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1. PRISONERS—SENTENCED TO COUNTY JAIL BY MAYOR'S COURT OR MUNICIPAL COURT—VIOLATION OF STATE STATUTE—SHERIFF—DUTY TO FURNISH NECESSARY MEDICAL TREATMENT AND HOSPITALIZATION—EXPENSE OF COUNTY—RULES PRESCRIBED BY COURT OF COMMON PLEAS PURSUANT TO SECTION 341.06 RC, CONTROL, PARAGRAPH 2, OAG NO. 135 FOR 1939 OVERRULED.

2. PRISONERS—SENTENCED TO COUNTY JAIL BY MAYOR'S COURT OR MUNICIPAL COURT—VIOLATION OF MUNICIPAL ORDINANCE—MUNICIPALITY—DUTY TO PROVIDE BY ORDINANCE FOR NECESSARY MEDICAL TREATMENT AND HOSPITALIZATION—WHERE NO ORDINANCE EXISTS, SHERIFF SHALL OBTAIN CARE FOR PRISONERS—EXPENSE OF MUNICIPALITY.

SYLLABUS:

1. It is the duty of the sheriff to furnish, and the county commissioners to provide at the expense of the county, such medical treatment and hospitalization as may be necessary to the health of county prisoners sentenced to the county jail by a mayor's court or municipal court for violation of a state statute, provided, however, that if the court of common pleas has, by virtue of Section 341.06, Revised Code, prescribed rules governing the employment of medical or surgical aid for prisoners, such rules must be adhered to by the sheriff in furnishing such services. (Opinion No. 135, Opinions of the Attorney General for 1939, Paragraph 2 of the Syllabus; overruled.)

2. It is the duty of a municipality to provide by ordinance for such medical treatment and hospitalization as may be necessary to the health of municipal prisoners sentenced to the county jail by a mayor's court or municipal court for violation of a municipal ordinance, provided, however, that if such municipality fails to provide for such care by ordinance, the sheriff shall obtain such care for municipal prisoners in the manner prescribed for county prisoners, and the municipality shall be respon sible for the expense incurred in obtaining such services.

Columbus, Ohio, June 27, 1956

Hon. G. L. Schilling, Prosecuting Attorney
Clinton County, Wilmington, Ohio

Dear Sir:

I have before me your request for my opinion on the provisions for the necessary medical care and hospitalization of prisoners in the county jail upon commitment from mayor's courts.

You inquire as to the manner in which the sheriff is to proceed in securing such care and who is responsibile to pay for such services when said prisoner is received in the county jail upon commitment from a mayor's court or municipal court for (a) violation of a state statute, and (b) violation of a municipal ordinance.

In Opinion No. 1138, Opinions of the Attorney General for 1952, page 121, I considered responsibility for the board and maintenance of prisoners in the county jail, and I there drew a distinction between county prisoners and municipal prisoners. Municipal prisoners are those sentenced for violation of a municipal ordinance, and county prisoners are those sentenced for violation of a state statute. The origin of the law under which said prisoner was sentenced was the sole distinction without reference to whether or not the sentencing court was a mayor's court or a municipal court. I followed this distinction in Opinion No. 5561, Opinions of the Attorney General for 1955.

Thus, in effect, the question presented is, what provisions are made for the medical treatment and hospitalization of municipal and county prisoners in the county jail and who is responsible to pay for such care?

In regard to county prisoners, it was held in Opinion No. 2246, Opinions of the Attorney General for 1928, Vol. II, page 1505:

"1. Persons arrested by peace officers for violating state laws may lawfully be confined in the county jail for such a period of time as is reasonably necessary, under all the circumstances of the case, to procure a proper warrant or commitment from a magistrate of competent jurisdiction.

"2. It is the duty of the sheriff to furnish, and the county commissioners to provide at the expense of the county, such medical, surgical and other like services as may be necessary to the health of prisoners lawfully confined in the county jail.

"3. If the Common Pleas Court has, by virtue of Section 3162, General Code, prescribed rules governing the employment of medical or surgical aid when necessary for prisoners in the county jail, such rules must be adhered to in furnishing such services."

In Opinion No. 135, Opinions of the Attorney General for 1939, Vol. I, page 160, without considering the 1928 opinion and upon an incomplete consideration of the statutory provisions relating to the duties of sheriffs and to the care of prisoners in the county jails, it was stated in the second paragraph of the syllabus that:

"2. In the absence of express appointment by the Court of Common Pleas, or in the absence of a contract with the County Commissioners, a physician rendering medical aid to incarcerated persons in a county jail may not receive payment therefor from the general fund of the county."

Later in 1939, the then Attorney General said in Opinion No. 869, Opinions of the Attorney General for 1939, Vol. II, page 1168:

"It is the duty of the sheriff to furnish, at county expense, such surgical service as may be necessary to the health of a prisoner who has been transferred to such county from the county jail of a second county, under the provisions of Section 3170, General Code."

