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COUNTY COMMISSIONERS—"LIVING QUARTERS" FOR SHERIFF—NO AUTHORIZATION TO PROVIDE RESIDENCE FOR SHERIFF UNLESS IN JAIL—NO ALLOWANCE FOR QUARTERS—JAIL REMODELING—307.01 R.C.—341.01 R.C.

SYLLABUS:

1. County commissioners may, in the exercise of a sound discretion, provide living quarters for the sheriff in the county jail.
2. County commissioners are unauthorized to provide a residence for the sheriff other than in the county jail, nor to provide the sheriff with a "living quarters" allowance or an outlay for rent of quarters.
3. When, during the repairing or remodeling of the county jail, the sheriff is displaced from the quarters provided for him in the county jail, the board of county commissioners may provide such substitute quarters as will facilitate the performance of his duties in a temporary jail wherein the county prisoners are confined.

Columbus, Ohio, January 3, 1957

Hon. Forrest E. Sidener, Jr., Prosecuting Attorney
Madison County, London, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Madison County Commissioners are remodeling the Madison County jail which is immediately adjacent to the sheriff's residence. The remodeling operation will necessitate the sheriff moving from the residence for a period of approximately ninety days. The commissioners do not know whether they are authorized to provide other housing for the sheriff and his family during the remodeling operation.

"R. C. 325.07 and the annotations thereunder seem to govern the situations in which the sheriff may be compensated over and above his actual salary as authorized by law. I can find nothing in any of the annotations which answer my question although it appears that the matter might be discretionary with the commissioners.

"I would therefore appreciate your advising me whether or not the commissioners can or may provide housing for the sheriff while the remodeling operation is going on as aforesated."

I assume that the sheriff's residence is a residence provided by the county and not a residence owned or rented by the sheriff, for displacement from which he might recover damages from the county. Section 325.07, Revised Code, provides a monthly allowance to the sheriff in addition to his compensation and salary. That section, however, lists in specific terms the purposes for which such funds may be allowed, and the purposes listed obviously do not include provision of living quarters under the circumstances outlined in your letter. In fact, there appears to be no specific statutory authority for a board of county commissioners to provide living quarters for the sheriff at county expense.

Although there is no *specific* statutory authority for providing quarters for the sheriff, I find a court decision which appears to recognize the authority of the county commissioners to provide residence quarters for the sheriff or jailer in the jail. The Circuit Court of Wood County, in State, ex rel., L. E. B. G. & N. Railway Co., v. Toan, Auditor, 13 O. C. C. (N.S.) 276, ruled that county commissioners are without authority to provide for the expense of lighting that part of the county jail which is used by the sheriff as a residence.

The railway company brought suit in mandamus for the payment of a bill for electric lights furnished to the county court house, jail, and sheriff's residence. The bill was ordered paid by the commissioners, but the auditor refused to issue his warrant therefor, claiming that the sheriff's residence was not a part of the county jail and therefore it would be illegal to pay the bill.

The court said that there was no statute authorizing the building of a residence for the use of the sheriff in connection with the jail, yet the court said at page 280:

"* * * It is true, that in most counties the jail buildings are so built as to furnish a residence for the sheriff, and so far as

our information goes in no county is the sheriff expected to pay anything as a rental for the building which he occupies. It is furnished to him by the county in that way, but we can see no reason why the county should pay for the lighting of the residence part of the jail simply because it happens to be under the same roof, any more than the county should pay for it if it were in a separate building.

"It might be wise for the Legislature to so provide, but they have not done so, and without some authority upon the subject we do not feel warranted in entering the order here that the auditor should issue his warrant for the full amount of the bill."

In Opinion No. 154, Annual Report of the Attorney General for 1911-12, Vol. I, p. 216, Attorney General Hogan ruled that the county commissioners may provide a telephone in the residence of a sheriff when such residence is in the county jail. The opinion appears to be founded upon the provisions of Sections 2419 and 3157, General Code, now Sections 307.01 and 341.01, Revised Code.

Section 2419, General Code, empowered the commissioners to provide a court house, jail, offices for county officers, and an infirmary, when, in their judgment they, or any of them, are needed. Such buildings and offices are to be of such style, dimensions, and expense, as the commissioners determine. Section 3157, General Code, provided that the sheriff shall have charge of the jail of the county, and all persons confined there, keep them safely, attend to the jail, and govern it according to the regulations prescribed by the court of common pleas. Accordingly, the then attorney general recognized a discretion as being vested in the county commissioners to determine that in order for the sheriff properly to carry out his duties, it is for the best interest of the public that the residence of the sheriff should be located in the jail.

I concur in the views expressed in the 1911 opinion and accordingly recognize the power of the county commissioners to provide living quarters for the sheriff in the county jail where the commissioners deem such an arrangement to be in the best interests of the public.

It by no means follows, however, that the county commissioners have the authority to provide a residence or housing for the sheriff and his family *outside* the county jail, pending repairs and remodeling of the county jail. The only justification for providing living quarters for the sheriff *at* the jail is to enable the sheriff to have full charge of the jail and of the persons therein confined. The sheriff and his family have no

right to county-provided living quarters as such, but only the use of quarters provided in the jail, and then only when the commissioners wish to make such provision.

In Opinion No. 6071, Opinions of the Attorney General for 1936, Vol. III, p. 1392, it was held 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 1936 opinion and the 1911 opinion, both stress the distinction between a residence in the jail and a private residence.

Since the very purpose of providing living quarters is to facilitate the performance of the duties of the sheriff, with particular regard to the desirability of his being stationed near the place of confinement of the county prisoners, it would seem that the only provision which might be made for the sheriff pending remodeling of the jail, would be a substitute quarters in a temporary jail, wherein the prisoners are being confined. So long as the quarters would be located in the temporary jail or as an adjunct thereto, the commissioners would be acting within the limits of the law. In no case can funds in lieu of quarters be allocated to the sheriff to be used as a "housing allowance" or for the purpose of renting quarters of his own choosing.

Accordingly, it is my opinion that:

1. County commissioners may, in the exercise of a sound discretion, provide living quarters for the sheriff in the county jail.
2. County commissioners are unauthorized to provide a residence for the sheriff other than in the county jail, nor to provide the sheriff with a "living quarters" allowance or an outlay for rent of quarters.
3. When, during the repairing or remodeling of the county jail, the sheriff is displaced from the quarters provided for him in the county jail, the board of county commissioners may provide such substitute quarters as will facilitate the performance of his duties in a temporary jail wherein the county prisoners are confined.

Respectfully,
C. WILLIAM O'NEILL
Attorney General