3065.

FEEDING PRISONERS—SHERIFF—ALLOWANCE OF ACTUAL COST NOT EXCEEDING SEVENTY-FIVE CENTS DAILY—DUTY OF BUREAU EXAMINER TO MAKE FINDING FOR RECOVERY OF EXCESS OVER ACTUAL COST.

SYLLABUS:

When, upon examination of the accounts of a county by the Bureau of Inspection and Supervision of Public Offices, it is found that the sheriff has received more by way of allowances from the county commissioners for the keeping and feeding of prisoners in the county jail than the actual cost thereof, a finding for recovery should be made by the examiner against the sheriff, in favor of the county, for the amount that he has received for the keeping and feeding of prisoners, over and above the actual cost of keeping and feeding such prisoners, whether it appears that the time for which such allowances were made was before or after the recent amendment of Section 2850, General Code.

COLUMBUS, OHIO, December 27, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, as follows:

> "We respectfully request your written opinion upon the following:
>
> In the case of *Kohler, Sheriff,* vs. *Powell,* 115 O. S. 418, the Supreme Court in construing the provisions of Section 2850, General Code, prior to its amendment in 112 Ohio Laws, held that the sheriff was not entitled to private, personal profit out of the feeding of prisoners confined in the jail.
>
> Question: Where it is possible for our examiners to determine that private, personal profit has inured to a sheriff in connection with the feeding of prisoners, should the examiner make a finding for recovery of such profit to the county treasury?"

The case of *Kohler, Sheriff,* vs. *Powell,* 115 O. S. 418, was decided December 14, 1926. This was before the amendment by the 87th General Assembly of Section 2850, General Code, which amendment became effective June 6, 1927. Section 2850, General Code, in force when the Kohler case was decided and when the controversy involved in that case arose, provided, among other things, that:

> "The sheriff shall be allowed by the county commissioners not less than forty-five nor more than seventy-five cents per day for keeping and feeding prisoners in jail. * * * The sheriff shall furnish at the expense of the county, to all prisoners confined in jail, * * * fuel, soap, disinfectants, bed, clothing, washing and nursing when required, and other necessaries as the court in its rules shall designate."

Section 2997, General Code, provided at that time 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." * * *

It was held in the Kohler case, as stated in the second branch of the syllabus, that:

> "The sheriff has no right to collect from the county to reimburse himself for expenditures made or indebtedness incurred for feeding the prisoners confined in the county jail any sum in excess of such disbursement or indebtedness so incurred. The law does not permit the sheriff to secure a private personal profit out of the feeding of the prisoners confined in the jail."

In 1927, Section 2850 of the General Code was amended, and, as amended, included within its terms the vital principle of the Kohler case, to wit:

> "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. * * * " (Italics the writer's.)

While you do not state in your inquiry whether or not the charge you have in mind was before or after the effective date of the recent amendment of Section 2850, General Code, it will be observed that, whether Section 2850 was amended before or since that time, the sheriff was and is not permitted to make a profit from the feeding of prisoners in jail, or to receive from the county any more than the actual cost of keeping and feeding those prisoners. Clearly, therefore, if he does receive by way of allowances from the county commissioners anything in excess of the actual cost of keeping and feeding the prisoners in his charge, either by reason of inadvertence or design, he should account for it to the treasury. As stated by the court in the Kohler case, supra:

> "Public money may be used only for public purposes and never for private gain. The methods employed to direct public money from public channels into private channels are sometimes very ingenious, but they do not affect the fundamental principle involved."

By the terms of Section 2994, General Code, the salary of a sheriff is fixed, and it is provided in Section 2996, General Code, that such salary and compensation as fixed by Section 2994, General Code, shall be instead of all fees, costs, penalties, percentages, allowances and all perquisites of whatever kind which a sheriff may collect and receive. Section 2977, General Code, provides as follows:

> "All the fees, costs, percentages, penalties, allowances and other perquisites collected or received by law as compensation for services by a county auditor, county treasurer, probate judge, sheriff, clerk of courts, surveyor or recorder, shall be so received and collected for the sole use of the treasury of the county in which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided."

It is clear from the foregoing that if a sheriff receives, by way of allowance from the commissioners for the keeping and feeding of prisoners, more than the actual cost thereof, he receives it illegally and should account for it to the county treasury.

By the terms of Section 274, et seq., there is created a Bureau of Inspection and Supervision of Public Offices, with authority and power to inspect and supervise the accounts and reports of the offices of each taxing district in the State of Ohio, and report thereon. The said report should show any public moneys illegally expended and to whom said moneys were paid, and from whom moneys due to the taxing district are payable. When it is determined during said examination that moneys are due to a taxing district, a statement is made as to from whom such moneys are due. This is called, in the vernacular of the Bureau, a "finding for recovery". If it should be found that a sheriff has received more by way of allowance from the county commissioners for the keeping and feeding of prisoners in the county jail than the actual cost thereof, a "finding for recovery" should be made against the sheriff in favor of the county for this excess.

In specific answer to your question, therefore, it is my opinion that where one of your examiners has found that private personal profit has inured to a sheriff by reason of his receipt of allowances from the county for the keeping and feeding of prisoners in the county jail, the examiner should make a "finding for recovery" against the sheriff for the amount of such profit.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3066.

MUNICIPALITY—TRANSFER OF FUNDS FROM ELECTRIC LIGHT TO GENERAL FUND UNLAWFUL.

SYLLABUS:

By reason of the provisions of Section 5625-13, *General Code, and the pronouncement of the Supreme Court of Ohio in the case of Cincinnati vs. Roettinger,* 105 *O. S.* 145, *funds may not lawfully be transferred from the electric light fund to the general fund of a municipality.*

COLUMBUS, OHIO, December 27, 1928.

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

GENTLEMEN:—Your recent communication reads:

> "Section 5625-9, G. C., paragraph g, 112 O. L. 395, provides that each subdivision shall establish a special fund for each public utility operated by a subdivision.
>
> Section 5625-13, G. C., 112 O. L. 397, provides in part:
>
> 'No transfers shall be made from one fund of a subdivision to any other fund, by order of court or otherwise, except that transfers may be made from the general to special funds established for purposes within the general purposes of the general fund, and from such special funds to the general fund; but no transfers shall be made from any such special fund to the general fund, except of moneys theretofore transferred from the general fund.'