

1183.

SHERIFF—FEEDING OF PRISONERS BY WIFE OF SHERIFF—NO PERSONAL PROFIT TO SHERIFF—CONTRACT BY MATRON TO FEED PRISONERS IN COUNTY JAIL, ILLEGAL—SECTION 12910, GENERAL CODE, DISCUSSED.

SYLLABUS:

1. *The relation of husband and wife is such that the relation alone does not engender an interest of the husband in the contracts of the wife, and where a county sheriff contracts with his wife for the furnishing of meals to the prisoners in the county jail, to be paid for from county funds, he does not thereby become interested in a contract for the purchase of supplies for the use of the county, in violation of Section 12910, General Code. Nor can he be said thereby to secure a private personal profit out of the feeding of the prisoners confined in the jail.*

2. *Where a sheriff is permitted to enter into a contract for the furnishing of prepared meals for the prisoners in the county jail and does so contract, the itemized monthly statements which he is required to file, showing the actual cost of the feeding of such prisoners, together with the bills therefor attached, should show the actual number of meals served and the dates thereof and the price per meal which he is required to pay, and the bills attached thereto should be the statements rendered to him by the person or persons with whom he had contracted to furnish such meals.*

3. *A contract made by the matron of a county jail whereby she agrees to furnish meals for the prisoners in the county jail, is in violation of Section 12910, General Code, and therefore illegal.*

COLUMBUS, OHIO, October 21, 1927.

HON. EUGENE S. OWEN, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter in which you request an answer to the following questions:

“1st: Can the county commissioners authorize the sheriff of the county to enter into a contract with a restaurant or some other person to furnish the meals and serve them to prisoners in the jail, of course for not less than 15 cents nor more than 25 cents per meal?”

2nd: Can the sheriff enter into a contract with a restaurant keeper or some other person to furnish the meals for the prisoners, and only make report monthly of the expense per meal and not the actual expense of the provision and labor performed in preparing and serving the same?”

3rd: Can the sheriff make such a contract with his wife, she being one of the family, to furnish the meals for the prisoners and serve them, and especially in a county where the daily average of the persons imprisoned in the jail for the previous year did not exceed twenty, as in Delaware County, Ohio, the average is much less?”

4th: If the sheriff is permitted to enter into such contract does it relieve him from filing an itemized statement each month of the actual costs together with the bills for the actual expense of the provisions furnished in feeding the prisoners, or can he file an account showing only the costs of each meal served to them?”

In Opinion No. 833 rendered by this department under date of August 5th, 1927, and addressed to the Bureau of Inspection and Supervision of Public Offices, it was held:

“By the terms of Section 3162, General Code, the Court of Common Pleas has full, complete and exclusive authority to promulgate rules and regulations for the feeding of prisoners and other persons confined in county jails. In the absence of any such rule to the contrary, a sheriff may lawfully purchase food already prepared for consumption from a restaurant or other person, subject however, to such rules and regulations relating to the *purchasing* of food as may be prescribed by the county commissioners and to the limitations of Section 2850, General Code, that he shall be allowed only the actual cost of feeding such inmates but at a rate not to exceed seventy-five cents per day of three meals each.”

This applies to all counties, irrespective of the daily average number of prisoners, subject to the limitations of Section 2850, General Code, which are 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. \* \* \* 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. \* \* \*”

The law imposes a duty on the sheriffs in the several counties to feed the prisoners and other persons in their custody, subject to the rules and regulations made by the court of common pleas as authorized by Section 3162, General Code, and subject further to the rules and regulations made by the county commissioners with reference to the *purchasing* of the food.

The decision in the case of *Kohler, Sheriff, vs. Powell*, 115 O. S. 418 is to the effect that:

“The law does not permit the sheriff to secure a private personal profit out of the feeding of the prisoners confined in the jail.”

In the course of the opinion the court emphasizes the authority of the common pleas court with reference to matters pertaining to the welfare of the prisoners, and after referring to Sections 3157, 3158, 3162 and 13574 of the General Code, states:

“\* \* \* 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*, \* \* \*” (Italics the writer’s.)

