

public funds. However, in the absence of any such agreement, or in the event the township trustees and city council are unable to reach an agreement, it is my opinion that the expense in question must be paid equally by the township and city.

Summarizing, and answering your questions specifically, it is my opinion that:

1. Section 1579-1023, General Code, does not authorize the trustees of the township of Madison, Richland County, Ohio, to issue bonds to provide money in order that such trustees may comply with the provisions of Section 1579-1019, General Code, to the effect that the "council of the city of Mansfield and trustees of the township of Madison shall provide suitable accommodations for the municipal court and its officers."

2. What constitutes suitable accommodations, as these words are used in Section 1579-1019, General Code, is a matter solely within the discretion of the council of the city of Mansfield and the trustees of Madison Township.

3. The cost of providing "suitable accommodations" for the municipal court of the city of Mansfield should be borne by the city of Mansfield and the township of Madison in equal proportions; although should the city council and the township trustees enter into an agreement, providing that such cost be paid upon a different basis, payments made by such subdivisions in accordance with such agreement would not constitute an unwarranted use of public funds.

4. In pro rating between the city and the township, the cost of providing suitable accommodations for the municipal court of the city of Mansfield, the rental value of any permanent structure belonging to either one of the political subdivisions, used as a part of the "suitable accommodations", should be determined by the city council and township trustees. Any capital expenditures necessary to improve such a structure so as to make it suitable for use as quarters for the municipal court should be paid by the subdivision owning the building.

Respectfully,
EDWARD C. TURNER,
Attorney-General.

2019.

SHERIFF ALLOWANCE FOR USE OF PRIVATE AUTOMOBILE.

SYLLABUS:

Questions with respect to the allowance to a sheriff for expenses incurred in the use of his private automobile discussed.

COLUMBUS, OHIO, April 26, 1928.

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

GENTLEMEN:—This will acknowledge your recent communication in which you ask my opinion with respect to several questions contained in a letter from one of your examiners. All of the questions relate to the allowance to a sheriff of his expenses in connection with the performance of his official duties, more particularly with respect to the use of his own private automobile in the performance of such duties. Since this general subject has heretofore been recently under consideration by this office, it is perhaps advisable, at the outset, to quote the language used in the previous opinion, insofar as it is pertinent to the questions here involved. In opinion No. 251, dated March 29, 1927, the following language is found:

"This department has a number of times been called upon to determine how, if at all, the sheriff was to be compensated for expenses incident to the use of vehicles in the performance of his duties in the event that he used his own private machine in the performance of such duties.

The question was first presented to Attorney General Hogan who held in an opinion addressed to the Prosecuting Attorney of Hamilton County that if a sheriff was the owner of a buggy or an automobile which he used in the service of the county in connection with the duties of his office, bills for repairs to the automobile or buggy should be allowed. This opinion may be found in the Annual Report of the Attorney General for 1913, Volume II at page 1155. And again in the same report at page 1187 it is held that Section 2997 of the General Code contemplates only recompense to the sheriff for expenditures made by him, and does not comprehend payments to such sheriff for labor performed by himself in the care of his horse. To the same effect is a later opinion of Attorney General Hogan found in Annual Reports of the Attorney General for 1913, page 1198.

In the Opinions of the Attorney General for 1915, pages 295 and 1276 are two opinions along the same lines. In the latter opinion the Attorney General held as follows:

'While Section 2997 contains the word "maintaining" and does not contain the word "operating" it would undoubtedly follow that said section authorizes the allowance of all expenses incident to the use of the automobile in public business, and would include oil and gasoline, as well as necessary repairs to tires and parts.

The county commissioners may, therefore, make an allowance to the sheriff for the expenses of maintaining and operating his automobile when used in the proper administration of the duties of his office. * * *

Just what proportion of the expenses may be charged against public funds will depend upon the facts in each particular case and is more a matter of policy than of law.'

In Opinions of the Attorney General for 1917, Volume III, page 2398, the question was raised in another form. The question there was whether or not the county commissioners could hire the sheriff's car for the use of the sheriff, and it is said with reference thereto that:

'County commissioners have no authority to hire the sheriff's machine for the use of the sheriff in the performance of his official duties.'

