

General Assembly as required by the Constitution for an emergency act, becomes at the end of the ninety-day referendum period a valid act of the general assembly if otherwise constitutional."

The principle above stated is, in my opinion, applicable to municipal ordinances.

Based on the foregoing discussion, I am of the opinion in specific answer to your questions:

1. The Council of the City of Youngstown is not empowered, under the city charter and present existing Street Railway franchise, being Ordinance No. 33370, to appoint a Street Railway Commissioner, and the pretended appointment; made as it was, is void.

2. The appointment of a Street Railroad Commissioner in the City of Youngstown, under the present existing Street Railway franchise ordinance, is not controlled by Section 88 of the charter.

3. If a Street Railroad Commissioner, as such, is appointed in the City of Youngstown, by authority of the present existing Street Railway franchise ordinance No. 33370, the appointment should be made as of an employe within the Division of Engineering, Department of Public Works, by authority of Section 28 of the charter, and in the manner provided for the appointment of such an employe, in accordance with Section 22 of the charter.

4. Ordinance No. 35289, passed by the Council of the City of Youngstown on January 12, 1931, did not go into immediate effect as an emergency measure but became effective upon the expiration of thirty days after its passage, in accordance with Section 11 of the charter of said city.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2948.

SHERIFF'S BOND—LIQUIDATION OF SURETY COMPANY CANCELS
SUCH BOND—NEW BOND REQUIRED—PREMIUM PAID BY
COUNTY.

SYLLABUS:

1. *Where a sheriff gives a bond upon which a surety company authorized to do business in Ohio appears as surety, which is approved by the county commissioners and the premium paid for from the county treasury, and the surety company later is taken over for liquidation under facts and circumstances in which there is no protection to the county under the bond, the county commissioners should require a new bond.*

2. *Under such circumstances the county may properly present a claim to the liquidating agent for the unearned premium.*

3. *In the event a new surety bond is given to the satisfaction of the commissioners the premium therefor may be allowed and paid by the county.*

COLUMBUS, OHIO, February 16, 1931.

HON. L. E. HARVEY, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication requesting my opinion, as follows:

"Our local sheriff, when he assumed office on the first day of January, 1931, gave a bond in the sum of \$20,000.00 with The Equitable Casualty & Surety Company as surety thereon.

Information has come to me that this company is now in the hands of a liquidation officer, who states that all surety bonds signed by this company will run until their expiration date. I am enclosing copy of a letter written to the local representative of this company.

The sheriff's bond was approved by the county commissioners and the premium has been paid. In your opinion is this bond still good, or should a new bond be required of the sheriff? If a new bond is required can the county commissioners legally pay the premium on it, since they have paid the present premium on the old bond and there seems to be no way to get it back?"

Inquiry at the State Division of Insurance, discloses that the Equitable Casualty & Surety Company, to which you refer, is in the process of liquidation pursuant to the provisions of Section 63 of the Insurance Laws of the State of New York. Francis P. Ward, Special Deputy Superintendent of Insurance, has been appointed agent to liquidate the business of said company.

In a communication issued by the Insurance Department of the State of New York, over the signature of Thomas F. Behan, Deputy and Acting Superintendent of Insurance of the State of New York, under date of December 31, 1930, giving notice with reference to the liquidation above referred to, the following is stated:

"Policyholders will not have any insurance protection under bonds, policies or other contracts of the Equitable Casualty and Surety Company after twelve (12) o'clock noon, Standard Time, at New York, N. Y., on January 15th, 1931."

Said statement further gives notice with reference to the presentation of claims by the creditors. The statement referred to is being enclosed herewith, for your information.

Section 2824 of the General Code, requires the sheriff to give a bond signed,

"by a bonding or surety company authorized to do business in this state, or, at his option, by two or more freeholders having real estate in the value of double the amount of the bond over and above all encumbrances to the state in a sum not less than five thousand dollars nor more than fifty thousand, to be fixed by the county commissioners, the surety company to be approved by the county commissioners, conditioned for the faithful performance of the duties of his office."

The section then further expressly provides that the premium for such bond shall be paid by the county commissioners and charged to the general fund of the county.

Section 2825, General Code, provides:

"At any time during his term of office, the county commissioners may require the sheriff or coroner to give additional sureties on his bond, or a new bond."

Section 2827, General Code, provides:

"If the sheriff or coroner fails to give a bond within the time required by law or fails to give additional sureties thereon or a new bond within ten days after he has received written notice that the county commissioners so require, the commissioners shall declare the office of such sheriff or coroner vacant. Thereupon such office shall be filled as provided by law."

Section 9573-1, General Code, provides:

"The premium of any duly licensed surety company on the bond of any public officer, deputy or employe shall be allowed and paid by the state, county, township, municipality or other subdivision or board of education of which such person so giving such bond is such officer, deputy or employe."

The sections hereinbefore mentioned expressly authorize the county commissioners to accept a surety bond by a "surety company authorized to do business in this state." For the purpose of this opinion, it will be assumed that the company under consideration was authorized to do business in this state at the time of the execution of the bond. Clearly, the county commissioners would be justified in approving the bond upon which the company authorized to do business in the state appears as surety. However, in view of the status of the surety company, it has developed that the commissioners unintentionally, of course, made a bad bargain. Under the circumstances, the county may do only that which an individual might do under similar circumstances, that is, the county may present its claim for the unearned premium which the company has received. By reason of the provisions of law it becomes the duty of the county commissioners under such circumstances, to require a new bond, and the statutes expressly authorize the payment of the same out of public funds. The fact that a former bond had been executed and paid for would not seem in any manner to control the action of the commissioners in requiring a bond and paying for it at this time.

In specific answer to your inquiry, it is my opinion that under the circumstances being considered, the sheriff should be required to give a new bond, and the premium therefor, if a surety bond is given, shall be allowed and paid by the county.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2949.

SOLDIERS' RELIEF COMMISSION—WHAT EXPENSES THE MEMBERS THEREOF MAY RECEIVE.

SYLLABUS:

Members of a soldiers' relief commission are entitled to their actual expenses incurred in connection with the organization of township and ward committees within their county and also such necessary expenses as are actually incurred in connection with the investigation of any or all cases of indigent persons entitled to soldiers' relief.