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MUNICIPAL CORPORATION—BANK MAY ACT AS AGENT TO COLLECT WATER RENTS AND ELECTRIC LIGHT CHARGES—MAY RECEIVE REASONABLE COMPENSATION.

Under the existing constitution and laws, all municipalities may properly constitute a bank as their agent to collect water rents and electric light charges, and may grant a reasonable compensation for such services.

COLUMBUS, OHIO, June 25, 1921.

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

GENTLEMEN:—In your recent communication you request my written opinion on the following questions:

Question 1. May a non-charter municipality legally have waterworks or electric light collections paid through a local bank, and pay such bank a commission or compensation for making such collections from water and light consumers?

Question 2. Can this be legally done in a charter governed city?"

It is a well established principle of jurisprudence that municipal corporations have such powers as are expressly granted, and such implied powers as are necessary to carry into effect the powers expressly conferred. See Page and Adams' Digest, Vol. 5, page 11572, and numerous citations given therein.

Section 3 of article XVIII of the Constitution, as amended in 1912, provides:

"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."

In the case of *Fremont vs. Keating*, 96 O. S. 468, the supreme court of Ohio recognized the rule that this amendment enlarged the powers of all municipalities, irrespective of whether or not they were chartered or unchartered. Therefore, in considering your inquiry it must be kept in view that in determining the power of municipalities which come within the scope of said constitutional provisions, we are no longer limited to the statutes relating to the so-called enumerated powers.

The following sections of the General Code, relating to the duties and powers of the director of public service in connection with the management of waterworks, are pertinent to consider at this time:

"Sec. 3956. The director of public service shall manage, conduct and control the water works, furnish supplies of water, collect water rents, and appoint necessary officers and agents."

"Sec. 3957. Such director may make such by-laws and regulations as he deems necessary for the safe, economical and efficient management and protection of the water works. Such by-laws and regulations shall have the same validity as ordinances when not repugnant thereto or to the constitution or laws of the state."

"Sec. 3958. For the purpose of paying the expenses of conducting and managing the water works, such director may assess and collect from time to time a water rent of sufficient amount in such manner as he deems most equitable upon all tenements and premises supplied with water * * *."

Under the plain provisions of section 3956 G. C., supra, it would seem clear that the director of public safety of a municipality has full power and authority to manage and control the waterworks, including the collection of rents, and further is empowered to appoint and employ necessary officers and agents. In construing the sections above quoted, it has been held that the director of public safety exercises a wide discretion. See *Hutchins vs. Cleveland*, 9 O. C. C. (n. s.) 226; *Rogers vs. Cincinnati*, 14 O. N. P. (n. s.) 193, and *City of Mansfield vs. Humphreys*, 82 O. S. 216.

Without further consideration, it is the opinion of this department that under the provisions of the law it is within the discretion of the director of public service relative to the method of collection, and if an arrangement is entered into whereby a bank is constituted an agent for the purpose of making water rent collections and compensated therefor, it cannot be questioned, unless an arrangement should be made which is so unreasonable as to constitute an abuse of power. Of course, the provisions of section 3960 G. C. relative to the weekly deposits of the waterworks receipts and separation of the fund should not be violated. What has been said is referable to non-chartered cities, and obviously the same must be said relative to the same power of a chartered city.

The statutes are not so explicit in so far as they relate to the operation of an electrical plant. However, the controlling authority in this respect springs from the constitution itself. Pertinent provisions of the constitution are as follows:

Section 4 of Article XVIII:

"Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility."

Section 6 of Article XVIII:

"Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality."

While as above indicated, the statutes are comparatively silent as to the detailed procedure relating to the control, management and operation of municipality owned electric light plants, it is evident, in view of the foregoing

citations, that the power to establish and manage the same clearly exists.

Under the existing constitution and laws it would seem logical to assume that by implication a municipal corporation would be permitted to exercise similar powers relating to managing electrical plants to those exercised in the managing of waterworks. The expressed power enabling municipalities to establish and operate such plants not outlining the method of procedure, it must be assumed that such implied power will be added as is necessary to carry into effect the expressed powers granted.

It would, therefore, seem that no objection could logically be raised in the event that a municipality followed a procedure in reference to the matter of electric light plants which the statutes have outlined in reference to waterworks.

It is, therefore, the opinion of this department that what has been said herein relative to the authority of a municipal corporation to constitute a bank as its agent to collect water rents is applicable, in so far as results are concerned, in the collection of electric light bills.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2194.

COUNTY TREASURER—CANADIAN MONEY—HAVING ACCEPTED SUCH MONEY IN HIS FISCAL TRANSACTIONS HE MUST BEAR LOSS OF ANY DEPRECIATION IN SAME.

A county treasurer having accepted Canadian instead of United States money in his fiscal transactions must bear the loss of any depreciation in such foreign money accepted.

COLUMBUS, OHIO, June 25, 1921.

HON. CLINTON W. FAWCETT, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion on the following statement of facts:

“During the last few years, the treasurer of Putnam county, Ohio, has received from the taxpayers and from banks, as change, the amount of \$21.80 of Canadian money. Each dollar of this money is now worth only eighty cents. The greater amount of this sum was paid to the treasurer previous to the depreciation or when each dollar of Canadian money was worth one hundred cents. As the Canadian dollar is only worth eighty cents, said amount of money has depreciated to the extent of \$4.36. The treasurer still has this money in his possession and I would be pleased to have your opinion as to whether the treasurer will be compelled to make good this depreciation or will the county be compelled to bear the loss.”

Your attention is first invited to the provisions of chapter 4, Div. II of title X of the General Code, being the chapter upon powers and duties of the county treasurer and containing sections 2632 to 2749 G. C., inclusive. In this chapter you will find that the treasurer must receipt the taxpayer for the taxes paid by the latter on the basis that such taxes are paid in cash, that is,