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1. PRISONERS SENTENCED TO COUNTY JAIL—RESPONSIBILITY FOR BOARD AND MAINTENANCE—MAYOR'S COURT OR MUNICIPAL COURT—VIOLATION OF MUNICIPAL COURT—VIOLATION OF MUNICIPAL ORDINANCE OR INCARCERATED FOR NONPAYMENT OF FINE—MUNICIPAL CORPORATION RESPONSIBLE—SECTION 4564 G. C.
2. RESPONSIBILITY PLACED ON COUNTY—MAINTENANCE OF PERSONS SENTENCED TO COUNTY JAIL BY MAYOR'S COURT OR MUNICIPAL COURT—VIOLATION, STATE STATUTE OR INCARCERATED FOR NONPAYMENT OF FINE—SECTION 2850 G. C.

SYLLABUS:

1. Under the provisions of Section 4564, General Code, the responsibility for the board and maintenance of prisoners sentenced to a county jail by a mayor's court or a municipal court for violation of a municipal ordinance or confined therein for non-payment of the fine imposed for such violation is placed upon the municipal corporation.

2. Under the provisions of Section 2850, General Code, the responsibility for the board and maintenance of prisoners sentenced to a county jail by a mayor's court or a municipal court for violation of a state statute or confined therein for non-payment of the fine imposed for such violation is placed upon the county.

Columbus, Ohio, February 11, 1952

Hon. James R. Goslee, Prosecuting Attorney
Logan County, Bellefontaine, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The City of Bellefontaine, having no municipal jail, has entered into a contract with the Board of County Commissioners of Logan County under the terms of which persons convicted of violating ordinances and state misdemeanors in the mayor's court of the city of Bellefontaine are confined in the county jail. The contract provides that the city shall pay the expenses of all prisoners confined after conviction for violation of city ordinances but further provides that the responsibility for maintaining prisoners convicted of misdemeanors in state cases and sentenced by the mayor's court to the county jail for violations of such state laws or for non-payment of fines assessed in state cases shall be assumed by the county.

"An examination of the statutes, cases pertaining thereto and opinions of the Attorney General does not seem to directly answer the question as to whether or not the county commissioners should be required to maintain any prisoners who are jailed through the action of a mayor's court. Opinion No. 3211 of the Opinions of the Attorney General for 1931, holding that the expenses of the board and maintenance of a person held a municipal prisoner for trial for the violation of a state statute should be paid by the municipality seems to be more nearly in point than any other authority I have been able to locate but no opinion is expressed therein as to the liability of either the municipality or the county after conviction.

"The Board of County Commissioners have requested that I secure from you an opinion as to their responsibility, if any, for the board and maintenance of persons confined in the county jail after sentence by the mayor's court as a result of convictions of misdemeanors in state cases or for non-payment of fines assessed in state cases."

Since the receipt of your request, the new Bellefontaine Municipal Court, provided for by Section 1581 of the General Code, has been instituted as of January 1, 1952 and by the provisions of Section 1584, General Code, the jurisdiction of the mayor's court in all civil and criminal cases has terminated. This fact, however, does not affect the basic question

involved in your request. That basic question is whether a municipal corporation is responsible for the board and maintenance of persons convicted of misdemeanors under state statutes and sentenced to confinement in a county jail or ordered confined in such county jail for non-payment of fines in such state cases if such conviction and sentence was in a mayor's court or a municipal court.

It is quite clear that under the statutes of Ohio, the counties, on behalf of the state and the municipalities, have certain responsibilities for board and maintenance of prisoners. From an examination of the many statutes touching on this subject matter, I also believe that it is quite clear that, except to the extent specifically directed by statute, a municipality has such responsibility only for "municipal prisoners." I do not find, however, any statutes or decisions of Ohio courts, or previous opinions of this office, defining precisely what is meant by "municipal prisoners." Is a "municipal prisoner" only one who has been charged with or convicted of a violation of a municipal ordinance, or does such term include violators of state statutes where conviction is had in a mayor's court or a municipal court?

