

2076.

FIREMEN'S RELIEF AND PENSION FUND — ELECTION OF TRUSTEES — GOVERNED BY SECTION 4601 G. C. NOT BY STATE GENERAL ELECTION LAWS — FIREMEN MAY VOTE TO ELECT SINGLE TRUSTEE OF SUCH FUND, IF HE IS UNWILLING TO VOTE FOR ANY OTHER CANDIDATE FOR SUCH OFFICE — SEE OPINIONS ATTORNEY GENERAL, 1940, NO. 1781, PAGE 101.

SYLLABUS:

1. *Opinion rendered under date of January 29, 1940, bearing number 1781, discussed.*
2. *The election of trustees of the firemen's relief and pension fund is governed by Section 4601, General Code, and not by the general election laws of the state.*
3. *Under authority of Section 4601, General Code, a fireman may vote for the election of a single trustee of the firemen's relief and pension fund in the event that he is unwilling to vote for any other candidate for such office.*

Columbus, Ohio, March 26, 1940.

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

Gentlemen:

I am in receipt of your request for my opinion concerning the following questions:

“Question 1. In Attorney General's Opinion No. 1781, dated January 29, 1940, it is said—

‘Either the council or Budget Commission may, therefore, subject to the limitations prescribed by Sections 4605 and 5625-23, General Code, as pointed out in paragraphs 1 and 2 of this syllabus, alter or change the estimates submitted by the Board of Trustees of the Firemen's Relief and Pension Fund to the legislative authority of a municipality.’

The question immediately arises—What are the ‘limitations’ referred to, as prescribed by sections 4605 and 5625-23 of the General Code?

Question 2. Is it mandatory under section 4601 G. C., that on the day designated by law as day of election for the Firemen members of the Board of Trustees of the Firemen's Relief and Pension Board that each member, who by the Fire Department Rules is designated a member thereof, shall send or cause to be sent by mail or otherwise the names of *two* persons, members of the department, who are his choice or if he chooses can a member vote for only one person and yet be within the law. If it is mandatory that each member vote for two persons, what is the duty of the Board of Trustees with reference to ballots that are voted that contain only one name thereon? Does the election for trustees of the Firemen's Relief and Pension Fund as prescribed in Section 4601, General Code, have anything in common with the General Election Laws of the State of Ohio, or must the firemen be governed entirely by the provisions incorporated in Section 4601, General Code?"

Section 4605, General Code, referred to in your inquiry, reads:

"In each municipality the council thereof each year, in the manner provided by law for other municipal levies, and in addition to all other levies authorized by law, shall levy a tax of not to exceed three-tenths of a mill on each dollar upon all real and personal property as listed for taxation in such municipality, but sufficient in amount within the three-tenths of a mill to provide funds for the payment of all relief and pensions granted or that may be granted during the ensuing year to firemen, or to widows or children of deceased firemen, under existing laws or rules adopted pursuant to existing laws. In the matter of such levy, the board of trustees of the firemen's relief and pension fund shall be subject to the provisions of law controlling the heads of departments in the municipality, and shall discharge all the duties required of such heads of departments. The entire sum collected under such levy shall be credited to the firemen's relief and pension fund at the earliest practicable time. If the levy herein provided for does not raise sufficient funds in any municipality or municipalities with which to pay firemen's relief or pensions, such municipality or municipalities may by action of council appropriate sufficient funds with which to make such payments."

You inquire what are the limitations prescribed by this section. You will note from the foregoing statute that the legislature has required certain steps to be taken as a condition precedent to the levy of the tax. If we refer to Section 4600, General Code, we will find that the legislature has prescribed the method by virtue of which municipalities may avail themselves of the provisions of the act. Such section reads in part:

"In all municipal corporations having fire departments supported in whole or in part at public expense, and employing two

or more full time regular members, there shall be established and maintained a firemen's relief and pension fund. A board of trustees, the members of which shall be known as 'trustees of the firemen's relief and pension fund' shall be established in each such municipality. Such board of trustees shall consist of six members who shall be chosen in the following manner: * * * "

This section authorizes a city to avail itself of the act, if a certain procedure laid down in that and succeeding sections is followed. It is not until such precedent acts have been taken that the municipality may avail itself of the right to levy the tax authorized by Section 4605, General Code.

