

2467

WHEN A MUNICIPAL CIVIL SERVICE COMMISSION IS AGENT OF DIRECTOR OF STATE PERSONNEL, MEMBER OF SUCH COMMISSION NOT AUTHORIZED TO RECEIVE PAYMENT FROM PUBLIC FUNDS—§143.04, R.C.

SYLLABUS:

Section 143.04, Revised Code, or other provisions of law do not authorize the payment of public funds to members of a municipal civil service commission when such commission has been designated as agent of the director of state personnel pursuant to said Section 143.04.

Columbus, Ohio, August 19, 1961

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads, in part, as follows:

"I enclose for your reference copies of correspondence received by this office from various city and county officials, relative to a problem which has arisen in a charter city of the State. The problem turns upon the interpretation of Section 143.04, Revised Code, as amended effective November 2, 1959.

"Briefly summarizing the facts, it appears that the Director of the State Department of Personnel has designated the municipal civil service commission as agent for carrying out the provisions of Sections 143.01 to 143.48, Revised Code, as they apply to employees of the county. The civil service commission has rendered itemized statements to the State for reimbursement of costs incurred by the commission for work done in the interest of the county.

"Pursuant to R. C. 143.04, the total amount of the costs thus incurred and approved has been paid out of the State treasury to the finance director of the municipal corporation. The finance director raised a question as to his authority to pay the amounts, thus received from the State, to the members of the civil service commission, in addition to their salaries which have been fixed and appropriated by the city council, pursuant to Section 125 of the charter of the city.

"This section of the city charter reads as follows :

" 'Sec. 125 Officers of Commissions—Salaries.

'The civil service commission shall designate one of its members as president, shall appoint a secretary who shall act as chief examiner, and such other officers and employees as may be necessary. The salaries of the secretary and other subordinates shall be fixed by the commission. The salaries of the commission shall be determined by the council and a sufficient sum shall be appropriated each year to carry out the civil service provisions of this charter.

'(Effective November 9, 1931.)'

"* * *

* * *

* * *

"In view of the conclusions and arguments presented in our enclosures, your formal opinion is requested with respect to the following question :

"Is the fiscal officer of either a charter or a non-charter city authorized to pay, to members of the civil service commission, any portion of the money received by the city treasurer, under R. C. 143.04 (in reimbursement of the cost of county civil service procedures conducted by the commission) where such payment is in addition to the salary fixed and appropriated by the city council for compensation of members of the commission?"

The question you have raised relates to the authorization pursuant to Section 143.04, Revised Code, for members of a civil service commission of a municipal corporation to accept compensation from the state for duties performed pursuant to this statute. Section 143.04, Revised Code, reads as follows :

“The director of state personnel, shall appoint such examiners, inspectors, clerks, and other assistants as are necessary to carry out sections 143.01 to 143.48, inclusive, of the Revised Code. The director may designate persons in or out of the official service of the state to serve as examiners or assistants under his direction who shall receive such compensation for each day actually and necessarily spent in the discharge of their duties as examiner or assistant as is determined by the director ; provided if any such examiner or assistant is in the official service of the state, or any political subdivision thereof, it shall be a part of his official duties to render such services in connection with such examination without extra compensation. In counties of the state in which are located cities having municipal civil service commissions, the director may designate the municipal civil service commission of the largest city within such county as his agent for the purpose of carrying out such provisions of sections 143.01 to 143.48, inclusive, of the Revised Code, within said counties, as the director designates. Each municipal civil service commission designated as agent of the director shall ,at the end of each month, render an itemized statement to the director of the cost incurred by such commission for work done as agent of the director and the director shall, after approving such statement, pay the total amount thereof to the treasurer of such municipal corporation in the same manner as other expenses of the department of state personnel.

“The director, examiners, inspectors, clerks, and assistants shall, in addition to their salaries, receive such necessary traveling and other expenses as are incurred in the actual discharge of their official duties. The director may also incur the necessary expenses for stationery, printing, and other supplies incident to the business of the department of state personnel. All salaries and expenses shall be approved and allowed by the director and paid out of the treasury of the state on the warrant of the auditor of state, in the same manner as the salaries and expenses of other state officers and employees are paid.”

Prior to the enactment of this section in 128 Ohio Laws, 794, effective November 2, 1959, the state civil service was governed not by the director of state personnel, but by a state civil service commission appointed by the Governor. Except for the difference in state direction, the civil service

system was approximately the same then as it is at present. The single major exception to this, at least as far as the present problem is concerned, was that Section 143.04, Revised Code, read prior to 1959, in part, as follows :

“* * *

* * *

* * *

“* * * In counties of the state in which are located cities having local civil service commissions, the state civil service commission may designate the local commission of the largest city within such county as its agent for the purpose of carrying out such provisions of sections 143.01 to 143.48, inclusive, of the Revised Code, within said counties, as the state civil service commission designates. *Such civil service commissioners shall each receive for this work such reasonable compensation as the boards of county commissioners determines*, and the board of county commissioners of such county, during the time such arrangement continues, shall appropriate each year, to be paid out of the county treasury into the treasury of such city, a sum sufficient to meet the county's portion of the cost of the work as determined by the number of employees in such classified service. (Emphasis added)

It will be noted that the General Assembly in 1959 saw fit to change this provision for payment of reasonable compensation to the various municipal civil service commissioners for the work performed under Section 143.04, Revised Code, as agent of the state civil service commission. The General Assembly deleted this provision and inserted the following provision :

“* * * Each municipal civil service commission designated as agent of the director shall, at the end of each month, render an itemized statement to the director of the cost incurred by such commission for work done as agent of the director and the director shall, after approving such statement, pay the total amount thereof to the treasurer of such municipal corporation in the same manner as other expenses of the department of state personnel.

“* * *

* * *

* * *”

The result of this amendment is that there is now no statutory provision for payment of public funds to municipal civil service commissioners acting as agents for the director of state personnel in carrying out the functions pursuant to Sections 143.01 to 143.48, inclusive, Revised Code. It has become such a familiar axiom of the law as to require no citation that public funds cannot be expended for any purposes for which there is not an express authorization of law.

I am further re-enforced in this belief by the provision of Section 143.30, Revised Code, which provides for such compensation as may be paid to municipal civil service commissioners, this compensation being under the sole control of the legislative authority of the municipality. This section reads, in part, as follows :

“* * * The expense and salaries of a municipal civil service commission shall be determined by the legislative authority of such city and a sufficient sum of money shall be appropriated each year to carry out sections 143.01 to 143.48, inclusive, of the Revised Code, in such city.

“* * *

* * *

* * *”

I do not believe the provisions of any city charter can alter this result. Once the state funds are paid into the municipal treasury they are, of course, at the disposal of that municipal government, but disbursement of such funds must be made according to municipal ordinances or charter provisions as there is no provision in state law to permit the payment of such moneys to the individual commissioners. I also do not believe the difference between charter and non-charter city governments has any bearing on this matter.

It is, therefore, my opinion and you are accordingly advised that Section 143.04, Revised Code, or other provisions of law do not authorize the payment of public funds to members of a municipal civil service commission when such commission has been designated as agent of the director of state personnel pursuant to said Section 143.04.

Respectfully,

MARK McELROY

Attorney General