It is my opinion that the distinction is based solely on whether the violation is that of a municipal ordinance. The fact that the convicting court is designated as a mayor's court or a municipal court, supported at least in part by the municipal corporation, appears to be of no consequence in the consideration of this question. My opinion in this regard is in accord with what I understand has been the long accepted practice in Ohio and is fully supported by the reported authorities outside of Ohio. See *McQuillin on Municipal Corporations*, 3rd Edition, Volume 17, §§47.16 and 48.01, and cases cited therein. While a mayor's court or a municipal court may be considered as a part of the municipal corporation within a very limited sense, in the last analysis, under the provisions of Article IV, Section 15 of the Ohio Constitution, a court may not be created by action of a municipality, but only by action of the General Assembly. *Hilton v. Bell*, 108 Ohio St., 233.

The creation of mayor's courts and municipal courts is prescribed by state statute and their jurisdiction, including their jurisdiction to hear and determine cases involving the violation of state laws, is likewise prescribed by statute. Thus, it would appear that in so far as their right to hear and determine cases involving violations of state laws is concerned, they

operate as a part of the state judicial system, having the same rights and duties as any other court hearing and determining such cases, including the same right to order confinement in the county jail.

The power to order confinement in the county jail is conferred by Section 13454-1, General Code, which reads:

“When a person convicted of a misdemeanor is sentenced to imprisonment in *jail* or the workhouse, the judge or magistrate shall order him into the custody of the sheriff or constable, who shall deliver him, with the record of his conviction, to the jailer or keeper, in whose custody he shall remain in the *jail of the county* or workhouse, as the case may be, until the term of his imprisonment expires or he is otherwise legally discharged.”

(Emphasis added.)

In your letter you make reference to Opinion No. 3211, Opinions of the Attorney General for 1931, page 639, which held that the expense of the board and maintenance of a person held in a municipal prison for trial for violation of a state statute should be paid by the municipality. This opinion, with which I have no quarrel, was based upon the fact that Section 4126, General Code, imposed upon the municipality the duty of sustaining *all* persons confined in municipal prisons and, thus, would include persons held in such prisons awaiting trial for violation of a state statute. In this situation, therefore, we find an exception to the general rule by reason of the requirements of a statute.

While I find no statute expressly providing that the support of prisoners confined in a county jail for violations of state statutes is the responsibility of the county where ordered to be so confined by a mayor's court or a municipal court, I believe that such a result is necessarily implied by existing statutes.

Section 2850, General Code, provides that the sheriff shall be allowed by the county commissioners the actual cost of keeping and feeding prisoners confined in the jail. In the absence of other statutes placing such responsibility elsewhere, or in the absence of statutes providing for reimbursement of the county for the maintenance of certain prisoners, it must reasonably be concluded that Section 2850 places upon the county the duty of maintaining persons who are confined therein as the result of violating state statutes. This conclusion follows from the fact that there are no statutes which alter the basic responsibility of maintenance provided

by Section 2850, *supra*, because of the fact that such conviction was had in a mayor's court or a municipal court.

Section 4564, General Code, reads as follows:

“Imprisonment under the ordinances of a municipal corporation shall be in the workhouse or other jail thereof, if the corporation is provided with such workhouse or a jail. Any corporation not provided with a workhouse, or other jail, shall be allowed, for the purpose of imprisonment, the use of the jail of the county, at the expense of the corporation, until it is provided with a prison, house of correction, or workhouse. Persons, so imprisoned in the county jail shall be under the charge of the sheriff of the county, who shall receive and hold such persons in the manner prescribed by the ordinances of the corporation, until discharged by due course of law.”

(Emphasis added.)

