

651.

SHERIFF—ALLOWED ACTUAL COST OF KEEPING AND FEEDING PRISONERS NOT EXCEEDING 75c PER DAY PER PRISONER—PREPARATION OF MEALS INCLUDED—SHERIFF PERFORMING ADDITIONAL WORK NOT ENTITLED TO ADDITIONAL COMPENSATION.

SYLLABUS:

1. *County commissioners must allow the sheriff the actual cost of keeping and feeding prisoners, which includes the preparation of meals, at a rate not to exceed seventy-five cents per day for each prisoner.*

2. *A sheriff is not entitled to additional compensation by virtue of the fact that he is called upon to perform additional work during the summer months.*

COLUMBUS, OHIO, April 21, 1933.

HON. HOWARD A. TRAU, *Prosecuting Attorney, Bellefontaine, Ohio.*

DEAR SIR:—Your request for my opinion reads as follows:

“Are the County Commissioners bound to pay the maximum amount of 75 cents per day for board of prisoners? The sheriff desires to have the commissioners pay the maximum amount of 75 cents per day, but the commissioners believe 60 cents per day reasonable, however, at 60 cents per day it allows very little, if any, for the preparation of meals. Although the prisoners are to be kept at cost, by the commissioners paying the maximum amount of 75 cents per day, the sheriff is enabled to receive reasonable compensation for preparing meals. By reasonable compensation for preparing meals, I would say from \$40.00 to \$60.00 per month with an average of eight to ten prisoners.

Further, in regard to compensation of sheriff, would like your opinion as to the counties, such as Logan, where during the summer months there are large cottage colonies and summer resort vacationists. These people remain in the county relatively short periods of time, from one to three weeks, and as the sheriff's compensation is based on the permanent population of the county he is not compensated for his services which are demanded during the summer months, because of these groups of floating or transient people.

As you may know, Indian Lake is in Logan County, and there is considerable work for the sheriff in the summer months during the vacation period.

Is there any way of providing additional compensation for the sheriff in a case such as this?”

Section 2850, General Code, provides for the sheriff's allowance for feeding prisoners. Said section reads 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 any 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 sheriff shall furnish, at the expense of the county, to all prisoners or other persons confined in the jail, fuel, soap, disinfectants, bed, clothing, washing and nursing when required, and other necessaries as the court in its rules shall designate. 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."

The Supreme Court of Ohio in the case of *Kohler vs. Powell*, 115 O. S. 418, declared that a sheriff is not entitled to a profit from feeding prisoners in a county jail. The second branch of the syllabus in that case is as follows:

"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."

To the same effect see Opinions of the Attorney General for 1927, Vol. I, page 525; Opinions of the Attorney General for 1927, Vol. II, page 1469; Opinions of the Attorney General for 1927, Vol. III, page 2089; Opinions of the Attorney General for 1928, Vol. I, page 168; and Opinions of the Attorney General for 1931, Vol. I, page 316.

The reasons given for the holding in the *Kohler* case, *supra*, are in substance that inasmuch as the legislature has provided for the payment of a definite salary to the sheriff for the performance of the duties of his office, among which are the keeping of the jail and the feeding of the prisoners, and has further provided that the sheriff shall be reimbursed for any necessary expenses in performing the duties of his office, it cannot be supposed that there was any intention on the part of the legislature to set up a system whereby the sheriff might make a personal profit from it, in addition to his salary, out of the performance of the duties of his office.

As to the cost of preparing the meals, I assume in answering this question that the sheriff does not prepare the meals and is not attempting to be personally

compensated for the preparation of such meals. There is no doubt but that the cost of preparing the meals, as well as the cost of the raw materials, may be taken into consideration in determining the actual cost of feeding the prisoners. That a sheriff may employ a cook for such purposes, is well settled. See Opinions of the Attorney General for 1927, Vol. I, page 76, as disclosed by the first branch of the syllabus:

“A sheriff may employ a cook to prepare provisions purchased for the purpose of feeding prisoners, provided the total cost of feeding such prisoners does not exceed the limit fixed by Section 2850, General Code, to wit, seventy-five cents per day per prisoner.”

As to the authority of the county commissioners to control the amount to be spent for preparing the meals, I refer you to an opinion of my immediate predecessor, being Opinion No. 4217, rendered April 1, 1932. The first and third branches of that syllabus read as follows:

“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.

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^s limitation of Section 2850, General Code.”

However, there is no authority for the county commissioners to pay the maximum amount of seventy-five cents per day where that amount is not the actual cost of feeding the prisoners. The county commissioners must allow the sheriff only the actual cost of keeping and feeding prisoners, not to exceed seventy-five cents per day, and the cost of preparing the meals is a proper item in determining the actual cost of feeding such prisoners.

I come now to your second question, relative to the right of the sheriff to receive additional compensation for services rendered during the summer months.

