

**OPINION NO. 67-078****Syllabus:**

1. A noncharter city operating under a general plan of municipal government may not create a department, other than those departments already authorized by the Revised Code, to handle matters such as income tax and ambulance service.

2. A fire department may be assigned, by ordinance, the duty of furnishing emergency ambulance service unrelated

to damage and accidents resulting from fire. A police department may be assigned, by ordinance, the duty of furnishing emergency ambulance service unrelated to strictly traffic and law enforcement functions. Such service, provided by ordinance, would be in addition to the ambulance service relating to damage and accidents resulting from fire as authorized in Section 737.21, Revised Code, and such service would also be in addition to the ambulance service relating to the traffic and law enforcement functions of the police department. Further, a noncharter city operating under a general plan of municipal government may provide ambulance service as a related adjunct of hospital service rendered under Section 715.37, Revised Code.

3. Persons other than firemen, whose positions are duly authorized, and who have duly qualified under the civil service law, may be employed to drive ambulances for the ambulance service of a city fire department.

4. City employees having ambulance duties in the police and fire departments must be under municipal civil service, and the director of public safety is the official who classifies the service in the police and fire departments pursuant to the provisions of Section 737.13, Revised Code. City hospital employees having ambulance duties are subject to the provisions of Sections 143.08 and 143.30, Revised Code, relating to civil service. The hiring authority is determined by the statute relating to the particular type of municipal hospital involved, for example, employees of a hospital erected under Sections 749.02 to 749.14, inclusive, of the Revised Code, are hired by the director of public safety pursuant to Section 749.15, Revised Code.

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To: Roger Cloud, Auditor of State, Columbus, Ohio  
By: William B. Saxbe, Attorney General, August 8, 1967

Your office has requested my opinion on the following questions:

"1. May a city operating under a statutory form of government create a department, other than those departments already authorized under the Revised Code of Ohio, to handle various matters such as income tax and ambulance service?

"2. To what extent and under what authority can ambulance service be provided the citizens of a municipal corporation outside of fire situations?

"3. May municipal police and firemen, officers and nonofficers, be employed and

paid to drive the ambulances in addition to their regular duties and salary?

"4. Where ambulance service is provided through the fire department, may persons other than firemen be employed to drive them?

"5. Must employees having ambulance duties be under Municipal Civil Service; who makes this determination and at what time?"

This opinion is limited to noncharter cities operating under a general plan of municipal government and does not relate to charter cities, or noncharter cities operating under an optional plan of municipal government.

To find the powers and duties of a noncharter city we must first go to the Constitution of Ohio.

Section 2, Article XVIII, Ohio Constitution, provides as follows:

"General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law."

Section 3, Article XVIII, Ohio Constitution, provides as follows:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

Section 7, Article XVIII, Ohio Constitution, provides as follows:

"Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section

3 of this article, exercise thereunder all powers of local self government."

In Opinion No. 826, Opinions of the Attorney General for 1929, pages 1276-1283, one of my predecessors stated as follows:

"It seems apparent that the Constitution makers, in framing Article XVIII of the Constitution of Ohio, meant to provide definitely for all the powers which might be possessed by a municipal corporation, and did not mean to permit the municipality to enlarge on these powers by the adoption of a charter. They, as well, designated the agency empowered to create a municipal corporation, and provided for the distribution of the powers granted to the corporation within its governmental structure. They provided further, that the municipal corporation might change its governmental structure and re-distribute its powers within its government by the adoption of a charter. Until such time as it did adopt a charter by authority of Section 4 (sic), of Article XVIII, the distribution of its powers and its governmental structure is to be controlled by general law."

The first branch of the syllabus of Opinion No. 1054, Opinions of the Attorney General for 1949, page 669, provides as follows:

"If a city has not adopted one of the optional plans of government and framed a charter or exercised its powers of local self-government pursuant to the provisions of Article XVIII, Section 7 of the Constitution of Ohio, the provisions of Sections 4323 to 4334, inclusive, of the General Code, as they pertain to the powers and duties of the director of public service in the operation and maintenance of all municipally owned utilities, must be followed."

