

613.

## CITY CHARTER—MUNICIPAL UTILITIES—RATES—APPROVAL BY COUNCIL.

## SYLLABUS:

*Where a city charter provides that rates of municipally owned utilities shall be fixed by a municipal board of control subject to the approval of council, the establishment of such rates by such board of control is ineffective until approved by council.*

COLUMBUS, OHIO, May 18, 1937.

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

GENTLEMEN: Your letter of recent date is as follows:

"We are enclosing herewith correspondence from our Cleveland Examiner, together with rate schedule for electrical service of a municipal plant, adopted in accordance with the requirements of Section 112 of the Cleveland City Charter, and also copy of Board of Control resolution No. 1889, modifying such rates, but which was not approved by council in accordance with the charter provisions.

Will you kindly examine the inclosure and advise us if the modifying rate provided by Resolution No. 1889 is legal and effective in view of the fact that such resolution was not approved by the city council in accordance with the provisions of Section 112 of the Cleveland City Charter."

Section 112 of the Charter of the City of Cleveland adopted in 1924, according to the enclosures submitted with your communication, provides as follows:

"Transportation rates shall be fixed in a manner provided by ordinance. Rates for the service or products of all other non-tax supported public utilities, owned and operated by the city, shall be fixed by the board of control, subject, however, to the approval by the council."

I assume the Cleveland municipal plant is "non-tax supported." It appears that in 1933 the city council passed an ordinance providing for the sale of electric current and to approve the schedule of rates thereto-

fore established by the Board of Control, which ordinance it is not necessary to set forth in this opinion. On January 11, 1934, the board of control passed Resolution No. 1889, referred to in your communication, changing in some respects the rates theretofore approved by council, which rates it appears have not as yet received the approval of council.

In the case of *Bauman, et al, vs. The State, ex rel. Underwood, Director of Law*, reported in 122 O. S. 269, the court held that the charter is an authority superior to an ordinance in a charter city, and the council cannot, by ordinance, divest itself of power conferred upon it by the charter. If it could do so in a single instance, then manifestly it could, by a general ordinance, divest itself of all power conferred by the charter, and thereby render the charter practically inoperative.

The charter limits, governs and controls the council very much the same as the Constitution limits, governs and controls the General Assembly.

Upon examination, this case discloses that while it is not with reference to rates, or the exact question involved, it does signify the court's opinion as to the authority of the provisions of a city charter. It regards them as paramount and similar to a constitution and if a law or resolution transgresses or conflicts with the constitution, it is illegal; and as the city council in this instance has not strictly followed the terms of the city charter, they have not given to this resolution of the board of control the necessary legal status to make it an effective act.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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614.

APPROVAL—BONDS OF CITY OF AKRON, SUMMIT COUNTY,  
OHIO, \$2,000.00.

COLUMBUS, OHIO, May 19, 1937.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

GENTLEMEN :

RE: Bonds of City of Akron, Summit County, Ohio,  
\$2,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated October 1, 1933. The transcript relative