There are many more opinions of this department along similar lines upon consideration of which I think it has been well established and generally recognized that allowances may be made to the sheriff for actual and necessary expenses incurred by him in the use of his own automobile when used in the performance of the duties of his office, due allowance being made for such private use as the sheriff may make of the machine.

I think that the cost per mile for the operation of the various makes of automobiles can now be readily ascertained. Therefore, I am of the opinion that the county commissioners are authorized to make an allowance to the sheriff in reimbursement for his necessary expenses incurred in the use of his private automobile based on a flat rate per mile for the mileage covered while such automobile is being used by the sheriff in the performance of his official duties. This will authorize nothing but reimbursement and good faith must be used in fixing the mileage rate."

Most of the inquiries involve interpretation of Section 2997 of the General Code, and, accordingly, I quote the language of that section, 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. The county commissioners shall allow the sheriff his actual railroad and street car fare and telephone tolls expended in serving civil processes and subpoenaing witnesses in civil and criminal cases and before the grand jury, and may allow his necessary livery hire for the proper administration of the duties of his office. Each sheriff shall file under oath with the quarterly report herein provided a full, accurate and itemized account of all his actual and necessary expenses, including railroad fare, street car fare, telephone tolls and livery hire mentioned in this section before they shall be allowed by the commissioners. Such statement shall show the number of the case and the court in which the service was rendered and the railroad point from which a livery rig was used."

The first inquiry made by your examiner is as follows:

"Have the county commissioners authority to enter into a contract with the sheriff for the use of the sheriff's privately owned automobile on a mileage basis, so as to enable the sheriff to derive a profit therefrom, over and above that which would reasonably compensate the sheriff, for the upkeep thereof, such as repairs, tires, gas, oil, etc. In other words, is the sheriff entitled to receive a sum in excess of that which would reasonably make him whole for the use of his automobile?"

A negative answer to this question is clearly required by the language just quoted from my recent opinion. In the first place, the county commissioners have no authority to enter into a contract, as such, with the sheriff for the use of his private automobile. Furthermore, the language in my previous opinion clearly indicates that, at all events, no profit may be derived from any use of the car in the public service. The only allowance which is authorized to be made is for necessary expenses, and of course any arrangement whereby the sheriff would receive compensation over and above all costs for the use of his car would be wholly without statutory authority. You are accordingly advised that the county commissioners have no authority to enter into a contract with the sheriff for the use of his privately owned automobile on a mileage basis which permits the sheriff to profit thereby over and above the necessary expenses connected with the use of such car.

The second question is stated as follows:

"Where other modes of travel are reasonably convenient, and at a cost of from one-third to one-half of that paid the sheriff on such mileage basis, taking into consideration the transportation of the prisoners, have the county commissioners authority to pay the sheriff for the use of his privately owned automobile on such mileage basis, when the same service could be had from

one-third to one-half of the amount paid by the use of such other means of travel, and such means are just as convenient?"

From the language of my previous opinion and the quotations therein from, and reference to, earlier opinions of this office, it is clear that the use of an automobile in the performance of the duties of the sheriff is well recognized. Your question suggests that other modes of travel are reasonably convenient and considerably less expensive. The question at least infers that the county commissioners shall sit in judgment upon the bills presented by the sheriff and determine whether or not in each instance the expenses incurred were actually necessary. I take it that you assume the county commissioners are maintaining that other modes of travel are reasonably convenient and that therefore no justification for the use of an automobile exists. This assumption is in my opinion erroneous. The language of Section 2997 of the General Code, *supra*, makes the duty of the county commissioners to make the quarterly allowance mandatory; that is to say, the actual and necessary expenses of the sheriff incurred and expended in the pursuance and transportation of persons accused and convicted of crimes and offenses, etc., are required to be paid by allowances by the county commissioners. As I view the language of the statute, the sheriff in the first instance is to determine what means of transportation he shall use. In other words, he is to determine which method will best serve his purpose in the performance of his duty. His determination in this respect should, in the absence of abuse of discretion, be final. The fact that the county commissioners may regard his judgment as faulty in any particular case would not in my opinion be a justification for a failure to make allowance for the expenses involved.

