

tenance and repair of streets as well as construction, etc., it follows that said tax may properly be used for placing slag and other materials upon said streets even though such operation constitutes "maintenance" as contradistinguished from construction."

The conclusion in the opinion last referred to is of course based upon the law as amended by the 88th General Assembly and it is in harmony with the conclusion that I have hereinbefore reached so far as this question is concerned.

Based upon the foregoing and in specific answer to your inquiry, it is my opinion that:

(1) A municipal corporation may use its share of the motor vehicle license tax receipts arising under the provisions of Section 6309-2, as amended by the 88th General Assembly, 113 O. L. 280, for the purpose of improving streets by grading when such streets have not been improved by cindering, graveling, etc.

(2) A municipal corporation may use its share of the gasoline tax receipts for the same purpose and under the same conditions.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1543.

MUNICIPALITY ADOPTING COUNCIL-MANAGER GOVERNMENT—
COUNCIL TAKING OFFICE MAY FIX ITS MEMBERS' SALARIES—
—CHAIRMAN ENTITLED TO ADDITIONAL COMPENSATION AS
CHAIRMAN AND POLICE JUSTICE.

SYLLABUS:

1. *Where a municipality adopts a council-manager plan of government, the said council, after taking office, under the provisions of Section 3515-52 of the General Code, may fix the salary of its members. Section 3515-63 would have no application in connection with the initial fixing of such compensation.*

2. *Council, under such circumstances, may fix a salary or compensation for the chairman of council as such, in addition to the compensation fixed for him as a member of council for the purpose of compensating him for the additional duties imposed upon him as such chairman and police justice.*

COLUMBUS, OHIO, February 20, 1930.

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

GENTLEMEN:—Your recent communication reads:

"The city of Ironton, in November, 1929, by a vote of the electors, adopted the council-manager plan of government provided for by statute, and parties elected as members of council took office on January 1, 1930.

Section 3515-52, G. C., reads:

'Salaries and attendance of councilmen. The council shall by ordinance fix the salary of its members which shall be paid in equal monthly installments. For each absence from regular meetings of the council, unless authorized by a two-thirds vote of all members thereof, there shall be deducted a

sum equal to two per cent of such annual salary. Absence for ten successive regular meetings shall operate to vacate the seat of a member unless such absence is authorized by council.'

Section 3515-53, G. C., reads :

'Chairman of council. At the first meeting following each regular municipal election, the council shall elect one of its members chairman, who shall preside at meetings of the council and perform such duties as may be imposed upon him as presiding officer, by the council.'

The pertinent part of Section 3515-63 reads : .

'Compensation. The salary of an elective officer shall not be changed during the term for which such officer was elected.'

Question 1. Has council, the members of which entered upon their duties at ten o'clock A. M., power to fix the salaries of its members for the term upon which they so entered, an ordinance in effect at the time of their qualification having fixed the salaries or compensation?

Question 2. Has the council power to fix a salary or compensation for the chairman of council as such, in addition to the salary fixed for him as a member of council?

Question 3. Has the council power to fix a salary or compensation for a police justice, in addition to the compensation which may be provided for the member of council occupying such office, in addition to that provided for him as a member of council and as chairman of council?"

Sections 3515-1, et seq., of the General Code, provide for the adoption of the various forms of government for municipalities when the question is submitted to the electors in accordance with the provisions of said section. Section 3515-4, which applies generally to all forms adopted, provides that, when a given proposition is carried by a majority of the electors thereof, the same shall become the charter of such municipality. The section further provides :

"When so adopted, this act shall go into effect immediately, in so far as it applies to the nomination and election of officers provided for herein and in all other respects it shall go into effect upon the first day of January following the next regular municipal election. All officers of any plan of government superseded by the adoption of any plan provided in this act, except members of the commission or council, shall continue in office and in the performance of their duties until the commission or council elected hereunder shall have provided by ordinance for the performance of the duties of such officers, whereupon the terms of all such officers shall expire and their offices be deemed abolished."

From the above section, it will be observed that all the officers of any plan of government superseded by the adoption shall continue in office and in the performance of their duties until the commission or council elected under the adopted plan have provided for the performance of the duties of such officer, excepting members of the commission or council. In other words, the functions of the commission or council of the existing government at the time of the adoption of the new plan apparently ceases. For purposes generally, the Act goes into effect on the first day of January next following the regular municipal election.

Section 3515-52, which is a part of the general provisions applicable to all plans, provides for council fixing the salary of its members. Clearly such section must refer to the council so created under the new plan of government which is altogether a different body from that which would have existed under the prior form of govern-

ment. From additional data submitted, it appears that the plan under consideration was adopted at the August primary, 1928, and that the members of council to which you refer were elected in November, 1929.

Section 3515-63, to which you refer, providing that the salary of an elective officer must not be changed during the term of such officer, would have no application in the case which you present, for the reason that as yet there has been no salary fixed by the council created under the new plan. Obviously, a salary cannot be changed which is not in existence. Of course, as soon as such salary has been fixed, the section last mentioned would have application. It is believed the foregoing will dispose of your first inquiry.

In considering your second and third inquiries, it will be observed that there appears to be no provisions of the sections relative to this form of government providing that a member of council shall receive no compensation other than that fixed as his salary as such member. Upon the other hand, as pointed out in your communication, the statutes authorize the council to prescribe such duties for the chairman or presiding officer as it deems advisable and Section 3515-53, as amended by the 87th General Assembly, 112 O. L. 201, expressly casts upon him the duties of police justice. It would be unreasonable to conclude, inasmuch as many additional burdens are placed upon such an officer, that he could not be compensated for such services. There is no fundamental objection to an officer receiving compensation for dual services when the two positions are not incompatible or against public policy. I know of no inhibition against such a municipality providing for the additional salary of the member of the present council who acts in the capacity of police justice.

Based upon the foregoing and in specific answer to your inquiries, it is my opinion that:

1. Where a municipality adopts a council-manager plan of government, the said council, after taking office, under the provisions of Section 3515-52 of the General Code, may fix the salary of its members. Section 3515-63 would have no application in connection with the initial fixing of such compensation.

2. Council, under such circumstances, may fix a salary or compensation for the chairman of council as such, in addition to the compensation fixed for him as a member of council for the purpose of compensating him for the additional duties imposed upon him as such chairman and police justice.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1544.

APPLICATION—FOR PERSON TO ACT AS POLICEMAN—GOVERNOR
MAY ONLY COMMISSION PERSONS UPON APPLICATION OF OR-
GANIZATIONS SET FORTH IN SECTION 9150, GENERAL CODE.

SYLLABUS:

The Governor of the State of Ohio has no authority to issue commissions to persons to act as policemen upon the application of companies or associations unless the application is made by a bank or building and loan association, association of banks or building and loan associations, or a company owning or operating a railroad, street railroad, suburban or interurban railroad in this state.