Branch one of the syllabus of Opinion No. 2198, Opinions of the Attorney General for 1952, page 832, provides as follows:

"A municipality which has not adopted a special charter pursuant to Section 7, of

Article XVIII, of the Ohio Constitution, must exercise its powers of local self-government by and through the officers provided in the general laws authorized by Section 2, of said Article XVIII, and the council of such city is without power to transfer the powers and duties of such officers to other officers or boards of its own creation."

In Opinion No. 2198, Opinions of the Attorney General for 1952, page 832, 837, the then Attorney General stated as follows:

"No where is any authority given the council to limit the authority granted any officer or to transfer his powers to another officer or office which the council sees fit to create. While the municipality is authorized by Section 3 of Article XVIII, supra, to exercise all powers of local self-government, it cannot substitute a municipal organization of its own making for that which the general assembly has enacted pursuant to Section 2 of the same Article."

(Emphasis added)

Since the city here involved is a noncharter city, we must look to the general laws enacted by the legislature relating to the government of municipalities in the state.

The first paragraph of Section 733.01, Revised Code, reads as follows:

"The executive power of cities shall be vested in a mayor, president of council, auditor, treasurer, solicitor, director of public service, director of public safety, and such other officers and departments as are provided by Title VII of the Revised Code.

"\* \* \*

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The officers and departments of a noncharter city operating under a general plan of municipal government are limited to those found in Title VII of the Revised Code. Title VII does not provide for a separate department of municipal government to handle various matters such as income tax and ambulance service, and no authority was found for a city operating under a general plan of government to create such a department.

We now come to question two which asks "to what extent and under what authority can ambulance service be provided the citizens of a municipal corporation outside of fire situations?"

Section 737.21, Revised Code, provides as follows:

"The legislative authority of a municipal corporation may establish all necessary regulations to guard against the occurrence of fires, protect the property and lives of its citizens against damage and accidents resulting therefrom, and for such purpose may establish and maintain a fire department, provide for the establishment and organization of fire engine and hose companies and rescue units, establish the hours of labor of the members of its fire department who shall not be required to be on duty continuously more than six days in every seven, and provide such by-laws and regulations for the government of such companies and their members as is necessary and proper."

Section 737.11, Revised Code, provides as follows:

"The police force of a municipal corporation shall preserve the peace, protect persons and property, and obey and enforce all ordinances of the legislative authority thereof, and all criminal laws of the state and the United States. The fire department shall protect the lives and property of the people in case of fire. Both the police and fire departments shall perform such other duties as are provided by ordinance. The police and fire departments in every city shall be maintained under the civil service system."

Section 715.37, Revised Code, provides as follows:

"Any municipal corporation may:

\* \* \* \* \*

"(D) Erect, maintain, and regulate pest-houses, hospitals, and infirmaries."

In Section 737.21, Revised Code, the words "resulting therefrom" clearly indicate that the function of a municipal fire department, and by implication its emergency ambulance service, is to protect the property and lives of citizens of the municipality from damage and accidents resulting from fire. Section 737.21, Revised Code, does not, in my opinion, authorize a fire department affected by that statute, to offer ambulance service except as such service is incident to the fire-fighting functions of the department. However, Section 737.11, Revised Code, provides: "Both the police and fire departments shall perform such other duties as are provided by ordinance." It therefore appears that the fire department could be assigned, by ordinance, the duty of furnishing emergency ambulance service unrelated to damage and accidents resulting from fire. It also appears that the police department could be assigned, by ordinance, the duty of furnishing emergency ambulance service unrelated to strictly traffic and law enforcement functions. The service, provided by ordinance, would be in addition to the ambulance service relating to damage and accidents resulting from fire as authorized in Section 737.21, Revised Code, and in addition to the ambulance service relating to the traffic and law enforcement functions of the police department.

