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A VILLAGE OPERATING WITHOUT A CHARTER MAY AS PART OF ITS COMPENSATION TO EMPLOYEES PROVIDE HOSPITALIZATION FOR ITS EMPLOYEES AND PAY THE PREMIUM FOR SUCH COVERAGE FROM VILLAGE FUNDS—§731.13, R.C.

SYLLABUS:

A village operating without a charter may as part of the compensation to its employees, pursuant to proper action of its legislative body in accordance with Section 731.13, Revised Code, provide hospitalization for its employees and pay the premium for such coverage from village funds.

Columbus, Ohio, May 10, 1961

Hon. Joseph Loha, Prosecuting Attorney
Jefferson County, Steubenville, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

"I have been requested by the solicitor of the village of Mingo Junction, Ohio, to obtain an opinion from you concerning the following problem:

"The Council of the Village decided to provide hospitalization for all of its employees. I would like to know if this is a proper use of public funds and also would this be considered a wage increase, thereby making a distinction between married and single employees. The hospitalization for married employees will cost approximately \$14.55 and the cost for single employees will be approximately \$5.55.

"Due to the distinction between the benefits conferred upon the married employees and the single employees, would this be considered a non-conformity with the statute that requires wages to be uniform for municipal employees in the same class."

As to the authority of a municipal corporation in Ohio to expend public funds for the payment of hospital costs, your attention is called to Opinion No. 4685, Opinions of the Attorney General for 1941, page 1091, the first paragraph of the syllabus of which reads as follows:

"1. A municipal corporation may as part of the compensation of its employes, pursuant to proper action by its legislative authority, authorize the payment of all or a portion of a premium of group life insurance covering the lives of such employes, except members of the police and fire departments."

In reaching the above conclusion, the then attorney general determined that the provisions of Sections 3 and 7 of Article XVIII of the Constitution of Ohio granted to the legislative body of a municipality the ability to determine and fix for itself the salaries of its municipal employees. My predecessor was fortified in his decision by the case of *City of Mansfield v. Endly*, 38 Ohio App., 528.

It should be pointed out, however, that the Supreme Court of Ohio in the case of *State, ex rel. Canada, appellant v. Phillips, Director of Public*

Safety, appellee, 168 Ohio St., 191, specifically overruled the third and fourth paragraphs of the syllabus of the case of *City of Cincinnati v. Gamble, et al, Board of Trustees*, 138 Ohio St., 220. The third and fourth paragraphs of the syllabus of the *Gamble case, supra*, were relied upon by my predecessor in Opinion No. 4685, *supra*, for the proposition that matters relating to police and fire protection were of state wide concern and, therefore, laws of the state adopted in connection therewith were a limitation upon a municipality's home rule authority, however since the *Canada case, supra*, such legislation cannot interfere with the exercise by a municipal corporation of its powers of local self government. I am of the opinion, therefore, that the first paragraph of the syllabus of Opinion No. 4685, *supra*, properly states the law of Ohio as it relates to the authority of a municipality to pay premiums of group insurance except that there is no longer any prohibition in this regard in connection with members of the police and fire departments and, therefore, the expenditure of public funds proposed in your request, if properly authorized by the legislative authority of the village of Mingo Junction, is valid and lawful.

The second part of your question deals with the possible discriminating nature of the proposed payment in that the premium charge for coverage for married employees under the plan is considerably greater than such charge is for single employees. While it may not be technically correct to designate payment for hospitalization coverage as an employee wage increase, certainly such payment would represent a form of compensation to the employees involved and obviously as between married and single persons such increase in compensation would not be identical. However, it is not within the province of this office to determine the wisdom of such a probably unequal salary increase or its effect upon the morale of the employees of a given village. If the legislative authority of a municipality has the power to fix the compensation of employees at its discretion, then any determination relating to such compensation must be left to the discretion of such legislative authority. Considering only the legal ability of the legislature of a village, I find no provision of law which requires that compensation for employees of that type of municipality be uniform even though the work performed by some of such employers may be identical. As pointed out earlier in this opinion, the authority to establish compensation of employees is within the power granted to the municipality by the Ohio Constitution (See *Mansfield v. Endly*, 38 Ohio App., 528, 38 Ohio Jurisprudence, 2d, 587, Municipal Corporations, Sec. 200).

Your attention is also called to Section 731.13, Revised Code, which reads as follows:

“The legislative authority of a village shall fix the compensation and bonds of all officers, clerks, and employees of the village except as otherwise provided by law. The legislative authority shall, in the case of electing officers, fix their compensation for the ensuing term of office at a meeting held not later than five days prior to the last day fixed by law for filing as a candidate for such office. All bonds shall be made with sureties subject to the approval of the mayor. The compensation so fixed shall not be increased or diminished during the term for which any officer, clerk, or employee is elected or appointed.”

In the early case of *Village of South Euclid v. Bilkey*, 126 Ohio St., 505, dealing with a similar statute, the court said in the second paragraph of the syllabus:

“2. The statute confers full and complete authority upon a village council to fix the salaries of officers of such village. Where the action of council, pursuant to that authority, is regular in all respects, it will not be reviewed by the courts upon a challenge of the wisdom and policy of such action or the motives of members of the legislative tribunal.”

Since a municipality pursuant to its home rule power has complete authority with regard to the salary paid to its employees, it might appear at first consideration that Section 731.13, *supra*, is merely a useless exercise of the legislative function on the part of the General Assembly. It should be remembered, however, that although the powers of local self government are applicable equally to municipalities regardless of whether or not such municipalities have adopted a charter in accordance with Section 7, Article XVIII of the Ohio Constitution, non-charter villages remain subject to statutory provisions which are adopted to prescribe an orderly method of exercising such powers. (See *Norris, et al v. Rosen, et al*, 162 Ohio St., 447; Opinion No. 819, Opinions of the Attorney General for 1959, page 513; Opinion No. 4322, Opinions of the Attorney General for 1954, page 498). Therefore, a non-charter village must operate within the provisions of Section 731.13, Revised Code.

Since the proposed agreement herein under consideration would represent a form of increased compensation, such contract, to comply with the provisions of Section 731.13, Revised Code, could not be effective as to any officer, clerk or employee of the village who is serving a specific

term, during the term for which such officer, clerk or employee is elected or appointed, unless, of course, there is authority in the village charter, if any, to the contrary.

In accordance with the above, it is my opinion and you are advised that a village operating without a charter may as part of the compensation to its employees, pursuant to proper action of its legislative body in accordance with Section 731.13, Revised Code, provide hospitalization for its employees and pay the premium for such coverage from village funds.

Respectfully,

MARK McELROY

Attorney General