

3459.

SENTENCE TO COUNTY JAIL — WHERE PERSONS FOUND GUILTY, VIOLATION OF MUNICIPAL ORDINANCES — COST TO KEEP AND FEED SUCH PRISONERS — DETERMINED BY COUNTY COMMISSIONERS — SECTION 2850 G.C. — BORNE BY MUNICIPAL CORPORATION.

WHERE BOARD OF COUNTY COMMISSIONERS, LESSORS, LEASE QUARTERS TO CONFINED PRISONERS IN MUNICIPAL JAIL OR STATION HOUSE, AMOUNT TO MAINTAIN SUCH PRISONERS, LIMITED TO FORTY CENTS PER DAY — SECTION 4126 G.C.

SYLLABUS:

1. *Where persons found guilty of violation of municipal ordinances are sentenced to a county jail the cost of keeping and feeding such prisoners in the county jail, as determined by the county commissioners under Section 2850, General Code, is to be borne by the municipal corporation.*

2. *Only where prisoners are confined in a municipal jail or station house which is in quarters leased from the board of county commissioners does Section 4126, General Code, limit the amount to be allowed for the maintenance of such prisoners to forty cents (40c) per day.*

Columbus, Ohio, February 21, 1941.

Hon. William M. Summers, Prosecuting Attorney,
Marietta, Ohio.

Dear Sir:

I have your request for my opinion which is as follows:

“In pursuance of General Code Section 2850, the Commissioners of Washington County have been allowing to the Sheriff eighteen cents (18c) per meal for each prisoner served in the County Jail.

This allowance has been made by virtue of the specific part of Section 2850, which reads as follows:

‘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.'

Because of the financial condition of the County, the County Auditor by virtue of Section 2576 of the General Code, has been releasing prisoners sentenced from the Police Court of Marietta for non-payment of fines.

In an attempt to rectify this situation, it has now been proposed that a contract be made and entered into in pursuance of General Code Section 4126 between the Commissioners of Washington County and the City of Marietta. It is proposed that these misdemeanors be prosecuted under the city ordinances and that the city pay to the county the cost of care and maintenance.

Section 4126 provides that the amount shall not exceed forty cents (40c) a day for any person confined but the County Commissioners have already determined the cost to be fifty-four cents (54c) per day by virtue of Section 2850.

With these facts in mind, may the Commissioners of Washington County enter into such a contract with the city at a sum less than the amount already determined as being the cost of feeding the prisoners, with the further thought in mind that the County Commissioners will be paying the difference for their care and maintenance?"

Your inquiry makes it necessary to consider all of the sections of the General Code which allow the sentencing of city prisoners, found guilty of the violation of municipal ordinances, to the county jail. Under Section 4559, General Code, authority is given for a municipal court to order prisoners confined in the county jail in the following words:

"When a fine is the whole or part of a sentence, the court or mayor may order that the person sentenced shall remain confined in the county jail, work house, or prison, until the fine and costs be paid, or secured to be paid, or the offender be otherwise legally discharged."

Further authority for such imprisonment is found in Section 4564, General Code, which is as follows:

"Imprisonment under the ordinances of a municipal corporation shall be in the work-house or other jail thereof, if the corporation is provided with such work-house or a jail. Any corporation not provided with a work-house, 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 work-house. 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 corporations, until discharged by due course of law."

Section 4126, General Code, to which you refer in your letter, reads as follows:

"Council shall provide, by ordinance, for sustaining all persons sentenced to or confined in such prison or station houses, at the expense of the corporation, and in counties where said prisons or station houses are in quarters leased from the county commissioners may contract with said commissioners for the care and maintenance of such persons by the sheriff or other person charged with the care and maintenance of county prisoners. On the presentation of bills for food, sustenance, and necessary supplies, to the proper officer, certified by such person as the council may designate, such officer shall audit them, under such rules and regulations as the council prescribes, and draw his order on the treasurer of the corporation in favor of the officer presenting such bill, but the amount shall not exceed forty cents a day for any person so confined."

Section 4125, General Code, which precedes the last quoted section is material to your question and must also be considered. That section is as follows:

"The marshal or chief of police shall provide all persons confined in prison or station houses with necessary food during such confinement, and see that such places of confinement are kept clean and made comfortable for the inmates thereof."

The latter two sections are found in Title XII of the General Code under the heading "Municipal Corporations" and under the chapter heading "Prisons and Station Houses." The sections above quoted, all having to do with the same general subject, must be read and construed together and apparent conflicts resolved, if possible, into one harmonious result so as to give effect to all of the statutes and each part of them. See Crawford's Interpretation of Laws, page 431, wherein it is stated:

"Statutes in *pari materia*, that is, those which relate to the same matter or subject, although some may be special and some general, in the event one of them is ambiguous or uncertain, are to be construed together, even if the various statutes have not been enacted simultaneously, and do not refer to each other expressly, * * * .

The rule which thus allows the court to resort to statutes in *pari materia* finds its justification in the assumption that statutes relating to the same subject matter were enacted in accord with the same legislative policy; that together they constitute a harmonious or uniform system of law; and that, there-

fore, in order to maintain this harmony, every statute treating the same subject matter should be considered. As a result, statutes in pari materia should not only be considered but also construed to be in harmony with each other in order that each may be fully effective."

See also Black on Interpretation of Laws, Second Edition, page 331.

With that rule in mind and viewing all of the above quoted sections as a whole, it appears that Sections 4559 and 4564, General Code, are the general statutes controlling the sentencing of prisoners, convicted of violation of municipal ordinances, to the county jail and that under those sections the cost of the imprisonment is, according to Section 4564, General Code, "at the expense of the corporation." It also appears that Section 4126, General Code, especially when read with Section 4125, supra, is of limited application and only applies when the municipal corporation maintains its jail or station house in quarters leased from the county commissioners and that it is only under those circumstances that the limitation of forty cents (40c) per day imposed by Section 4126, supra, has application and that under all other circumstances where city prisoners are confined in the county jail the expense of their imprisonment is to be borne by the municipal corporation and is not subject to the limitation of forty cents per day imposed by Section 4126, supra.

In the case of Richland County vs. The City of Mansfield, 27 N.P. (N.S.) 293, by the same process of reasoning, a judgment against a city was allowed in favor of a county for the cost of maintaining city prisoners in the county jail at the rate determined by the commissioners and allowed to the sheriff under Section 2850, General Code, and without application of the limitation of forty cents per day contained in Section 4126, supra. It should be mentioned that the first headnote of the above case is not accurate in that it states that the liability of the city in that case is limited to forty cents per day, whereas if the facts be checked, the judgment there allowed in favor of the county against the city was at the rate of seventy-five (75) cents per day.

In accordance with the above, you are advised and it is my opinion that where persons found guilty of violation of municipal ordinances are sentenced to a county jail, the cost of keeping and feeding such prisoners in the county jail, as determined by the county commissioners under Section 2850, General Code, is to be borne by the municipal corporation and that only where prisoners are confined in a municipal jail

or station house which is in quarters leased from the board of county commissioners does Section 4126, General Code, limit the amount to be allowed for the maintenance of such prisoners to forty cents (40c) per day.

Respectfully,

THOMAS J. HERBERT,
Attorney General.