

OPINION
46-69

October 5, 1946 (OPINION)

COUNTIES

RE: Compensation of Jailer

This will acknowledge receipt of your letter of October 2, 1946, in regard to the appointment and compensation of the jailer for the county jail.

As stated in your letter, section 11316 of the Compiled Laws of 1913, provided for the appointment and compensation of the jailer. Said section reads as follows:

"The jailer or keeper of the jail shall, unless the sheriff elects to act as jailer in person, be a deputy appointed by the sheriff and such jailer shall take the necessary oath before entering upon the duties of his office. The board of county commissioners or each county shall fix the amount to be paid the sheriff as compensation for such jailer's services; provided the sheriff shall in all cases be liable for the negligence and misconduct of the jailer as of other duties."

In the Revised Code of 1943, section 11316 of the Compiled Laws is embodied in section 12-4420 which reads as follows:

"The sheriff shall act as keeper of the jail unless he shall designate one of his deputies as such jailer, and such jailer shall take the necessary oath before entering upon the duties of his office. The sheriff in all cases shall be liable for the negligence and misconduct of the jailer."

I have looked up section 12-4420 in the "Code Revision Report of the Code Revision Commission" and I find there the following reviser's note: "We have eliminated 'The board of county commissioners of each county shall fix the amount to be paid the sheriff as compensation for such jailers services'."

No explanation is given in the "Code Revision Report" as to the Code Commission's reason for eliminating the provision in section 11316 of the Compiled Laws in regard to compensation of the jailer. But it is obvious that, in view of the provision of section 11-1011 of the Revised Code, it was not deemed necessary to state that the jailer's compensation shall be determined by the county board. Under the provisions of section 11-1011, the board clearly has the power to fix the salary or compensation of the jailer if the appointment of a jailer is deemed necessary.

NELS G. JOHNSON

Attorney General