Having taken such steps, the legislature directs the municipalities to levy a tax for the benefit of or to maintain the firemen's pension fund. However, in authorizing the levy of such tax, the legislature has placed certain limitations, to wit:

1. The tax must be levied in the manner provided by law for other municipal levies.
2. The levy is in addition to all other levies authorized by law.
3. The tax levied under the authority of the section shall not exceed three-tenths of a mill on the real and personal property of the taxing district.
4. The tax to be levied must be sufficient in amount to provide funds for the payment of all pensions under laws existing at the time of the enactment of such section, but not to exceed three-tenths of a mill.
5. The tax may be levied only upon the real property and personal property as listed for taxation in the municipality. (Personal property as defined in Section 5325, General Code.)

When is a tax levied "in the manner provided by law?" Section 5625-20, General Code, provides that before the taxing authority of any subdivision may levy a tax, it must adopt "a tax budget for the next ensuing fiscal year." Such section prescribes the mechanics for the preparation of the budget. That is to say, the head of each department entitled to participate in any appropriation or revenue of a subdivision must file, in the case of a municipality, with the chief executive officer, before the first of June in each year, an estimate of its contemplated receipts or revenue for such next ensuing year and an estimate of its contemplated expenditures for such period. Section 4605, General Code, prescribes that the trustees of a fire-

men's pension fund "shall discharge all the duties required of such heads of departments" in the preparation of the budget estimate.

As pointed out in Opinion No. 1781, the county budget commission must adjust the estimates of requirements as set forth in such budget so as to make the total levies authorized to be made come within the limitations provided by the Constitution and statute. Thus, unless a levy for the contemplated purpose is authorized to be levied outside the "ten mill limitation" (Section 5625-2, General Code; and Section 2, Article XII of the Constitution), the budget commission may adjust the amount to be levied so that it, together with the other similar ranking needs, would, in the aggregate, not exceed ten mills. For the purpose of adjusting the amount of contemplated taxes, the county budget commission is bound by certain statutory limitations, among others.

1. If all contemplated levies may be made within the ten-mill limitation, the budget commission should make no adjustment.
2. The budget commission may not reduce any contemplated levy beyond the minimum fixed by law. (Section 5625-24, General Code.)
3. The budget commission must determine whether the levies prescribed by Sections 4605 to 4621, General Code, are properly authorized and, if so, approve them without modification (Section 5625-23, General Code), and similarly with levies for debt charges within the ten-mill limitation.

After such budget has been approved, the various taxing subdivisions must levy the amount of taxes so determined.

From the foregoing, it will be seen that certain quasi-judicial or discretionary duties are placed upon the municipality to determine what rate of taxation is necessary to be levied for the payment of all pensions granted to firemen under laws existing at the time of the enactment of Section 4605, General Code, but not to exceed three-tenths of a mill upon each dollar of the tax valuation of property upon the duplicate of the municipality.

The method of election of the board of trustees of the firemen's pension fund is specifically prescribed in Sections 4601 and 4602, General Code, which read:

Sec. 4601.

“On the second Monday of the month following the taking effect of this act, the two members of the board of trustees of the firemen’s relief and pension fund to be chosen by the members of the fire department shall be elected in the following manner: The secretary of the board shall give notice thereof by posting it in a conspicuous place at the headquarters of the department and at the house of each company composing it. Between the hours of six o’clock in the forenoon and six o’clock in the afternoon on the day designated each person in the fire department who by its rules is designated a member thereof, shall send or cause to be sent by mail or otherwise, in writing the names of two persons, members of the department who are his choice.

The two members of the municipal council, or other legislative body, to be chosen as members of the board of trustees as provided for in the next preceding section, shall be chosen by the members of the municipal council, or other legislative body, at their first regular meeting after the taking effect of this act for a term of one year beginning on the second Monday of September and thereafter members of the board shall be chosen annually to assume office on the second Monday of September and to serve for one year or until their successors have been duly chosen and qualified.”