It may be contended by some that the second sentence of this statute providing for imprisonment “at the expense of the corporation” is not limited, by its express terms, to ordinance violators and, therefore, would include state statute violators. I can not conceive this to be the proper interpretation for the reason that the third sentence provides that persons “so imprisoned” shall be held “in the manner prescribed by the ordinances of the corporation.” Obviously, persons imprisoned for violation of state statutes would be held in the manner prescribed by the state statute and not in the manner prescribed by ordinance. It is apparent, therefore, that Section 4564, providing for imprisonment in a county jail “at the expense of a corporation,” is limited in its application to cases where such imprisonment is for violation of an ordinance of a municipality and that said Section 4564, and Sections 4565 and 4566, General Code, authorizing the county commissioners, under certain conditions, to forbid the use of the county jail upon notice to the council of the municipality, have no application to cases where a mayor's court or municipal court, pursuant to its authority under Section 13454-1, *supra*, have sentenced the violator of a state statute to confinement in the county jail. This view is fully supported by the following language from the opinion in the case of *Richland County v. Mansfield*, 27 O.N.P. (N.S.) 293, at page 298:

“As said before G. C. 4563, 4564, 4565 and 4566 are special provisions applicable to persons committed for violation of ordinances of the corporation.”

See also Opinion No. 4900, Opinions of the Attorney General for 1935, page 1486, to the effect that pursuant to Section 4566, General Code, a board of county commissioners may, on written notice as provided by Section 4565, refuse the use of the county jail to a municipality for prisoners convicted of violating *ordinances of* such municipality.

The fact that the maintenance of persons violating state misdemeanor statutes is the basic obligation of the county, while the maintenance of persons convicted of violating ordinances is the basic obligation of the municipality is given recognition in Section 13451-14, General Code, which provides:

“In any county which has no workhouse, but which contains a city which has a workhouse maintained by the city, it shall be competent for the commissioners of the county to agree with the proper authorities of such municipality, upon terms and conditions under which persons convicted of misdemeanors shall be maintained in such city workhouse at the expense of said county. *In any such case persons committed to such city workhouse for the violation of any law of the state, whether such commitment be from the court of common pleas or police court or other court, or magistrate’s court, the cost and expense of maintaining such persons so committed, shall be paid out of the general fund of the county, on the allowance of the county commissioners, provided, however, that all persons committed to any such city workhouse for the violation of any ordinance of such municipality, shall be maintained in such workhouse at the sole cost of such municipality.*”

(Emphasis added.)

This statute appears to be another legislative recognition of the basic legislative policy of this state. True, there does not exist a similar statute providing in such express language for the relative obligations for support of prisoners confined in a county jail. Since, however, the workhouse provided for in Section 13451-14, General Code, is a municipal institution, it was necessary to enact this section to provide for confinement of state law violators in such institution and to provide for the required payment by the county. On the contrary, the county jail, being a county institution, such confinement is authorized by Section 13451-4, General Code, and no statute, in addition to Section 2850, is required to place the burden of such support on the county.

For other opinions of this office dealing generally with the obligations of support of municipal or state prisoners, see: Opinion No. 1424, Opin-

ions of the Attorney General for 1937, page 2370; Opinion No. 3459, Opinions of the Attorney General for 1941, page 78; and Opinion No. 807, Opinions of the Attorney General for 1949, page 492.

I note from your letter that under the contract between the City of Bellefontaine and Logan County the city is required to pay the expenses of all persons confined after conviction for a violation of city ordinances. Such, of course, is fully authorized by Section 4564, General Code, providing for imprisonment of ordinance violators "at the expense of the corporation." I further note that the contract provides that the responsibility of maintaining prisoners convicted of misdemeanors in state cases shall be assumed by the county. As I construe the existing law, this provision of the contract is merely a recognition of such existing law.

In specific answer to your question, therefore, it is my opinion that :

1. Under the provisions of Section 4564, General Code, the responsibility for the board and maintenance of prisoners sentenced to a county jail by a mayor's court or a municipal court for violation of a municipal ordinance or confined therein for non-payment of the fine imposed for such violation is placed upon the municipal corporation.

2. Under the provisions of Section 2850, General Code, the responsibility for the board and maintenance of persons sentenced to a county jail by a mayor's court or a municipal court for violation of a state statute or confined therein for non-payment of the fine imposed for such violation is placed upon the county.

Respectfully,

C. WILLIAM O'NEILL
Attorney General