

declaration and declared to me that the statements made therein were true as he verily believed.

Signed.....

Subscribed and sworn to before me this.....day of

....., 19.....

Signed.....

.....
 (Title of officer.)"

In the form of the above declaration, the party desiring to become a candidate states whether he did or did not vote for a majority of the candidates of his party at the last general election. This shows the intention that voting at the last general election is not a prerequisite, otherwise the form would have contained the declaration only that he did vote for a majority of the candidates of his party at such election.

I am of the opinion, therefore, that a voter cannot be denied the right to have his name appear on the primary ballot because of the fact that he did not vote at the last general election held in even numbered years.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4217.

SHERIFF—COST OF FEEDING PRISONERS—COUNTY COMMISSIONERS MUST ALLOW ACTUAL COST WITHIN 75 CENTS LIMITATION PER DAY—RIGHT OF COUNTY COMMISSIONERS TO REGULATE.

SYLLABUS:

1. *In the absence of a violation of rules and regulations adopted by the county commissioners concerning the feeding of state prisoners in the county jail by the county sheriff, the county commissioners must allow the sheriff his actual cost of feeding such prisoners, subject to the 75c per day limitation set by Section 2850, General Code.*

2. *County commissioners may require the sheriff to furnish food for prisoners confined in the county jail and file the original bills with the county commissioners as provided by Section 2850, General Code.*

3. *County commissioners may not control the amount allowed by the sheriff for the preparation of meals for state prisoners confined in the county jail, unless such action is necessary to keep the cost of such meals within the statutory limitation of Section 2850, General Code.*

COLUMBUS, OHIO, April 1, 1932.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads:

"In opinion No. 1608 of the year 1928, it was held by the Attorney General that a contract might be made by the sheriff for the furnishing of

prepared meals for the prisoners in the jail. It is further held that in the absence of rules to the contrary, the sheriff may contract with his wife for the furnishing of prepared meals for the prisoners in the jail.

QUESTION:—May the County Commissioners control the amount of the contract made by the sheriff for the furnishing of prepared meals to the prisoners or are such commissioners required to appropriate and pay whatever amount within the 75c per day of three meals each, contracted for by the sheriff?

QUESTION No. 2:—May the County Commissioners require the sheriff to furnish food for the prisoners and file the original bills with the County Commissioners, as provided by Section 2850, G. C., thus preventing the sheriff from contracting for prepared meals?

QUESTION No. 3:—May the Commissioners control the amount which the sheriff pays for the preparation of meals? In other words, can they control the amount paid a cook?"

Section 2850, General Code, reads in part 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 and 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 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."

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, * * *".

I assume for the purposes of your first inquiry that the contract in question was made by the sheriff in the absence of any rule or regulation of the county

commissioners conveying the same, or, if rules and regulations had been established by the county commissioners, that the contract was in conformity with such rules and regulations.

An examination of the provisions of Section 2850, *supra*, discloses that the language therein used imposes the duty on the county commissioners of allowing the sheriff his actual cost of feeding prisoners in the county jail, subject to the 75c limitation therein provided. This is apparent from a consideration of the fact that such section, in defining the duty of the county commissioners in allowing the sheriff's expenses for the actual cost of feeding prisoners confined in the county jail, uses the word "shall", and there is no doubt but that the word as used is mandatory. And this conclusion follows regardless of whether or not such cost arises contractually.

It is, therefore, my opinion, in answer to your first inquiry, that in the absence of a violation of rules and regulations adopted by the county commissioners concerning the feeding of state prisoners in the county jail by the county sheriff, the county commissioners must allow the sheriff his actual cost of feeding such prisoners, subject to the 75c per day limitation set by Section 2850, General Code.

As to your second question, your attention is directed to an opinion found in Opinions of the Attorney General, 1929, page 534, the first branch of the syllabus of which reads:

"A board of county commissioners may lawfully adopt rules requiring the sheriff to file with that board requisitions for the food to be purchased for feeding the State prisoners in the county jail, as well as for the compensation of persons for cooking and serving such food."

In the body of the opinion, after reviewing various statutes and cases applicable to the question of the feeding of prisoners in the county jail by the sheriff and the method of compensation therefore, it was stated:

"It seems clear, from the provisions of Section 2850, General Code, as amended in 1927, keeping in mind the principles of the case of *Kohler, Sheriff, vs. Powell*, 115 O. S. 418, and certain facts of contemporary history not necessary to review at this time, that the intention of the Legislature was, by this enactment, to place the control of the purchase of food for State prisoners in the county jail entirely in the hands of the county commissioners, to the end that there should be no question with reference to the sheriff's making a profit from the feeding of those prisoners. The effect of the provisions of this statute is to virtually make the sheriff merely the agent of the county commissioners with respect to the manner of the purchase of the food for State prisoners in the county jail. The terms of the statute give to the commissioners the complete and sole authority for the promulgating of rules relating to the manner of the purchase of the food for the prisoners, and the sheriff is bound to conform to those rules and regulations in the making of purchases. If the commissioners should see fit to require requisitions to be made before the purchases are made, the authority given in the statute is certainly broad enough to permit rules and regulations of that kind and, inasmuch as the entire cost of the purchase, preparation and serving of the food to the prisoners is limited by the statute, the commissioners must necessarily have the control of the amount to be paid to the person or persons for cooking and serving the food to the extent that it is nec-

essary to limit that amount so as to keep the entire cost of feeding the prisoners within the limitations of the statute and might lawfully promulgate a rule requiring requisitions for the cost of such cooking and serving of meals, so that they could properly determine whether or not the limits of the cost of feeding the prisoners, as fixed by statute, will be exceeded."

In Opinion No. 3002, Opinions of the Attorney General for 1931, I held, as disclosed by the second branch of the syllabus, that:

"The county commissioners have the exclusive authority to prescribe the rules and regulations with reference to the sheriff purchasing food for prisoners confined in the county jail."

In the body of that opinion, it is stated:

"To my mind, the county commissioners in their rules and regulations, may prescribe the manner and the method in which the sheriff should purchase the food to be bought by him."

From the foregoing, it would seem apparent that the county commissioners, if they so desire, may authorize the sheriff to contract for the preparation and furnishing of food to state prisoners in the county jail, but if they determine that the public good requires otherwise, they could by appropriate rules or regulations prohibit the sheriff from entering into such a contract, for example, by stipulating that the food be purchased in certain quantities at certain intervals.

Coming now to your third inquiry, namely, whether or not the county commissioners may control the amount which the sheriff pays for the preparation of meals, from a consideration of the 1929 opinion above quoted, particularly that part relative to the control of the county commissioners over the amount to be paid to the person or persons for cooking and serving the food, it will be noted that the county commissioners have control over the same to the extent that it is necessary to limit that amount so as to keep the entire cost of feeding the prisoners within the limitations of the statute. It follows, therefore, that the county commissioners may control the cost of such cooking and serving to that extent only.

In answer to your third inquiry, I am of the opinion that the county commissioners may not control the amount allowed by the sheriff for the preparation of meals for state prisoners confined in the county jail, unless such action is necessary to keep the cost of such meals within the statutory limitations of Section 2850, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.