I do not deem a comparison of the costs involved by different methods of transportation as being necessarily of great value. In certain cases this comparison might be material, but ordinarily, there are so many other factors legitimately entering into the decision of a question of this character that the cost factor is not controlling or decisive unless there has been a gross abuse of discretion, and my opinion is that the sheriff's determination of the proper method of transportation is final, and not reviewable by the county commissioners in making the quarterly allowance, unless abuse of discretion exists.

I do not wish to be understood as saying that in no event could there be a refusal to pay a bill presented for transportation. In any instance in which manifestly the discretion vested in the sheriff has been abused, the county commissioners may so determine, but their right in this respect is restricted to clear cases of abuse of discretion, and can not extend to a substitution of their judgment for that of the sheriff.

The third inquiry is as follows:

"Do the words, 'for actual and *necessary* expenses, etc.,' as used in Section 2997 G. C. include a profit to the sheriff, or do such words mean an amount sufficient to reimburse the sheriff, so as to make him whole?"

In view of what has been heretofore said, this question need not be discussed. Clearly, the sheriff can not be allowed by the county commissioners, under authority of Section 2997 of the General Code, an amount over and above the actual and necessary expenses incident to the use of his private automobile.

The fourth question is as follows:

"Do the words 'the *necessary* expense incurred in the pursuit and return of the person charged with a felony,' as used in Section 3015 G. C., authorize the county commissioners to pay such sheriff for the use of his privately

owned automobile, on the same basis as contained in questions one and two above, so as to enable the sheriff to derive a profit therefrom?"

Section 5015, General Code, reads:

"The county commissioners may allow and pay the necessary expense incurred by an officer in the pursuit of a person charged with felony, who has fled the county."

In my opinion, the same interpretation of the phrase "the necessary expense" should be given in this section as is applicable to the similar phrase found in Section 2997 of the General Code, *supra*. That is to say, the reimbursement of the sheriff for his expenses in using his own automobile in connection with his duties under this section would be subject to the same limitations heretofore discussed with reference to his reimbursement in connection with the allowance under Section 2997, General Code, and consequently there would be no authority to pay the sheriff any amount over and above the actual and necessary expenses for the use of such car.

Your fifth question is:

"Do the words 'all necessary expenses' as used in Section 2491 G. C., the extradition statute, authorize the county commissioners to pay the agent of the State, any sum above what is actually necessary, on the basis as contained in questions one and two above?"

The expenses therein provided for are, in my opinion, governed by exactly the same rule as has heretofore been discussed. Reimbursement of expenses in connection with the use of private automobiles may be made, but no contract or allowance involving a profit to the owner of a car can be authorized under the guise of expenses.

In connection with the above quoted inquiry, your examiner has made reference to four specific instances in which a sheriff has used his own automobile in making trips outside of the State in connection with his official duties. One of these was where the sheriff went to South Dakota, another to North Carolina, and the remainder were for shorter distances. In each instance the sheriff took with him his wife, and her expenses were included in the bills presented and allowed, as I understand it. The examiner has made a computation which shows that in each instance the trip might have been made by train, at a substantial saving.

With respect to the expenses incurred by the wife of the sheriff it is sufficient to say that they should in no event be allowed unless the sheriff's wife served as deputy or assistant, and her services were, in the judgment of the sheriff, necessary in connection with his official duties in the particular case. I have not before me sufficient facts to enable me to pass upon the questions presented. From what I have said, I believe it is clear that each case is governed by its own peculiar facts and the sheriff is the judge of what assistance he needs and what means of transportation will best serve his purpose. His discretion in this matter should not be disturbed unless clearly abused. At the same time, one or two of the specific instances cited would, from the facts before me, apparently have justified the county commissioners in refusing to make an allowance, on the ground that the sheriff had abused his discretion. If, however, the expense account has been presented and allowed by the commissioners, the board has thereby necessarily approved the course of the sheriff and its decision should be final, in the absence of any showing of fraud.

Respectfully,

EDWARD C. TURNER,
Attorney General.