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1. MUNICIPAL ORDINANCE—DULY PASSED—PERIOD ALLOWED BY LAW TO FILE REFERENDUM PETITION—ELAPSED WITHOUT PETITION FILED—ORDINANCE CAN NOT BE REPEALED BY SUBSEQUENT ORDINANCE APPROVED BY ELECTORS PURSUANT TO INITIATIVE PETITION FILED UNDER SECTION 4227-1 G. C.—SUCH INITIATIVE ORDINANCE OF NO EFFECT.
2. CONTRACT DULY MADE FOR INSTALLATION OF PARKING METERS—ORDINANCE DULY PASSED—SUBSEQUENT REPEAL OF ORDINANCE WILL NOT ANNUL CONTRACT.

SYLLABUS:

1. When a municipal ordinance has been duly passed and the period allowed by law for filing a referendum petition has elapsed without any such petition being filed, such ordinance can not be repealed by an ordinance thereafter approved by the electors pursuant to an initiative petition filed pursuant to Section 4227-1 of the General Code, and such initiated ordinance is of no effect.

2. Where, pursuant to an ordinance duly passed, a contract has been duly made for installation of parking meters, the subsequent repeal of such ordinance will not have the effect of annulling such contract.

Columbus, Ohio, January 7, 1949

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion, reading as follows:

“Certain questions have arisen in various municipalities relative to the lawful collection and deposit of parking meter revenues in the municipal treasury, as well as the use and purposes for which such parking meter revenues may legally be expended.

“All municipal parking meter ordinances which have come to our attention were passed for the purpose of authorizing the purchase and installation of parking meters to regulate parking and to control traffic in the more congested areas of the respective municipalities, and usually provide for the payment of the original cost of the meters, their maintenance and repair, together with

all expenses incident to the collection of coins from the parking meters, painting traffic and parking lines on the street or curb, and for policing the metered area to enforce the regulations against overtime parking.

“Enclosed herewith are copies of two letters received of recent date, which will illustrate the questions most frequently submitted in regard to the installation of parking meters and use of funds derived therefrom. We are unable to find any Ohio court decisions on this subject, or formal opinions rendered by the Attorney General which apply to the same.

“Inasmuch as these questions are of interest to the general public and the answers thereto will be of state-wide application, we respectfully request that you give consideration to the following, and furnish us your formal opinion in reply thereto.

1. When a village ordinance, providing for the purchase and installation of parking meters, has been properly passed in due form, can said ordinance be repealed by an ‘Initiative Petition,’ after the time for filing a Referendum Petition has elapsed?

2. When an ordinance repealing the parking meter ordinance passed by Council is initiated by petition and has been submitted to the electors of a municipality, and approved by a majority of 62 votes, does the action of the electors in repealing the former legislation of council, authorizing the purchase of parking meters, annul the contract subsequently enacted with the D.P.M. Company prior to the date of expiration of such contract (one year), said contract having been entered into by both parties thereto in good faith?

3. Where parking meters have been installed pursuant to an ordinance passed by council for the purpose of regulating traffic and parking in certain congested areas, how shall the fees fixed by ordinance for such parking privileges be used, and to what fund shall they be credited in the municipal treasury?

4. When the amount of revenue received from parking meter collections is in excess of the requirements for maintenance and repair of the meters and the regulation of traffic in the congested or metered area, can the surplus accumulated from such revenue be used for current expenses in the operation of the municipal government?”

I note also letters attached to your communication, one being from the city solicitor of Bellaire, indicating that it is desired by his city to use the surplus funds arising from parking meters after the meters have

been paid for, for the maintenance and repair of streets. Also a letter from the clerk of the village of Germantown, which appears to set forth the basis for the questions which you have raised as to the effect of an initiative petition and election thereon, designed to repeal an ordinance which had been previously passed by the council and on which no referendum had been attempted.

The letter from the clerk of the village of Germantown indicates that pursuant to the emergency ordinance passed by council, a contract had been made with a meter company for the installation of not less than 160 and not more than 200 parking meters, at the contract price of \$64.50 per meter, it being provided, however, in said contract that the city was under no obligation to purchase said meters but had the option to do so at the end of twelve months. This contract further provided that the village should pay a rental of \$3.50 per month, said rental to be applied on the purchase price if the village elected to purchase at the end of the trial period, and provided further that this rental fee should be paid out of revenue from the meters only.

The letter of the clerk further indicates that after this contract had been made, an initiative petition was filed bearing the requisite number of signatures, looking to the repeal of the ordinance pursuant to which the contract had been made, that an election was duly held on said initiative petition, and that a majority of the electors voted in favor of such initiated ordinance.

