

1455.

## JAILS—PAYMENT OF BILLS FOR KEEPING AND FEEDING PRISONERS.

*SYLLABUS:**Objections to opinion No. 361 considered and disapproved.*

COLUMBUS, OHIO, December 28, 1927.

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

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

“We are enclosing herewith a letter from our State Examiner in Hamilton County. You will note that some objection has been taken to that part of your opinion rendered to this department under date of April 21, 1927, which requires the county commissioners to allow and pay the bills of the persons furnishing the supplies to the jail instead of making payment to the sheriff upon presentation to the commissioners of receipted bills. Will you kindly advise this department whether after consideration of the objections set up in this letter any change could be made in your former opinion in this respect.”

The letter which you enclose takes issue with the construction placed by me upon Section 2850, General Code, as enacted in amended Senate Bill No. 28, of the 87th General Assembly, in my Opinion No. 361, rendered April 21, 1927. In the said opinion I held:

“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 warrant of the county auditor.”

Section 2850, General Code, as amended, 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. \* \* \* Such bills, when approved by the county commissioners, shall be paid out of the county treasury on the warrant of the county auditor. \* \* \*”

At the time of the amendment of Section 2850, supra, by the 87th General Assembly, former Section 2850, General Code, relating to the same subject was repealed.

The former section did not contain the clause "such bills when approved by the county commissioners shall be paid out of the treasury on the warrant of the county auditor." This language was first used in the amended statute. Your correspondent in his letter states after referring to my aforesaid opinion No. 361:

"The part of his opinion that is objectionable is clause 4 in which he states that all bills for foodstuffs, etc., must be paid directly to the vendors, instead of permitting the sheriff to pay the bills when rendered and be reimbursed monthly. This position taken by the commissioners and sheriff is strengthened by the wording of the first line of this law: 'The sheriff shall be allowed by the county commissioners the actual cost of keeping and feeding prisoners.' Later on the law reads 'Such bills when approved by the county commissioners, shall be paid out of the county treasury on the warrant of the county auditor.' I presume it is in this clause that the idea is obtained that bills are to be paid direct to the vendors, although the law does not exactly say so. \* \* \*

The sheriff is perfectly willing to advance his own money to pay these bills and take receipts, and present receipted bills to the commissioners monthly, thus saving the county large sums in discounts. Then of course the entire amount would be paid to the sheriff, and it seems that the law would justify this method as well as any other. \* \* \*\*

I am unable to understand how anyone can presume to construe the language contained in the above statute and give effect to the language inserted at the time of the last amendment, wherein it says:

"Such bills when approved by the county commissioners shall be paid out of the county treasury on the warrant of the county auditor."

and conclude that the law would be complied with by permitting the sheriff to pay the bills out of his own pocket and then present the receipted bills for allowance.

We are not permitted in the construction of statutes to read something into them that is not there, or to ignore language that is there.

I am bound, in the construction of the statute, to give effect to the language of the supreme court which was used in the case of the county board of education of Hancock County vs. Boehm, et al. (102 O. S. 292) wherein it is said:

"When an existing statute is repealed and a new and different statute upon the same subject is enacted, it is presumed that the legislature intended to change the effect and operation of the law to the extent of the change in the language thereof."

I see no reason to modify my former opinion.

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