Sec. 4602.

“All votes cast at the fire department election shall be counted and canvassed by the board of trustees who shall announce the result, and the two members receiving the highest number of votes, shall be members of the board of trustees of the firemen’s relief and pension fund for the ensuing year. If any two persons receive a tie vote for the office, it shall be decided by lot or in any other way agreed upon by the persons for whom such tie vote was cast.”

There is a well established rule of statutory construction to the effect that when there are special statutory provisions for particular cases in addition to a general statute, which in terms is broad enough to and would, were it not for the special statute, make provision for the matters provided for in the special statute, it must be taken that the legislature intended the matters provided for in the special statute to be governed thereby, and that the special statute is an exception to the general statute.

Doll v. Barr, 58 O. S., 113, 120;
 State, ex rel. Elliott, v. Connor, 123 O. S., 310;
 State, ex rel. Stellar, v. Zangerle, 100 O. S., 414;
 Perkins v. Bright, 109 O. S., 14;
 Northwestern Ohio Natural Gas Co. v. Tiffin, 59 O. S., 420;
 Western & Southern Indemnity Co. v. Chicago Title and Trust
 Co., 128 O. S., 422.

Were it not for the provisions of Sections 4601 and 4602, General Code, it might be that the manner of selection of trustees of the firemen's pension fund might be governed by the general election laws. Upon such question, I express no opinion; however, since the legislature has specifically provided that such trustees be elected in the manner provided in such special statute, I am, therefore, of the opinion that boards of trustees of the firemen's pension fund must be elected in the manner therein prescribed.

You further inquire whether a member may vote for one member only when two are to be selected under authority of Section 4601, General Code. Provisions of statute regulating official action in matters of form are usually to be regarded as merely directory, especially where they are designed only to promote order and convenience in the discharge of public business, and where the public interests or private rights do not depend upon their strict observance. Black on Interpretation of Laws, Section 127.

Similarly, all statements relating to procedure should be liberally construed and applied to effect their respective purposes.

Miami County v. Dayton, 92 O. S., 215;
Porter v. Rohrer, 95 O. S., 90;
Weirick v. Mansfield Lumber Company, 96 O. S., 386;
Vance v. Davis, 107 O. S., 577.

The purpose of Section 4601, General Code, is patent. It is to provide for the selection by firemen of the two trustees of the pension system who are the choice of the majority of the firemen. It is apparently not the intent of the legislature to require that each fireman shall be required to vote for trustees if he should not desire so to do; nor to provide that no election would result unless each and all firemen vote. The evident purpose of the legislature was to permit such firemen, who desired and were willing to vote for such purpose, to vote for the candidates between the hours specified in the statute. If we gave the statute the most rigid interpretation, no election would result unless every fireman voted. Such does not appear to have been the legislative intent. Such interpretation would lead to absurd consequences which are never presumed to have been intended by the legislature.

It likewise appears to have been the legislative purpose to permit the firemen to vote for two members. If the fireman does not desire to vote for any member for trustee, the statute does not provide a remedy to compel him to vote for anyone. It would appear that the legislature is granting

him a privilege or right which he may or may not use, as he sees fit. If he sees fit to exercise this privilege to the extent of only fifty percent, and to vote for only one member, I am unable to find any language in the act which would require him to vote for a second candidate whom he did not desire to have selected. It therefore seems to me that the legislative intent was to permit each fireman to vote for either one or two persons whom the fireman voting desires to have serve as trustee. It does not appear to have been the legislative intent to prevent the fireman from voting if only one candidate seems desirable to him.

Specifically answering your inquiries, it is my opinion that:

1. The election of trustees of the firemen's relief and pension fund is governed by Section 4601, General Code, and not by the general election laws of the state.
2. Under authority of Section 4601, General Code, a fireman may vote for the election of a single trustee of the firemen's relief and pension fund in the event that he is unwilling to vote for any other candidate for such office.

Respectfully,

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Attorney General.