

1399.

POLICE RELIEF FUND—COUNCILMANIC REPRESENTATIVES ON BOARD OF TRUSTEES LOSE MEMBERSHIP WHEN TERMS IN COUNCIL EXPIRE—HOW SUCH VACANCIES MAY BE FILLED.

SYLLABUS:

1. Trustees of a police relief fund chosen as representatives of a city council, cease to be trustees of such fund in the event that their terms as councilmen expire during their terms as trustees and their offices are accordingly vacated.

2. The board of trustees of a police relief fund may adopt rules and regulations providing for the filling of vacancies that may occur for any reason among the councilmanic representatives of such board, provided that the successors are chosen from the membership of council at the time the vacancies are filled.

COLUMBUS, OHIO, January 13, 1930.

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

GENTLEMEN:—Acknowledgment is made of your recent communication which reads:

“Section 4616 G. C., as amended 113 O. L., page 64, provides in part for the selection of two members of a city council to act as trustees of a police relief fund, and Section 4619, G. C., provides that members so selected shall serve for one year, or until their successors are elected.

Two members of the council of the city of ----- were selected during the current year, and after the amendment of Section 4614, G. C., as members of the board of trustees of the police relief fund. These two members were not re-elected, and their terms as members of council will expire on December 31, 1929.

Question: Do such persons continue as members of the board of trustees of the police relief fund for the period of one year following the organization effected during the current year?”

Section 4616, General Code, to which you refer, as amended by the 88th General Assembly, provides:

“In any municipal corporation, having a police department supported in whole or in part at public expense, the council by ordinance may declare the necessity for the establishment and maintenance of a police relief fund. Thereupon a board of trustees who shall be known as ‘trustees of the police relief fund’ shall be created, which shall consist of six members, who shall be chosen in the following manner: Two members shall be chosen by the city or village council, or other legislative body, from among its own members; two members shall be elected by the police department from members of its own department; two other members shall be residents of the municipality and not members of the council, or other legislative body, or of the city and village police department, one of whom shall be chosen by the two members chosen by the municipal council, or other legislative body, and one shall be chosen by the two members elected by the members of the police department. In the event of a tie vote on any matter whatsoever the six members so chosen shall choose a seventh member, whose vote shall decide the question.”

Section 4617, General Code, as amended, provides that upon the taking effect of the act, two members of the board of trustees of the police relief fund to be chosen by the members of the police department, shall be elected in the manner outlined in said section. The section then provides:

"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."

Section 4619, General Code, as amended, provides:

"The members so elected shall serve for one year, or until their successors are elected, and the election for such successors shall be held each year upon the second Monday of September. In case of vacancy by death, resignation or otherwise, among the members so elected by the police department, a successor shall be chosen at a special election, called by the secretary of the board. Such election shall be conducted in the manner provided in Section 4617 of the General Code. The board of trustees at its first meeting or as soon thereafter as possible, shall adopt rules and regulations to govern the filling of any vacancies which may occur among the other members of the board."

It is plain that the language of these sections does not effect a categorical answer to your inquiry. While it is clear that the members must originally be chosen from the council, yet there is no express language which makes it necessary that the office of councilman be held throughout the term of service as a trustee. It is also clear that the two members chosen from the police department must be members of such department at the time of their choice and the statute further specifies that, in case of vacancy as to either of these members, a special election must be held and the successor must be a member of the police department. The third group must be residents of the municipality and members of neither council nor the police department. As to these particular members, the statute is fairly clear that the residence and non-membership qualifications must exist throughout the term, but it is only as to these members that the necessity of continuity of qualification may be said to be fairly specific.

Considering all of the sections together, however, it is evident that the Legislature intended that the board of trustees should be a representative affair. Its personnel was intended to include an equal representation from council and the police department and from the citizenship at large not connected with either council or the police department. While the expression of the Legislature leaves much to be desired, I feel that a fair interpretation of its intention is that trustees who are chosen as representatives of the council may not hold office as such trustees after they have ceased to be councilmen, and the same rule would apply to the representatives of the police department. This is in harmony with the ordinary rule that membership in an organization on the basis of membership in certain constituent organizations ceases when there exists no longer membership in the constituent organization.

The conclusion which I have reached is substantiated by language found in an opinion of my predecessor, appearing in Opinions of Attorney General for 1928, at p. 2092. The discussion there involved the right of a member of a board of cemetery trustees who is chosen as such as the representative of the council, to hold office after ceasing to be a councilman. My predecessor said:

"You will observe the language used in the first sentence of this section. I construe this to mean that at least one member must be a member of the

board of township trustees. Accordingly, if the sole representative of the municipal council on the board should go out of office as a councilman, I believe his office as a member of the board would also be vacant, and the same rule would apply to the member chosen from the board of township trustees."

In view of what has been said, I am of the opinion that trustees of a police relief fund chosen as representatives of a city council, cease to be trustees of such fund in the event that their terms as councilmen expire during their terms as trustees and their offices are accordingly vacated.

Since a vacancy exists under such circumstances, the provisions of Section 4619 of the Code, supra, become applicable. By the last sentence of that section, the authority is given to the trustees to adopt rules and regulations governing the filling of vacancies occurring in the membership of the board including the vacancies which would be occasioned in the manner hereinbefore indicated. In my view the board may adopt any reasonable rules and regulations with respect thereto providing that the vacancies among the councilmanic representatives must be filled from the membership of council at the time such vacancies are filled.

Respectfully,  
GILBERT BETTMAN,  
Attorney General.

1400.

ROAD IMPROVEMENT—BEGUN BEFORE BUT COMPLETED AFTER EFFECTIVE DATE OF UNIFORM BOND ACT—COUNTY'S SHARE PAID FROM LEVIES UNDER SECTIONS 1222 AND 6926, GENERAL CODE—BOND ISSUE FOR REIMBURSING FUNDS NOW AUTHORIZED.

**SYLLABUS:**

*When proceedings became pending in October, 1924, for the construction of an inter-county highway, upon a co-operative basis between the state and the county, and the improvement was completed and paid for in December, 1927, the county's portion of the cost having been paid by appropriations from the proceeds of levies under Sections 1222 and 6926, General Code, bonds may not now be issued for the purpose of reimbursing the fund or funds from which appropriations were heretofore made.*

COLUMBUS, OHIO, January 13, 1930.

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

GENTLEMEN:—Your letter of recent date is as follows:

"We are enclosing herewith a letter from one of our examiners, in which he outlines the procedure in connection with the construction of a state road improvement and makes inquiry whether under the conditions stated, the county commissioners may legally issue and sell bonds for the county's share of such improvement and also for the shares of the township and property owners. Will you please render your opinion to this department upon the questions submitted in this letter?"

Enclosed with your letter is the following letter from your examiner:

"Under date of October 13, 1924, the commissioners of Belmont County petitioned the State Highway Director to cooperate in the construction of Sec. A-1 of I. C. H. No. 7.