1. Considering the effect of the initiated ordinance which was carried by a vote of the electors, I note the case of *State ex rel. Smith v. Fremont*, 116 O. S. 469, wherein the court had before it a very similar situation to that above outlined. In that case, the original ordinance providing for the issuance of bonds to pay the cost of installing a filtration plant for the pumping of the city's water supply had been passed as an emergency ordinance. No referendum was had upon that ordinance for the obvious reason that under the provisions of Section 4227-3, General Code, an emergency ordinance receiving the vote of two-thirds of all the members elected to the council goes into effect immediately. It appears that even before this ordinance was passed by council, an initiative petition, signed by more than the requisite number of the electors of the city, was filed with the council providing for a different method of dealing with the city's water supply, and this initiated ordinance was duly submitted

to the electors and approved by the required majority. However, prior to the election the city council passed another ordinance as an emergency measure, authorizing the advertisement for bids as contemplated by its original ordinance, and a contract was thereafter awarded pursuant to such advertisement.

Thereafter, this action in mandamus was filed, praying for an order directing the defendants to make a contract for the drilling of wells and for taking such other steps as were contemplated and required by the initiated ordinance above referred to.

The court in a per curiam opinion denied this prayer, saying that the filing of the initiative petition was simply an effort to nullify the action of the city council in respect to its policy relating to the construction of a filtration plant. The court said:

"The only method by which the legislation of the city council would be annulled, under our present Constitution, would be by the employment of the referendum, not the initiative. However, *since the city council declared the measure to be an emergency and in the interest of public health and safety, and that is conceded, there could be no referendum.* The effect of the initiative petition and its subsequent adoption by the people would be nothing less than a referendum upon the measure adopted by the city council. It is the invoking of initiative legislation as a substitute for and in lieu of a referendum. It is an attempt to repeal legislative action by invoking initiative action."

(Emphasis added.)

In the case you present, it appears that the original ordinance providing for parking meters was not passed as an emergency measure, but that no referendum petition was filed. Accordingly, the above decision would appear to be conclusive, and I am therefore holding, and you are advised, that the initiative petition and the vote of the electors on the ordinance purporting to repeal the action of the city council were void and of no effect.

2. Where, pursuant to an ordinance duly enacted by the city council and upon which no referendum was had, a contract is made for the purchase of parking meters, that contract could not be annulled by subsequent repeal of the ordinance either by the council itself or by the electors enacting an initiated ordinance.

The sanctity of the contract is protected both by the federal constitu-

tion and the constitution of Ohio. Section 28 of Article II of the Ohio Constitution forbids the legislature passing any law impairing the obligation of contracts. A like protection is thrown around contracts by Section 10 of Article I of the Constitution of the United States. It appears to me that this proposition is so fundamental and well understood that it is not necessary to cite authority. In the case before us, if the initiated ordinance referred to had no legal effect, then there is, of course, no annulment of the contract, and since we have determined that the initiated ordinance was void, your question appears to answer itself.

3. As to the use to which funds arising from parking meters may be put, it may be stated first that those uses would be limited to such as are stated in the ordinance. As I do not have the text of the ordinance in this case before me, I am not able to discuss those purposes from the standpoint of the ordinance.

Your question, however, as I understand it, concerns the validity of an ordinance which provides that parking meter revenues not needed for maintenance and repair of the meters and the regulation of traffic in the metered area shall be used for current operating expenses of the municipal government.

In regard thereto, I might state that it has always been the policy of this office, consistently adhered to in all cases, to refrain from expressing an opinion on the constitutionality of a statute or ordinance. This, it seems to me, should be regarded as possibly the highest prerogative of the judicial branch of the government.

Furthermore, it must be borne in mind that the Attorney General is authorized by law to render opinions to state officials on only such questions which arise in connection with the discharge of their official duties. Until a court of competent jurisdiction has passed upon the validity of a statute or ordinance in a case which is properly before it, I do not conceive it to be your duty to raise such a question. For the foregoing reasons, you are advised that I must, therefore, decline to express an opinion on the fourth question presented by you.

In specific answer to your questions, it is my opinion that :

1. When a municipal ordinance has been duly passed and the period allowed by law for filing a referendum petition has elapsed without any such petition being filed, such ordinance can not be repealed by an ordi-

nance thereafter approved by the electors pursuant to an initiative petition filed pursuant to Section 4227-1 of the General Code, and such initiated ordinance is of no effect.

2. Where, pursuant to an ordinance duly passed, a contract has been duly made for installation of parking meters, the subsequent repeal of such ordinance will not have the effect of annulling such contract.

Respectfully,

HUGH S. JENKINS,
Attorney General.