This latter opinion relied upon the 1928 opinion, supra, and made no reference to the former 1939 opinion. I have been presented with several similar questions in recent years and have adopted the view expressed in 1928. In opinion No. 4177, Opinions of the Attorney General for 1954, upon consideration of Sections 341.06, 341.19, 341.01 and 341.04, Revised Code, I stated at page 434:

"In the light of these provisions of the law, which are manifestly intended to guard the health of the prisoners committed to a county jail, there could hardly be any question raised

as to the obligation of the county to take care of its prisoners, to the extent if necessary of providing them with hospitalization and medical and surgical care."

Also in Opinion No. 4177, supra, I considered the status of municipal prisoners in the county jail who were in need of medical treatment. I there said that when there was a contract between the municipality and the county, which obligated the county to maintain the prisoners, and such contract contained no reference to medical care as such, but did require the county to "sustain" such prisoners, the county was obligated to furnish such services at its own expense on the theory that "maintenance" included medical care. You have stated, however, that no contract exists, so that the question of responsibility still exists.

Section 753.02, Revised Code, reads as follows:

"The legislative authority of a municipal corporation *shall provide by ordinance for sustaining all persons sentenced to or confined in a prison or station house at the expense of the municipal corporation,* and in counties where prisons or station houses are in quarters leased from the board of county commissioners, may contract with the board for the care and maintenance of such persons by the sheriff or other persons 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 legislative authority designates, such officer shall audit the bills under the rules and regulations prescribed by the legislative authority, and draw his order on the treasurer of the municipal corporation in favor of the person presenting such bill, but the amount shall not exceed seventy-five cents a day for any person so confined." (Emphasis added.)

In considering this section in Opinion No. 4177, supra, I stated:

"In the section last above quoted, the duty is placed on a municipality 'to provide by ordinance for *maintaining* all persons sentenced to, or confined in a prison or station house at the expense of the municipal corporation.' It certainly needs no argument to show that the duty thus imposed would include provisions for the care of the health of its prisoners. The words 'maintain' and 'sustain' are, according to Webster's International Dictionary synonymous; and both are defined as meaning to 'support.' The courts have defined these words, as including much more than mere lodging and feeding. Thus, in the case of In re Surbeck's Estate, 56 N. Y. S., 2nd 487, it was said: '"Maintenance" is a word of general welfare, and comprehends food, clothing and medical care.' To like effect, Eastland v. Williams Estate, Tex. Civ. App., 45 S. W., 412."

Thus, having decided that the municipality does have the duty to provide for medical care, it follows that such municipality is also responsible to pay for such treatment unless the county has assumed this responsibility by contract. It should further be noted that the seventy-five cent per day maximum provided in Section 753.02, supra, upon consideration in Opinion No. 3459, Opinions of the Attorney General for 1941, page 78, was held to be applicable only in the event that the quarters in which municipal prisoners were confined were leased from the board of county commissioners; such a lease does not appear to exist from the facts you have submitted.

In reference to the method by which treatment is to be provided, Section 1905.35, Revised Code, declares:

> "Imprisonment under the ordinances of a municipal corporation shall be in the workhouse or other jail of the municipal corporation. Any municipal corporation not provided with a workhouse, or other jail, may, for the purpose of imprisonment, use the county jail, at the expense of the municipal corporation, until the municipal corporation is provided with a prison, house of correction, or workhouse. *Persons so imprisoned in the county jail are under the charge of the sheriff.* Such sheriff shall receive and hold such persons in the manner prescribed by the ordinance of the municipal corporation, until such persons are legally discharged." (Emphasis added.)

It should be noted that the sheriff is to proceed in regard to municipal prisoners as provided by the ordinances of the municipality and that such ordinances should provide for medical treatment. It would appear from your query that no such ordinance exists which directs the sheriff's action.

As Section 1905.35, supra, provides, such prisoners are "under the charge of the sheriff." The duty upon the municipality to provide medical care for its prisoners can not be avoided merely by a failure to act. Thus, lacking any specific directions by municipal ordinance, the sheriff should proceed to procure medical treatment for municipal prisoners in the same manner as county prisoners, except that said municipality shall be responsible to pay for the expense incurred.

Accordingly, it is my opinion and you are advised that:

1. It is the duty of the sheriff to furnish, and the county commissioners to provide at the expense of the county, such medical treat-

ment and hospitalization as may be necessary to the health of county prisoners sentenced to the county jail by a mayor's court or municipal court for violation of a state statute, provided, however, that if the court of common pleas has, by virtue of Section 341.06, Revised Code, prescribed rules governing the employment of medical or surgical aid for prisoners, such rules must be adhered to by the sheriff in furnishing such services. Opinion No. 135, Opinions of the Attorney General for 1939, Paragraph 2 of the Syllabus; overruled.

2. It is the duty of a municipality to provide by ordinance for such medical treatment and hospitalization as may be necessary to the health of municipal prisoners sentenced to the county jail by a mayor's court or municipal court for violation of a municipal ordinance, provided, however, that if such municipality fails to provide for such care by ordinance, the sheriff shall obtain such care for municipal prisoners in the manner prescribed for county prisoners, and the municipality shall be responsible for the expense incurred in obtaining such services.

Respectfully,

C. WILLIAM O'NEILL
Attorney General