

ance of such interest item under certain circumstances, a strict compliance with the provisions of law authorizing such forbearance should be required.

It is my opinion on your specific inquiry that when a taxpayer enters into an agreement pursuant to Sections 3 to 6 of Am. S. B. 42, enacted by the 90th General Assembly, for the payment of the delinquent taxes assessed and becoming delinquent prior to August 15, 1932; thereafter, pursuant to the provisions of such agreement, pays one or more of such installments and then defaults in the performance thereof; such act then authorizes the collection of such delinquent taxes remaining unpaid, plus a ten percent penalty on same, any interest charged and entered on the delinquent land duplicate prepared August 15, 1932, and any unpaid interest computed at the rate of 4% per annum on such deferred installments under such contract to the date of the breach and from the date of the breach at the rate of 8% per annum.

Respectfully,

JOHN W. BRICKER,  
Attorney General.

883.

MUNICIPAL HOSPITAL—DIRECTOR OF PUBLIC SAFETY, IN ABSENCE OF ORDINANCES TO CONTRARY, SHOULD FIX RATES CHARGED PATIENTS.

*SYLLABUS:*

*In the absence of any charter provision relating thereto, the director of public safety should fix the rates charged for services to patients in municipally owned hospitals if there be no municipal ordinance with reference thereto, but if there be ordinances in existence or if at any time the council passes ordinances regulating the rates to be charged, then such ordinances would be controlling.*

COLUMBUS, OHIO, May 26, 1933.

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

GENTLEMEN:—I am in receipt of your recent request for my opinion which reads as follows:

“Section 4035 of the General Code reads in part as follows:

“The director of public safety shall have the entire management and control of such hospital, when completed and ready for use, and subject to the ordinances of council, shall establish such rules for its government, and the admission of persons to its privileges, as he deems expedient. \* \* \*

Because of the wording of the above, it appears that this Department has always held that council shall fix the rates to be charged for patients being treated within a municipally owned hospital.

The position is taken by many cities that this is a matter entirely under control of the director of public safety and we are enclosing an opinion given by a city solicitor to a city manager in Ohio whose duties include those of a director of safety in cities where a charter has not been adopted.

In view of the fact that this question is being raised in different cities, we should like very much to have the matter definitely settled, and therefore ask that you give us an opinion at your convenience on the following question:

In the absence of any charter provision relating thereto, does the director of safety or council, have authority to fix rates charged for services to patients in municipally owned hospitals?"

Section 4370 of the General Code reads as follows:

"The director of public safety shall manage, and make all contracts in reference to the police stations, fire houses, reform schools, houses of correction, infirmaries, hospitals, workhouses, farms, pest houses, and all other charitable and reformatory institutions. In the control and supervision of such institutions, the director shall be governed by the provisions of this title relating to such institutions."

This section makes the powers of the director of public safety subject to the provisions of section 4035, General Code, referring to municipal hospitals, which reads as follows:

"The director of public safety shall have the entire management and control of such hospital, when completed and ready for use, and subject to the ordinances of council, shall establish such rules for its government, and the admission of persons to its privileges, as he deems expedient. Such director may also employ a superintendent, steward, physicians, nurses, and such other employes as he deems necessary, and fix the compensation of all persons so employed, which compensation shall be subject to the approval of the council."

The first part of this section appears to give the director of public safety unlimited power in the management and control of municipal hospitals. However, the section continues with the phrase, "subject to the ordinances of council," thus limiting the powers of the director in making rules for such hospitals. "Government" is defined in Webster's International Dictionary as follows:

"Act or fact of governing; exercise of authority in regulating the action of something; control; direction; rule; regulation."

Thus "government," "management" and "control," as used in this section, have practically the same meaning and any action taken by the director of public safety with reference thereto would be "subject to the ordinances of council." It should be noted throughout the entire section that the power of the director of public safety is limited, as in the latter part of the section this phrase appears, "subject to approval of council." There would appear to be a conflict in this section as to whether council or the director has jurisdiction in matters relating to the government, control and management of municipal hospitals. Moreover, the only logical construction of section 4035 would be that in the absence of city ordinances the director of public safety should fix rates charged for services in municipally owned hospitals. However, the rates so fixed would be valid and binding until changed by city ordinance. This conclusion is supported by an

opinion of the Attorney General, Vol. 2, 1921, page 1095, where it was stated at page 1096:

“Thus it would seem that while the legislature had bestowed upon the director of public safety the power and authority to have entire control of the municipal hospital as contemplated by this section, and the fixing of the salary and compensation of the employes thereof, it would likewise seem evident that the limitations conferred simultaneously offset the positive powers of the director of public safety in such matters as the section covers, by conferring in reality upon council, the power and authority apparently bestowed upon the director of public safety in the matter of the fixing of the compensation of the employes of this department.”

I am assuming for the purpose of this opinion that the hospital established by the city is not a free one.

It is my opinion, in specific answer to your question, that in the absence of any charter provision relating thereto, the director of public safety should fix the rates charged for services to patients in municipally owned hospitals if there be no municipal ordinance with reference thereto, but if there be ordinances in existence or if at any time the council passes ordinances regulating the rates to be charged, then such ordinance would be controlling.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

---

884.

APPROPRIATION—LEGALLY MADE FOR SALARIES OF POLICEMEN AND FIREMEN—IF REVENUES FOR PAYMENT THEREFOR INSUFFICIENT, CLAIM EXISTS AGAINST MUNICIPALITY WHEN—NO CLAIM IF NO APPROPRIATION MADE.

**SYLLABUS:**

1. *Where a lawful appropriation exists for the payment of the salaries of policemen and firemen in a city operating under general laws, but those salaries can not be paid because of a failure of anticipated revenues to meet the appropriation, the said policemen and firemen have a legal claim against the municipality for their salaries so long as they continue to fill their positions and satisfactorily render service to the municipality.*

2. *In the event no appropriation is made for the payment of the salaries of policemen and firemen in a city operating under general laws, the said policemen and firemen have no claim against the said municipality for their salaries, although they continue in the service.*

COLUMBUS, OHIO, May 26, 1933.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion with reference to the right of policemen and firemen in the city of Campbell,