In view of Section 715.37, Revised Code, which grants the municipality the power to erect, maintain, and regulate hospitals, it seems that the municipality could provide ambulance service as a related adjunct of hospital service rendered under such section.

Question three asks if municipal police and firemen, officers and non officers, may be employed and paid to drive the ambulances in addition to their regular duties and salary. This question appears to assume that a separate ambulance service department can be created, and since we have indicated this cannot be done, question three appears moot.

Question four asks "where ambulance service is provided through the fire department, may persons other than firemen be employed to drive them?"

Section 737.08, Revised Code, provides as follows:

"The fire department of each city shall be composed of a chief of the fire department and such other officers, firemen, and employees as provided by ordinance. The director of public safety shall have the exclusive management and control of such other surgeons, secretaries, clerks, and employees, as are provided by ordinance or resolution of the legislative authority of such city."

Section 737.08, Revised Code, permits appointment of employees other than firemen to positions in the fire department by ordinance or resolution of the legislative authority of the city. It therefore appears that persons, other than firemen, whose positions are duly authorized, and who have duly qualified under the civil service law, may be employed to drive ambulances for the ambulance service of a fire department. It should be noted, however, that Section 143.33, Revised Code, prohibits the transfer of personnel between the fire and police departments.

Your fifth and final question asks whether employees having ambulance duties must be under municipal civil service and who makes this determination and at what time.

Section 737.11, supra, provides in part as follows:

"\* \* \*The police and fire departments in every city shall be maintained under the civil service system."

Section 737.13, Revised Code, reads as follows:

"The director of public safety of a city shall classify the service in the police and fire departments in conformity with the ordinance of the legislative authority thereof determining the number of persons to be employed in the departments, and shall make all rules for the regulation and discipline of such departments, except as otherwise provided by law."

It thus is evident that employees having ambulance duties in the police and fire departments must be under municipal civil service, and the director of public safety is the official who classifies the service in the police and fire departments in accordance with the provisions of Section 737.13, Revised Code.

City hospital employees having ambulance duties are subject to the provisions of Sections 143.08 and 143.30, Revised Code, relating to civil service. The hiring authority is determined by the statute relating to the particular type of municipal hospital involved, for example, employees of a hospital erected under Sections 749.02 to 749.14, inclusive, of the Revised Code, are hired by the director of public safety pursuant to Section 749.15, Revised Code.

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

1. A noncharter city operating under a general plan of municipal government may not create a department, other



than those departments already authorized by the Revised Code, to handle matters such as income tax and ambulance service.

2. A fire department may be assigned, by ordinance, the duty of furnishing emergency ambulance service unrelated to damage and accidents resulting from fire. A police department may be assigned, by ordinance, the duty of furnishing emergency ambulance service unrelated to strictly traffic and law enforcement functions. Such service, provided by ordinance, would be in addition to the ambulance service relating to damage and accidents resulting from fire as authorized in Section 737.21, Revised Code, and such service would also be in addition to the ambulance service relating to the traffic and law enforcement functions of the police department. Further, a noncharter city operating under a general plan of municipal government may provide ambulance service as a related adjunct of hospital service rendered under Section 715.37, Revised Code.

3. Persons other than firemen, whose positions are duly authorized, and who have duly qualified under the civil service law, may be employed to drive ambulances for the ambulance service of a city fire department.

4. City employees having ambulance duties in the police and fire departments must be under municipal civil service, and the director of public safety is the official who classifies the service in the police and fire departments pursuant to the provisions of Section 737.13, Revised Code. City hospital employees having ambulance duties are subject to the provisions of Sections 143.08 and 143.30, Revised Code, relating to civil service. The hiring authority is determined by the statute relating to the particular type of municipal hospital involved, for example, employees of a hospital erected under Sections 749.02 to 749.14, inclusive, of the Revised Code, are hired by the director of public safety pursuant to Section 749.15, Revised Code.