of the county auditor.*"

It is clear that the legislature must have intended by the insertion of this latter clause in the statute that the county commissioners were to pay the bills instead of making the allowance for this particular expense direct to the sheriff and letting him pay the bills, as is done when allowances for other expenses incurred by the sheriff are made.

Specifically answering your questions:

1. Under the provisions of Amended Senate Bill No. 28 amending Section 2850, General Code, sheriffs in all counties are required to render on the fifth day of each calendar month 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 regardless of the number of prisoners confined in the county jail during the year next preceding.

2. Under the provisions of Amended Senate Bill No. 28, amending Section 2850, General Code, sheriffs in all counties shall be allowed by the county commissioners the actual cost of keeping and feeding prisoners and other persons confined in the county jail at a rate not to exceed seventy-five cents per day of three meals each regardless of whether or not the average number of prisoners or other persons confined in the county jail during the next preceding year exceeded twenty in number.

3. 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.

4. Under the provisions of Amended Senate Bill No. 28 the sheriff is required to file with the county commissioners each month an itemized and accurate account with all bills attached showing the actual cost of keeping and feeding prisoners and other persons placed under his charge and the said bills when approved by the county commissioners shall be paid by them direct to the persons presenting the bills on warrants of the county auditor.

Respectfully,
EDWARD C. TURNER,
Attorney General.

362.

COUNTY COMMISSIONERS—MUST APPROPRIATE MONEY FOR JUNIOR CLUB AND FARMERS INSTITUTE WORK AS PROVIDED FOR IN SECTIONS 9880-2 AND 9918, GENERAL CODE.

SYLLABUS:

The provisions of Sections 9880-2 and 9918 of the General Code are mandatory, and in so far as the funds in the county treasury will permit, having due regard for other expenditures made mandatory by statute, it is the duty of the county commissioners to appropriate sufficient funds to enable the county auditor to file the certificate required by Section 5660, General Code, and to draw his warrant for the amounts and to the persons respectively named in Sections 9880-2 and 9918, upon compliance by the organizations described in such sections with all the terms and conditions thereof.

COLUMBUS, OHIO, April 21, 1927.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date reading as follows:

“I am in receipt of the enclosed communication from the president of the Gallia County Farm Bureau, in which he fails to tell me just what he wants, but I take it for granted from conversation with him, that the information wanted is whether the provisions of the sections referred to are mandatory.

On investigation I find there are four farmers' institutes in this county; Section 9918 provides not to exceed \$25.00 for each of these, or less if the expenses of each does not amount to that sum, and that \$175.00 be sent to the Dean of the Ohio State University, which makes up the \$275.00 mentioned in his letter.

Under Sec. 9880-2, requiring commissioners to pay expenses,—for premiums to Juvenile Clubs,—not to exceed \$500.00, the commissioners have appropriated but the sum of \$150.00 which it is claimed will very much hamper if not curtail Juvenile Club work.

My notion of these sections is that they are mandatory, but the commissioners think not, and refuse to care for these expenses, so I must ask your opinion in the matter.”

With your letter you transmit a communication from the president of the Gallia County Farm Bureau, in the following language:

“I wish to call to your attention that the county commissioners have not