

1847.

POLICE PENSION FUND—TRUSTEES OF SAID FUND EMPOWERED TO AMEND RULES AND REGULATIONS SO AS TO INCREASE AMOUNT OF PENSIONS AND TO MAKE AMENDMENT APPLICABLE TO THOSE ALREADY ON PENSION ROLL—APPROVAL OF DIRECTOR OF PUBLIC SAFETY NECESSARY—SEE SECTION 4628 G. C.

The trustees of the police pension fund are empowered by section 4628 G. C. to amend the rules and regulations so as to increase the amount of pensions to be paid to members, and to make the amendment applicable to those already on the pension roll as well as to those thereafter placed thereon, subject, however, to the express limitation that the amendment shall not become effective until approved by the director of public safety.

COLUMBUS, OHIO, February 7, 1921.

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

GENTLEMEN:—Your letter of recent date inquiring whether or not the trustees of a police pension fund established under section 4616 et seq. G. C. may legally increase the pensions of members who are now on the retired pension roll, and drawing pensions under rules and regulations in effect at the times of their respective retirements, etc., was duly received.

As I understand it, your question arises by reason of the fact that members of the particular police relief fund involved are divided into three groups, each group receiving pensions under and pursuant to the particular rules and regulations in effect at the time they were placed on the pension roll. This condition of affairs was brought about by reason of the fact that the rules and regulations governing the particular fund involved were amended on two different occasions so as to provide for the payment of increased pensions, but with the express provision in each amendment that the change in the amount to be paid should not apply to members then on the pension rolls. In other words, each particular amendment operated prospectively only.

The question now for determination is whether or not the trustees of the police relief fund involved may now amend the rules and regulations so as to increase the amount of pensions to be paid to members, so as to provide that members now on the retired roll as well as those thereafter placed thereon shall receive uniform pensions at the increased rates. In my opinion the question should be answered in the affirmative, provided the rules and regulations adopted are approved by the director of public safety. The governing statute is section 4628 G. C. which, among other things, provides that

“Such trustee(s) shall make all rules and regulations for the distribution of the fund, including the qualification of those to whom any portion of the fund shall be paid and the amount thereof, * * * but no rules or regulations shall be in force until approved by the director of public safety,” etc.

Nowhere in the statutes on the subject is there to be found any provision either expressly or by necessary implication prohibiting the trustees from increasing the amount of pensions of members previously placed on the pension roll, nor, it may be added, is there any provision requiring that the pensions of members already on the pension roll shall be increased so as to make them uniform in

amount with pensions to be paid to members subsequently placed thereon. As was aptly said in *State vs. Holmes*, 23 C. C. (n. s.) 133, "The amount of pension granted is not fixed by statute, but by the rules of the trustees." See also *State vs. Trustees*, 20 C. C. (n. s.) 13, 15.

You are therefore advised that the trustees of the police pension fund are empowered by section 4628 G. C. to amend the rules and regulations so as to increase the amount of pensions to be paid to members, and to make the amendment applicable to those already on the pension roll as well as to those thereafter placed thereon, subject, however, to the express limitation that the amendment shall not become effective until approved by the director of public safety.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1848.

JUVENILE COURT—WHERE DELINQUENT CHILDREN SENTENCED TO BOYS' INDUSTRIAL SCHOOL OR GIRLS' INDUSTRIAL HOME—COSTS PAYABLE BY COUNTY—NO AUTHORITY FOR JUSTICE OF PEACE OR MAYOR TO BIND OVER MINOR UNDER EIGHTEEN YEARS TO COURT OF COMMON PLEAS TO AWAIT ACTION OF GRAND JURY—SUCH CASES TRANSFERABLE TO JUVENILE COURT—FEES AND COSTS IN SUCH CASE—HOW PAID—WHAT CONSTITUTES "RECORD" IN JUVENILE CASES—SEE SECTION 1641 G. C.

1. *Where delinquent juveniles are sentenced to the Boys' Industrial School or Girls' Industrial Home, the costs of the case and the expense of transporting said juveniles to the place to which they have been committed, are, pursuant to Sec. 1682 G. C., payable by the county and not the state.*

2. *There is no statutory authority permitting a justice of peace or mayor to bind over a minor under the age of eighteen years to the court of common pleas to await the action of the grand jury, and no fees may be legally taxed or paid in connection with any attempt by such officers to bind over such persons. A mayor or justice of peace has no jurisdiction to dispose of a case against a minor under eighteen years of age other than to transfer the case to the juvenile judge. Fees and costs originally made, are to follow the case for allowance and payment under section 1682 G. C.*

3. *In cases arising under section 1654 G. C. and all other sections of the juvenile act, the entries and minutes made in the appearance docket of the juvenile court and the entries in the journal of that court of all orders, judgments and findings of the court, are the only "record" required by law to be kept.—Section 1641 G. C.*

COLUMBUS, OHIO, February 8, 1921.

HON. F. M. CUNNINGHAM, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—You have recently submitted to this department a series of questions relative to the payment of costs in juvenile cases.

(1) The first of said questions is:

"Where delinquent juveniles are sentenced to the industrial school does the state or the county pay the costs of the case and the costs of transportation?"