Section 2850, General Code, provides that all food shall be purchased by the sheriff under rules and regulations to be prescribed by the county commissioners.

The effect of these several provisions of law is that the manner of feeding, the quality and quantity of the food, and the kind and amount of food served, subject to the limitations imposed by law as to its cost, are matters which are within the prov-

ince of the court of common pleas to regulate by the promulgation of rules, while the actual purchasing, that is the time, place and manner of purchasing, and quantities to be purchased at one time are matters to be regulated by rules which the county commissioners may prescribe.

The sheriff is in fact a mere ministerial officer so far as feeding of the prisoners is concerned. That is to say, he is to do the actual feeding and purchasing of the food and the procuring of statements showing the amount and actual cost of the food purchased, subject to the rules of the court as to the manner of feeding, the kind, quality, quantity and amount of food served and subject to the rules of the county commissioners as to the place where, time when, and manner of purchasing the food. It is provided in Section 2850, General Code, that:

“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. \* \* \* Such bills, when approved, by the county commissioners, shall be paid out of the county treasury on the warrant of the county auditor. \* \* \*”

In the absence of rules of the common pleas court or of the commissioners, the sheriff being charged with the duty of providing for the sustenance of the prisoners would necessarily be required to use his discretion with reference to matters not covered by rules, and in the absence of any violation of law on the sheriff's part, his exercise of such discretion could not be questioned.

As held in Opinion No. 833, supra, in the absence of any rules to the contrary, or if rules were promulgated permitting it, a sheriff may purchase food for the prisoners already prepared. In such a case he should render bills therefor at the actual cost to him. If it be at the rate of a prescribed price per meal, that is what the bill should show, because that would be the actual cost to him. The bills should be rendered to the county commissioners showing the actual cost per meal and should not contain or show the cost of the materials that went into the making of the meals.

In the case of the Board of Education of *Zaleski School District, et al, vs. Boal*, 104 O. S. 482, it was sought to enjoin a board of education and its treasurer from paying the salary of a school teacher, who was the wife of one of the members of the board of education which had employed her, the contention being that such employment was illegal for the reason that it was a violation of Section 12932, General Code, which makes it a penal offense for a member of a board of education to participate in the employment of his father or brother, mother or sister as a teacher or instructor in the public schools, over which the board of which he is a member has jurisdiction, and for the further reason that a member of the board of education was prohibited by the terms of Section 4757, General Code, from having either directly or indirectly any pecuniary interest in any contract of the board.

Section 4757, General Code, reads as follows:

“Conveyances made by a board of education shall be executed by the president and clerk thereof. No member of the board shall have directly or indirectly any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as clerk or treasurer. No contract shall be binding upon any board unless it is made or authorized at a regular or special meeting of such board.”

In the course of the opinion, the court said:

*"The rights of a married woman in this state have been extended by express provisions of our laws, and she now has the full power to contract, and the unlimited right to have and enjoy the benefits of her contracts and the fruits of her employment. These modern statutes relating to the property rights of married women are generally intended to cut off the common-law rights of the husband to the personal estate of the wife. They have been construed to constitute as her separate estate a separate business or trade which she may carry on, and all the property incident thereto. Under the provisions referred to, the earnings of a married woman, or property acquired by her labor, constitute her separate property, and no part thereof or interest therein can in any wise be claimed by the husband as against her. 13 Ruling Case Law 1149, Section 173.*

If the power to contract in her own right, or the enjoyment of the fruits of her employment, is to be denied or limited, such denial or abridgment thereof must be found in some express provision of the legislation of the state. It cannot be imposed by action of the court." (Italics the writer's.)

