

follows that the fines so collected must be disposed of as provided in Section 12378, *supra*.

It is therefore my opinion that a justice of the peace in assessing fines for the violation of either Rule 26, of Section 479, General Code, or Section 481, General Code, must pay the fines so imposed and collected into the treasury of the county in which such fines were assessed, to the credit of the county general fund. This must be done within twenty days after the receipt of such fine by the justice of the peace.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

843.

SHERIFF—LIMITATION PROVIDED FOR IN SECTION 2850, GENERAL CODE, RELATIVE TO "75 CENTS PER DAY OF THREE MEALS EACH" APPLIES ONLY TO THE FEEDING OF PRISONERS—FURNISHING OF FUEL, SOAP, DISINFECTANTS, ETC., ADDITIONAL.

*SYLLABUS:*

*The limitation of Section 2850, General Code, viz., "but at a rate not to exceed seventy-five cents per day of three meals each" applies only to the feeding of prisoners and other persons confined in the jail and the further provision of said section, to the effect that "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" contemplates an expenditure above and beyond this amount.*

COLUMBUS, OHIO, August 9, 1927.

HON. WALTER J. MOUGEY, *Prosecuting Attorney, Wooster, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

"In reference to Section 2850 of the General Code of Ohio as amended by the last General Assembly, relating to the feeding of prisoners in the county jail, beg to ask your opinion as to whether the maximum allowed of seventy-five cents per day is to cover only the feeding of the prisoners, including such extras as washing, soap, heat and other necessaries for keeping them.

This section has caused us some little difficulty here as the County Commissioners have one opinion and the Sheriff's office another, and it is somewhat ambiguous to me as it provides at the beginning that 'the Sheriff shall be allowed by the County Commissioners the actual cost of *keeping and feeding* prisoners or other persons confined in jail, but at a rate not to exceed seventy-five cents per day for three meals each.' \* \* \* '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 rule shall designate'."

In answering your inquiry your attention is directed to Section 3612 of the General Code, which so far as pertinent to your inquiry, provides:

"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)."

This section was construed by the Supreme Court of Ohio in the recent case of *Kohler, Sheriff, vs. Powell, et al.*, 115 O. S. 418, the first paragraph of the syllabus of which reads:

"Section 3162 of the General Code confers upon 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."

Sections 3157, 3177 and 2850 of the General Code, respectively provide as follows:

Sec. 3157. "The sheriff shall have charge of the jail of the county, and all persons confined therein, keep them safely, attend to the jail and govern and regulate it according to the rules and regulations prescribed by the court of common pleas."

Sec. 3177. "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. \* \* \* "

Sec. 2850. "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 Section 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 commissioner, 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 necessities 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)

By the terms of Section 3177, supra, the county commissioners at the expense of the county, shall provide the articles and services herein enumerated. By the terms of Section 2850, supra, the sheriff shall furnish, at the expense of the county, to all prisoners or other persons confined in the jail, the articles and services therein enumerated and such other necessities as the common pleas court in its rules shall designate. Although, and as you indicate in your letter, Section 2850, supra, provides that "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" when this provision is read in connection with the entire section, it is clear that the legislature had reference only to *food*. That such was the legislative intent is clearly evidenced by the latter provision of the same section, viz., "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 necessities as the court in its rules shall designate." It seems clear that the word "keeping" must be construed in the light of the word "feeding" and that both words relate to food, while the words "fuel, soap, disinfectant, bed, clothing, washing and nursing when required, and other necessities" include necessities other than food.

Section 2850, supra, now and before its recent amendment fixed a maximum rate of seventy-five cents per day per prisoner. As stated by Judge Kincaid in the Kohler case, supra, on page 423:

"the legislature clearly intended to prevent both extravagant overfeeding and niggardly underfeeding of the prisoners. \* \* \* Some stress is laid upon the word 'keeping' as used in connection with the word 'feeding' and, as we understand counsel, their claim is that the words 'keeping and feeding prisoners' \* \* \* contemplate some further service by the sheriff outside of the matter of feeding the prisoners, for the performance of which the legislature intended to compensate the sheriff. If this is true, it seems more than strange that the legislature did not define the service covered by the word 'keeping' \* \* \*. The first duty of the sheriff is to keep the prisoners committed to jail until they are legally released. If he does not keep them, he will have no prisoners to feed."

Section 2850, supra, before its recent amendment, provided:

"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."*

Then as now the law imposed upon the sheriff the duty of "keeping and feeding prisoners" and in addition thereto "to furnish, at the expense of the county" other necessaries including the articles and services therein enumerated.

In view of the foregoing and answering your question specifically it is my opinion that the limitation of Section 2850, supra, viz., "but at a rate not to exceed seventy-five cents per day of three meals each" applies only to the *feeding* of prisoners and other persons confined in the jail and that the further provision of said section, viz., "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" contemplates an expenditure above and beyond this amount. The law imposes upon the sheriff the duty to furnish the same, the expense therefor is to be paid by the county.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

844.

MUNICIPALITY—CHARTER PROVISIONS—SELECTION OF BOARD OF TRUSTEES OF THE FIREMEN'S PENSION FUND.

*SYLLABUS:*

*Where, by charter provision all powers of local self government are reserved to a municipality, and the legislative powers incident thereto are vested in the council of such municipality, such council is authorized to adopt by ordinance a method of selecting the board of trustees of the Firemen's Pension Fund at variance with that prescribed by general law.*

COLUMBUS, OHIO, August 9, 1927.

*Bureau of Inspection and Supervision of Public Works, Columbus, Ohio.*

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

"Article I of the Charter of Cincinnati reads:

"The city shall have all powers of local self-government and home rule and all powers possible for a city to have under the Constitution of the State of Ohio. The city shall have all powers that now or hereafter may be granted to municipalities by the laws of the State of Ohio. All such powers shall be exercised in the manner prescribed in this Charter, or if not prescribed herein, in such manner as shall be provided by ordinance of the Council."

Section 1 of Article II of the Charter reads:

"All legislative powers of the city shall be vested, subject to the terms of this charter and of the Constitution of the State of Ohio, in the Council.