

Syllabus:

Under R.C. 325.071, a county sheriff may expend funds for expenses, including meals for staff and retirement mementos, which are incurred by him in the performance of his official duties and which he determines are in the furtherance of justice. This determination must not be manifestly arbitrary or unreasonable.

To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 28, 1988

I have before me your request for my opinion concerning the use by a county sheriff of the furtherance of justice funds available to him under R.C. 325.071. You ask whether a county sheriff may use these funds to purchase office equipment, meals for staff on official business, and mementos to retiring employees.

R.C. 325.071, which establishes the furtherance of justice allowance for the county sheriff, provides in pertinent part:

There shall be allowed annually to the county sheriff, in addition to all salary and allowances otherwise provided by law, an amount equal to one half of the official salary allowed under section 325.06 of the Revised Code, *to provide for expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice.* Upon the order of the county sheriff, the county auditor shall draw his warrant on the county treasurer, payable to the county sheriff or such other person as the order designates, for such amount as the order requires; such amounts, not exceeding the amount provided by this section, to be paid out of the general fund of the county.

Nothing shall be paid under this section until the county sheriff has given bond to the state in an amount not less than his official salary....

The county sheriff shall annually, before the first Monday of January, file with the county auditor an itemized statement, verified by him as to the manner in which such fund has been expended during the current year, and shall if any part of such fund remains in his hands unexpended, forthwith pay such remainder into the county treasury. (Emphasis added.)

Thus, R.C. 325.071 requires that the county sheriff use the funds "to provide for expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice."

R.C. 325.071 is almost identical to R.C. 325.12, which provides that an amount shall be available for the prosecuting attorney, "to provide for expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice." Opinions of my predecessors have approved the use of the prosecuting attorney's allowance for various expenditures. See, e.g., 1976 Op. Att'y Gen. No. 76-069 (municipal court transcripts); 1972 Op. Att'y Gen. No. 72-122 (foreclosure costs); 1946 Op. Att'y Gen. No. 1277, p. 714 (witness expenses); 1939 Op. Att'y Gen. No. 1038, vol. II, p. 1471 (extra stenographer and law books). However, in 1969 Op. Att'y Gen. No. 69-159 at 2-337, one of my predecessors stated:

Section 325.12, *supra*, requires payment from the fund upon the order of the prosecuting attorney limited only by the amount of the fund as provided for by this section. In addition, the statute requires that the prosecuting attorney post bond before any amount is paid under this section. Finally, an annual itemized statement must be verified by the prosecuting attorney, filed by him with the auditor and he must pay over the unexpended balance in the Furtherance of Justice Fund at the end of the year to the county treasurer. It seems quite clear to me that the legislative scheme was to provide a fund, with adequate safeguards to the county in the form of bond for faithful performance and annual accountings, with the determination as to whether or not a given expenditure is consistent with the purposes of the fund to be made by the appropriate prosecuting attorney. A continuation of past practices of this office ruling on specific requests can only result in the placing of artificial restrictions upon the use of the fund which were not intended by the General Assembly. There is simply no way that the Attorney General can put himself in the position of any given prosecuting attorney in making the determination as to whether or not a given expenditure would constitute "expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice."

See also 1976 Op. Att'y Gen. No. 76-069 at 2-242 (quoting with approval Op. No. 69-159).

Like R.C. 325.12, R.C. 325.071 provides safeguards against misuse of the county sheriff's allowance, and the broad language of the statute makes it clear that the county sheriff is to use his discretion in the use of the funds. I agree with my predecessor's reasoning in Op. No. 69-159; I cannot substitute my judgment for that of the county sheriff. Cf. *State ex rel. Copeland v. State Medical Board*, 107 Ohio St. 20, 140 N.E. 660 (1923) (if a factual determination is necessary on a matter assigned by statute to the state medical board, the board must make the determination). Therefore, I conclude that the county sheriff may expend his furtherance of justice funds for expenses which are incurred by him in the performance of his official duties and which the county sheriff determines are in the furtherance of justice.

Clearly, the county sheriff has much discretion regarding the use of these funds and may use them for a variety of expenses. See, e.g., *Stokes v. St. Paul Fire & Marine Insurance Co.*, 35 Ohio App. 3d 97, 519 N.E.2d 850 (Hamilton County 1987) (upholding sheriff's use of furtherance of justice funds to pay expenses for police and sheriffs' associations meetings and to settle the claim of an individual improperly held in the county jail). As one of my predecessors noted, "the legislature did not put any limitation on the expenses to be incurred other than that they should be 'in the performance of his official duties and in the furtherance of justice.'" 1967 Op. Att'y Gen. No. 67-120 at 2-189. Furtherance of justice funds may be used, therefore, to pay the costs of items such as meals and mementos if these costs are expenses which are incurred by the sheriff in the performance of his official duties and which he determines are in the furtherance of justice. Cf. 1982 Op. Att'y Gen. No. 82-006 (municipal funds may be expended to purchase meals and other amenities, such as retirement gifts, for municipal employees, if the legislative body of the municipality determines the expenditure is for a public purpose and if its determination is not manifestly arbitrary or unreasonable). I caution, however, that the determination of the county sheriff is valid only if it is not manifestly arbitrary or unreasonable. Whether a determination is manifestly arbitrary or unreasonable is a matter for a court rather than the Attorney General to decide. See 1988 Op.

Att'y Gen. No. 88-015 at 2-59 (whether a particular rule by the Director of Mental Retardation and Developmental Disabilities is unreasonable or an abuse of discretion is a question of fact which only a court is competent to determine); 1979 Op. Att'y Gen. No. 79-012 at 2-40 (whether a board of education abused its discretion in expending certain bond issue proceeds is a matter for a court to determine).

As a final matter, a brief discussion of the issue of expending furtherance of justice funds for office equipment may prove helpful. R.C. 307.01 imposes on the board of county commissioners the duty to provide offices for county officers and "equipment, stationery, and postage, as it considers reasonably necessary for the proper and convenient conduct of county offices." *See also* R.C. 311.06 (the board of county commissioners shall provide office and furniture for the county sheriff). Thus, under R.C. 307.01, the board of county commissioners must provide for the sheriff such office equipment as the board considers reasonably necessary for the proper and convenient conduct of the sheriff's office. It would appear, therefore, that the board of county commissioners must purchase the sheriff's office equipment. However, it is possible that the board would not consider the office equipment in question to be reasonably necessary. If so, the sheriff may purchase the equipment upon a determination that such purchase will aid the performance of his official duties and be in the furtherance of justice. As long as this determination is not arbitrary or unreasonable, the expenditure from the sheriff's furtherance of justice funds for office equipment is valid. *See* 1967 Op. Att'y Gen. No. 67-120 (the sheriff may use furtherance of justice funds for any purpose, including the purchase of law enforcement equipment, which is in furtherance of his responsibility to preserve justice). Again, this is a matter for the judgment of the officers involved, the board of county commissioners and county sheriff, rather than the Attorney General.

Therefore, it is my opinion and you are advised that under R.C. 325.071, a county sheriff may expend funds for expenses, including meals for staff and retirement mementos, which are incurred by him in the performance of his official duties and which he determines are in the furtherance of justice. This determination must not be manifestly arbitrary or unreasonable.