Section 12910, General Code, reads as follows:

*"Whoever, holding an office of trust or profit by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education or a public institution with which he is connected, shall be imprisoned in the penitentiary not less than one year nor more than ten years."*

The question is presented as to whether or not a sheriff who contracts with his wife for the furnishing of meals to the prisoners would be said to be interested in a contract for the purchase of supplies for use of the county in violation of the terms of said Section 12910, *supra*. As will be noted, the provisions of Section 12910, General Code, would have no application to the facts considered in the case of the *Board of Education vs. Boal*, *supra*. However, if a member of a board of education can not be said to have any direct or indirect pecuniary interest in a contract, made by the board of education, of which he is a member, with his wife for services as a teacher, it would seem to follow that a sheriff could not be said to be interested in a contract for the purchase of supplies for the use of the county in the event he made a contract with his wife to furnish meals to the prisoners in the county jail over which he had control.

It has come to my attention that in some counties the sheriff has appointed his wife to be matron of the jail. By the terms of Section 3178, General Code, sheriffs are authorized, with the approval of the probate judge, to appoint not more than three jail matrons, and there are no provisions of law which prohibit the appointment by the sheriff of his wife as one of the matrons. In fact such an appointment is commonly and usually made.

It was in the case of the *State of Ohio, ex rel., Falconer vs. Cooper* 12 O. N. P (N. S.) 659, that a woman serving as matron of a jail is not a public officer, but is an assistant to the sheriff, and sustains the relation of an employe similar to that of a deputy sheriff. Although not suggested in your inquiry, the question naturally arises whether or not if a sheriff with the approval of the probate judge, had appointed his wife to be jail matron, she could legally contract to supply meals for the prisoners without herself violating the provisions of Section 12910, General Code.

While Section 12910, General Code, is a penal section and must therefore be strictly construed, it seems clear to me that even though we apply the rules of strict construction to the statute, it must be said that anyone agreeing to furnish meals for prisoners in the county jail, would be "interested in the contract for the purchase of supplies for the county" which is clearly prohibited by Section 12910, *supra*, and

as a jail matron is an agent or servant or employe of the sheriff, a jail matron who did so contract, would be amenable to the provisions of the statute. It of course follows that a county sheriff can not be authorized to contract with his wife for the supplying of meals to the prisoners if she be the matron of the jail.

With reference to the four questions submitted in your letter, the first two questions having been specifically answered in Opinion No. 833, above referred to, a copy of which is herewith enclosed, I do not again answer them.

As to the third and fourth questions, it is my opinion that:

1. The relation of husband and wife is such that the relation alone does not engender an interest of the husband in the contracts of the wife; and where a county sheriff contracts with his wife for the furnishing of meals to the prisoners in the county jail to be paid for from county funds he does not thereby become interested in a contract for the purchase of supplies for the use of the county in violation of Section 12910 General Code. Nor can he be said thereby to secure a private personal profit out of the feeding of the prisoners confined in the jail.

2. Where a sheriff is permitted to enter into a contract for the furnishing of prepared meals for the prisoners in the county jail, and does so contract, the itemized monthly statements which he is required to file showing the actual cost of the feeding of such prisoners, together with the bills therefor attached, should show the actual number of meals served and the dates thereof and the price per meal which he is required to pay, and the bills attached thereto should be the statements rendered to him by the person or persons with whom he had contracted to furnish such meals.

3. A contract made by the matron of a county jail whereby she agrees to furnish meals for the prisoners in the county jail is in violation of Section 12910, General Code, and therefore illegal.

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

1184.

APPROVAL, NOTE OF THE OTTERBEIN HOME RURAL SCHOOL DISTRICT, WARREN COUNTY, OHIO—\$900.00.

COLUMBUS, OHIO, October 21, 1927.

*Retirement Board, State Teachers' Retirement System, Columbus, Ohio.*

1185.

MOTOR VEHICLE—REGISTRATION, WHEN PURCHASED IN ANOTHER STATE—MORTGAGEES MUST EXECUTE BILLS OF SALE—PURPOSE OF SWORN STATEMENT.

**SYLLABUS:**

1. *Motor vehicles or used motor vehicles purchased outside the State of Ohio, and brought into this state, must first be registered before they may be operated on the highways*