Section 2994, General Code, provides a sliding scale under which the sheriff is paid. Such section reads in part as follows:

“Each sheriff shall receive sixty-five dollars for each full one thousand of the first fifteen thousand of the population of the county, as shown by the last federal census next preceding his election;

Fifty-five dollars per thousand for each full one thousand of the second fifteen thousand of such population of the county;

Forty-five dollars per thousand for each full one thousand of the third fifteen thousand of such population of the county.”

Section 2997, General Code, providing additional allowances for the sheriff, 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, for his actual and necessary expenses incurred and expended in pursuing or transporting persons accused or convicted of crimes and offenses, in conveying and transferring persons to and from any state hospital for the insane, the institution for feeble-minded youth, Ohio hospital for epileptics, boys' industrial school, girls' industrial home, county homes for the friendless, homes of refuge, children's homes, sanitariums, convents, orphans' asylums or homes, county infirmaries, and all institutions for the care, cure, correction, reformation and protection of unfortunates, and all expenses of maintaining horses and vehicles necessary to the proper administration of the duties of his office."

Section 2999, General Code, is as follows:

"Nothing in this chapter shall be construed to make a county, or an officer thereof, liable to any of the officers named herein or his deputies, assistants, clerks, bookkeepers, or other employes, for the payment of compensation in excess of the amount herein authorized, or except in the manner herein provided."

It is the settled law of this state that a public officer elected or appointed cannot receive any additional compensation, by reason of the fact that additional duties are imposed upon him or assumed by him, unless the legislature has expressly provided that such additional compensation may be paid.

Article X, section 5, of the Ohio Constitution, reads:

"No money shall be drawn from any county or township treasury, except by authority of law."

As stated in the case of *Anderson vs. Board of Commissioners*, 25 O. S. 13:

"Where a service for the benefit of the public is required by law, and no provision for its payment is made, it must be regarded as gratuitous and no claim for compensation can be enforced."

This fundamental principle of law was followed in *Strawn vs. Commissioners*, 47 O. S. 404; *Jones vs. Commissioners*, 57 O. S. 189; *Rogers vs. Cincinnati*, 26 O. C. C. (N. S.) 321; Opinions of the Attorney General for 1927, Vol. 1, page 455; Opinions of the Attorney General for 1927, Vol III, page 1930.

In the case of *Teale vs. Stillinger*, 95 O. S. 129, it was held:

"A county treasurer is prohibited by statute from receiving any compensation for the performance of an official duty in excess of that provided by law, and he cannot by the use of the public office and the public records, stationery and data, do indirectly during his term of office what he is prohibited from doing directly."

From this it is obvious that the sheriff may not be compensated for the additional work rendered during the summer months. His compensation is based upon the population of the county as shown by the last federal census. In this

connection, it might be proper to point out that when making appropriations for deputy and clerk hire in the sheriff's office, the county commissioners would be justified in taking into consideration the facts set forth in your letter.

Therefore, in specific answer to your questions, it is my opinion:

1. County commissioners must allow the sheriff the actual cost of keeping and feeding prisoners, which includes the preparation of meals, at a rate not to exceed seventy-five cents per day for each prisoner.

2. A sheriff is not entitled to additional compensation by virtue of the fact that he is called upon to perform additional work during the summer months.

Respectfully,

JOHN W. BRICKER,
Attorney General.

652.

CLOSED BANK CLAIMS AGAINST EVIDENCED BY PASSBOOK OR OTHER INSTRUMENTS ARE SECURITIES—REGISTRATION NOT REQUIRED—LICENSED DEALERS ONLY MAY SELL—PURCHASER OF SECURITIES FOR OWN ACCOUNT NEED NOT BE LICENSED NOR PURCHASED FROM LICENSED DEALER—CLAIMS PRESENTED AGAINST CLOSED BANK NOT WITHIN JURISDICTION OF DIVISION OF SECURITIES WHEN—OHIO SECURITIES ACT DISCUSSED.

SYLLABUS:

1. *Claims against closed Ohio banks evidenced by passbooks or other instruments are securities within the meaning of the term as used in the Ohio Securities Act.*

2. *Such securities are not required to be registered in accordance with the Ohio Securities Act before being sold and dealt in in Ohio, but may be sold and dealt in only by licensed dealers in securities.*

3. *There is no requirement that a person purchasing securities for his own account by repeated and successive transactions must purchase from a licensed dealer, nor that the purchaser be licensed under the Ohio Securities Act.*

4. *A transaction whereby a person turns in claims against a closed bank in Ohio to be applied to an obligation which such person owes to such bank, is not within the jurisdiction of the Division of Securities.*

COLUMBUS, OHIO, April 21, 1933.

HON. JOHN W. POWERS, *Chief, Division of Securities, Columbus, Ohio.*

DEAR SIR:—This office has received a request for official opinion from the prosecuting attorney of Lucas County upon the following two questions:

"1. Can accounts in closed banks properly be brought under our Securities Law, Section 6373 et seq. and the purchase and sale thereof regulated and controlled as securities?

2. Even though accounts in closed banks are held to be securities within the meaning of these statutes, can the Division of Securities re-