

6071.

COUNTY COMMISSIONERS—UNAUTHORIZED TO PAY FOR
DEPUTY SHERIFFS TELEPHONE AT HIS PRIVATE RESI-
DENCE.

SYLLABUS:

County commissioners are unauthorized to pay the expenses of a telephone in the private residence of the deputy sheriff, when such residence is not at the county jail.

COLUMBUS, OHIO, September 14, 1936.

HON. JOHN B. MEISTER, *Prosecuting Attorney, Wauseon, Ohio.*

DEAR SIR: Your recent communication reads as follows:

"I wish to submit the question of whether the county commissioners are authorized to pay the expenses of owning a phone for a deputy sheriff who would have no use for the phone outside the county business. Sec. 2850 Ohio General Code and annotations thereunder go into the matter of the county commissioners allowing the sheriff for the keeping and feeding of prisoners but do not touch on the phone question. Under said section 2850 there is an attorney general opinion No. 1933 of 1935, however, holding that county commissioners are without authority to provide for the expense of that part of the county jail which is used by the sheriff as a residence, and that county commissioners are unauthorized to pay for the electric current used to prepare the meals of the sheriff and his family but may pay for the electric current used to prepare the meals of the prisoners in the county jail. This opinion, however, does not go so far as to say what allowance may be made for the deputy sheriff."

From your communication, it is presumed that you desire to know whether or not the county commissioners are authorized to pay the expenses of a phone proposed to be installed in the private residence of the deputy sheriff, which residence is not at the county jail.

At the outset, it may be stated that it is well recognized that county commissioners have authority to spend moneys of the county only where there is express or implied authority conferred by law.

It was held in Annual Report of the Attorney General for 1911-1912, Vol. I, Page 216, as disclosed by the syllabus:

“By virtue of the discretion vested in them by section 3157 G. C., the county commissioners may provide the office of a sheriff in a county jail with a telephone.

The same is true with regard to their right to place a telephone in the residence of a sheriff *when such residence is in the county jail.*” (Italics the writer’s.)

After quoting sections 2419 and 3157, General Code, the then Attorney General stated in the opinion:

“The county commissioners are vested, by virtue of the above section, 2419 of the General Code, with a wide discretion in building a county jail, and they have determined in this case that in order to carry out the provisions of the above section 3157 General Code, it is for the best interest of the public that the residence of the sheriff should be located in said jail. If in the judgment of said county commissioners it is for the best interest of the county that a telephone for the use of the sheriff and the public shall be located in the jail for the proper performance of the duties of said sheriff, they may so locate one, and it is also discretionary with them as to the exact location of said telephone in said jail.

My opinion, therefore, is that the rent of a telephone in the sheriff’s residence where said residence is in and a part of the county jail, is a legal charge against the county, provided the county commissioners shall determine that it is for the best interest of the public and necessary for the sheriff in the proper performance of his duties that such a telephone shall be so located in the jail.”

While the said opinion did not undertake to mention or discuss the provisions of section 2850, General Code, which you mention in your communication, and which section read at that time substantially the same as it now reads, yet it is to be presumed that such section was noted by the then Attorney General, but was not mentioned therein because undoubtedly it was considered that its subject matter could not possibly be said to provide authority for the furnishing of a telephone to the sheriff. Such section 2850, General Code, provides:

“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 G. C. §§3158 and 3159, 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."

Obviously, there is nothing in such section which could be said to give express or implied authority for the furnishing of a telephone for the sheriff or a deputy sheriff who, by virtue of section 9, General Code, possesses all the powers of his principal.

In Opinions of the Attorney General for 1933, Vol. II, Page 1430, it was held, as disclosed by the syllabus:

"A board of elections is not authorized to provide a telephone in the residence or private business office of its clerk."

In the opinion it is stated:

' * * * There being no provision of law authorizing the installation of telephones in the homes of the clerk and deputy clerk, I am of the opinion, that the act of the board in authorizing telephones to be so installed is without authority of law, and the payment therefor would be illegal.'

I am of the opinion therefore that a board of elections is not authorized to provide a telephone in the residence or private business office of its clerk."

The principle of the foregoing opinion applies equally as well to the present situation. There being no authority, express or implied, to maintain at public expense a telephone in the residence or private business office of the deputy sheriff, I am of the opinion, in specific answer to your question, that county commissioners are unauthorized to pay the expenses of a telephone in the private residence of the deputy sheriff, when such residence is not at the county jail.

The opinion to which you call attention in your communication is probably Opinion No. 1889, rendered November 29, 1933, and reported in Opinions of the Attorney General for 1933, Vol. III, Page 1777. There is no opinion No. 1933 of 1935. An examination of the 1933 opinion shows that it has no bearing on the instant question.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6072.

APPROVAL—CONTRACT FOR PLUMBING FOR PROJECT KNOWN AS HOSPITAL, OHIO STATE SANATORIUM, MT. VERNON, OHIO, \$1,475.00, AETNA CASUALTY AND SURETY COMPANY OF HARTFORD, CONN., SURETY-WUELLEMER & THEADO OF COLUMBUS, OHIO, CONTRACTOR.

COLUMBUS, OHIO, September 11, 1936.

HON. CARL G. WAHL, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Public Welfare, and Wuellmer & Theado of Columbus, Ohio. This contract covers the construction and completion of contract for plumbing for a project known as Hospital, Ohio State Sanatorium, Mt. Vernon, Ohio, in accordance with Item No 2 of the form of proposal dated July 27, 1936. Said contract calls for an expenditure of one thousand four hundred and seventy-five dollars (\$1,475.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. In addition, you have