

As appears from Opinion No. 691, of this department, above referred to, the title to the property here in question was approved, subject only to the exceptions therein noted with respect to the taxes on said property for the last half of the year 1928, amounting to \$5.40, and the undetermined taxes for the year 1929, all of which taxes are a lien upon said property.

As noted in said former opinion, no warranty deed was tendered by said Phillip Morton, with the abstract of title and other files relating to the purchase of the casement in the property therein described, but only a typewritten copy of said deed. Said original deed, properly executed by said Phillip Morton and wife, should of course be tendered before, or at the time the warrant for the purchase of this property is issued by the Auditor of State.

I am herewith returning said encumbrance estimate, Controlling Board's certificate and other files relating to this transaction.

Respectfully,
GILBERT BETTMAN,
Attorney General.

781.

MUNICIPALITY—POWER TO ACQUIRE LANDS WITHOUT ITS LIMITS
AS OUTLET FOR SEWERS.

SYLLABUS:

A municipality may legally acquire lands outside its corporate limits and construct a storm water sewer, the outlet of which is located upon said lands outside of such corporate limits.

COLUMBUS, OHIO, August 21, 1929.

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

GENTLEMEN:—Acknowledgment is made of your recent communication, which reads:

“The city of _____ contemplates the construction of a storm sewer inside the corporation and construction of an outlet outside of the corporation.

Question: May a city legally construct a storm water sewer and outlet outside of the corporation limits, such construction being necessary to drainage of an area within the city limits?”

It is a cardinal rule of construction that a municipality has such powers as are expressly granted to it by the constitution and statutes of Ohio, and such implied power as is necessary to carry into effect the express powers so granted.

One of the important questions your inquiry presents is whether a municipality may acquire real estate for such purposes outside of the municipal corporation. Obviously, as a sewer is to be constructed, some real estate rights will be involved in such an undertaking.

Section 3631 of the General Code is found under chapter 1, which deals with the enumerated powers of municipalities, which chapter is found in division 2 of the General Code. Said section provides as follows:

"To hold and improve public grounds, parks, park entrances, free recreation centers and boulevards, and to protect and preserve them. To acquire by purchase, lease, or lease with privilege of purchase, gift, devise, condemnation or otherwise and to hold real estate or any interest therein and other property for the use of the corporation and to sell or lease it, or to donate the same by deed in fee simple to the State of Ohio as a site for the erection of an armory."

It will be observed that the section above mentioned does not limit the power of purchasing or holding real estate to such as is located within municipal limits.

Section 3677, General Code, which relates to the appropriation of property, provides in part as follows:

"Appropriation of property; street improvement, etc.; canal improvement; water supply; change of venue.

Municipal corporations shall have special power to appropriate, enter upon and hold real estate within their corporate limits. Such power shall be exercised for the purposes, and in the manner provided in this chapter.

* * * *

10. For sewers, drains, ditches, public urinals, bath-houses, water-closets and sewage and garbage disposal plants and farms;

* * * * "

The section last mentioned, standing alone, would indicate that a municipality has no power of appropriation of lands outside the corporate limits for sewer purposes. Paragraph 13 of said section expressly authorizes the appropriation within or without the corporate limits of lands for a supply of water for its inhabitants. Paragraph 15 grants power to purchase land within or without a corporation for the purpose of establishing landing fields. However, Section 3678, General Code, which is in pari materia with Section 3677, and must therefore be construed in connection with it, contains among other things, the following provision:

"In the appropriation of property for any of the purposes named in the preceding section, the corporation may, when reasonably necessary, acquire property outside the limits of the corporation."

In the case of *Avery et al. vs. United States*, decided by the U. S. Circuit Court of Appeals of the Sixth Circuit, in 1900, it is stated in the opinion, by Lurton, Judge, that:

"A municipal corporation, unless restrained by statute or charter, has the implied power to purchase and hold all such real estate as may be necessary to the exercise of powers specifically granted."

citing among others the following: 2 Dill. Mun. Corp. (2d Ed.) Section 432; *Reynold's Heirs vs. Commissioners*, 5 Ohio 204; *Gall vs. City of Cincinnati*, 18 O. S. 563.

From the foregoing it would appear to be clear that there is ample authority on the part of a municipality to acquire land outside of said municipality for the purpose of constructing a sewer outlet which is necessary and essential in connection with the proper drainage of the municipality. It certainly would be absurd to hold that proper steps could not be taken to secure the necessary outlet for a sewer system when it is a mandatory duty of municipalities to protect the public health by estab-

lishing such system. It is believed unnecessary to discuss the various sections of the General Code which relate to the construction of sewers.

The foregoing clearly indicating that lands may be properly acquired for such purposes, it seems to be obvious that a municipality may construct a sewer, the outlet of which is required to be constructed on lands which lie outside of the municipal limits.

Respectfully,
GILBERT BETTMAN,
Attorney General.

782.

COUNCILMEN—NON-CHARTER CITY—RATE OF COMPENSATION.

SYLLABUS:

1. *Council of a non-charter city has no authority to fix the salary of its members otherwise than in accordance with Section 4209, General Code.*

2. *Members of council in a non-charter city, which, according to the last preceding federal census had a population of 27,824, may not legally receive compensation at the rate of \$300 per year.*

COLUMBUS, OHIO, August 21, 1929.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication, which reads as follows:

“Section 4209, G. C., reads:—

‘The compensation of members of council, if any is fixed, shall be in accordance with the time actually employed in the discharge of their official duties, but shall not exceed one hundred and fifty dollars per year each, in cities having a population according to the last preceding federal census, of twenty-five thousand or less. For every thirty thousand additional inhabitants so determined, such compensation may be, but shall not exceed, an additional one hundred dollars per year, each, but the salary shall not exceed twelve hundred dollars per annum, and shall be paid semi-monthly.’

Question. May members of the council, in a city which, at the last federal census, had a population of 27,824, legally receive compensation at the rate of three hundred dollars each per annum, provided for by ordinance?

Said city has not adopted a charter.”

A city which has not adopted a charter by authority of Section 7, of Article 18, of the Constitution of Ohio, is controlled by general law, with respect to the organization of its government, the distribution of its powers and the agencies to carry into effect those powers and the determination of the duties and compensation of officers. The Legislature has by general law, Section 4212, General Code, authorized the council of a city, except as otherwise provided, to determine the number of officers, clerks and employes in each department of city government, and to fix by ordinance or resolution their respective salaries and compensations. When the salary or compensation of an officer of the city is fixed by statute, the council thereof cannot lawfully change it.

The compensation of members of council is not fixed by statute but a maximum