881.

APPROVAL—BONDS OF DONALD S. ELSOM IN AMOUNT OF $5,000.00 FOR THE FAITHFUL DISCHARGE OF HIS DUTIES AS DEPUTY DIRECTOR OF HIGHWAYS IN UNION COUNTY, OHIO.

COLUMBUS, OHIO, July 19, 1937.

HON. JOHN J. JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval official bond of Donald S. Elsom, as principal, and Hartford Accident and Indemnity Company of Hartford, Connecticut, as surety, in the sum of Five Thousand Dollars ($5,000.00) conditioned that the said Donald S. Elsom shall faithfully discharge the duties imposed upon him by law as resident district deputy director in Union County, effective July 1, 1937.

After examination, it is my opinion that said official bond is correct as to legality and form and I have accordingly endorsed my approval thereon and am returning the same herewith.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

882.

CITY COUNCIL MAY AUTHORIZE GROUP INSURANCE—COMPENSATION OF EMPLOYEE'S PREMIUMS—COMPETITIVE BIDS, WHEN.

SYLLABUS:

1. *The city council of a non-charter city may legally authorize group life insurance on behalf of any or all of the employes of such municipality by virtue of Section 3 of Article XVIII of the Constitution of Ohio.*

2. *The provisions of Section 9426-1, General Code, are broad enough to include employes of a municipality and by reason thereof an insurance company authorized to transact business in this state may make a contract of group life insurance covering such employes.*

3. *Group life insurance may be authorized without regard to the compensation of employes of the municipality and premiums for such insurance may be paid in a lump sum for all employes participating.*

4. *A contract for group life insurance where the premium exceeds* $500 *would be governed by the provisions of Sections* 4328, 4371 *and* 4403, *General Code, and would be required to be let at competitive bidding.*

COLUMBUS, OHIO, July 19, 1937.

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

GENTLEMEN: This will acknowledge receipt of your letter of recent date which reads as follows:

> "We are attaching hereto correspondence from the City Solicitor of the City of Cuyahoga Falls, Ohio, in which it is requested that several former opinions of Attorneys General be reviewed as they pertain to group life insurance on behalf of city employes. In connection with this, answers to several questions are requested as follows:
>
> Question 1. Does the city council of a non-charter city in the State of Ohio have authority to legally authorize group life insurance on behalf of any or all of the employes of such municipality, and if so, what is the basis of its legal authority?
>
> Question 2. If such group life insurance is authorized, would same have to be authorized as part of the compensation of employes fixed by ordinance of council, or may it be authorized without regard to the compensation of employes?
>
> Question 3. If this may be authorized as a part of the compensation of the city employes, or otherwise, may the city ordain said payment by ordinance in a lump sum for all the employes participating if not less than seventy-five percent of same consent thereto as per Section 9426-1 of the General Code, governing group life insurance generally, or must this additional compensation be fixed by ordinance in equal amounts and proportions as additional salary compensation for each employe to receive such insurance?
>
> Question 4. If the amount of premium to be paid by the city for such insurance in any one year, assuming that the contract is made with one insurance company, exceeds $500, would the contract for said insurance have to be let at competitive bid, or may council contract under its home rule powers of the Constitution without competitive bidding, the same as it has the right to do with public utilities, subject, of course, to the thirty day referendum period on the ordinance?"

My predecessors in office on several occasions considered the question as to whether or not a municipality had the authority to expend

public funds for group insurance. In each instance they reached a conclusion that such authority existed by virtue of the home rule provisions of the Constitution of Ohio. In Opinions of the Attorney General for 1927, Vol. I, page 37, the then Attorney General held as disclosed by the syllabus:

> "Unless forbidden by its charter, the legislative authority of a municipal corporation may, as a part of the compensation to its employes, legally authorize group insurance on behalf of any or all of the employes of such municipality."

In Opinions of the Attorney General for 1928, Vol. II, page 1099, the question again was presented with reference to the authority of a village to authorize group indemnity insurance and the then Attorney General held:

> "The legislative authority of a village may, as a part of the compensation to its employes, legally authorize group indemnity insurance and pay the premium therefor from public funds."

Again, in Opinions of the Attorney General for 1931, Vol. II, page 889, the then Attorney General discussed the question involved in this opinion at some length and concluded as disclosed by the first branch of the syllabus:

> "A municipal corporation, which, by force of its charter adopted by authority of Section 7 of Article XVIII of the Constitution of Ohio, possesses all powers of local self-government granted to it by the Constitution of Ohio, may provide group life or indemnity insurance for its officers or employes and pay the premium for such insurance, either in whole or in part, from the public funds of the municipality, unless it is prohibited from so doing by the provisions of its charter."

The Opinions of the Attorneys General above referred to were based upon the theory that the authority for expending public funds for group insurance existed by virtue of Article XVIII, Sections 3 and 7 of the Constitution of Ohio.

The Supreme Court of Ohio in the case of *Perrysburg* vs. *Ridgway,* 108 O. S. 245, held, in referring to Article XVIII, Section 3 of the Constitution of Ohio, that:

"The above constitutional grant of power to municipalities is self-executing in the sense that no legislative action is necessary in order to make it available to the municipality."

It is well settled in this state that the powers of local self-government derived from the Constitution of Ohio apply to non-charter cities as well as to cities which have adopted a charter under Article XVIII, Section 7 of the Constitution. In the case of *Perrysburg* vs. *Ridgway, supra,* the Supreme Court of Ohio held as disclosed by the first, fourth and fifth branches of the syllabus:

"1. Since the Constitution of 1912 became operative, all municipalities derive all their 'powers of local self-government' from the Constitution direct, by virtue of Section 3, Article XVIII, thereof.

4. The exercise of 'all powers of local self-government,' as provided in Article XVIII, Section 3, is not in any wise dependent upon or conditioned by Section 7, Article XVIII, which provides that 'a municipality *may* adopt a charter,' etc.

5. The grant of power in Section 3, Article XVIII, is equally to municipalities that do adopt a charter as well as those that do not adopt a charter, the charter being only the mode provided by the Constitution for a new delegation or distribution of the powers already granted in the Constitution. *(State, ex rel. City of Toledo,* vs. *Lynch, Auditor,* 88 Ohio St., 71, 102 N. E., 670, 48 L. R. A. (E.G.), 720, Ann. Cas., 1914 D, 949, disapproved upon the proposition that a charter is a prerequisite to the exercise of home-rule powers under Section 3, Article XVIII.)"

At the time the foregoing opinions of the Attorneys General were rendered, there were no statutory laws governing group life insurance. The General Assembly in 1935 enacted Sections 9426-1, et seq., providing for such insurance. Section 9426-2, General Code, relating to certain policy restrictions, provides among other things as follows:

"Except as provided in this act, it shall be unlawful to make a contract of life insurance covering a group in this state."

It is quite obvious that the foregoing provision makes it unlawful for an insurance company to make a contract of life insurance covering a group in this state unless the group comes within the meaning of

Section 9426-1, General Code. Were it not for this inhibition, I would not hesitate to say, in view of the foregoing reasoning, that the provisions of the laws relating to group life insurance would not apply to municipalities. However, the result of the enactment would not only prohibit an insurance company from entering into a contract of group life insurance with a municipality but conversely would prevent a municipality from contracting with an insurance company for such insurance although it has such authority under the provisions of the home-rule amendment of the Constitution unless group life insurance, as defined in Section 9426-1, would include employes of a municipality. The pertinent part of Section 9426-1 reads as follows:

> "Group life insurance is hereby declared to be that form of life insurance covering not less than fifty employees with or without medical examination, written under a policy issued to the employer, the premium on which is to be paid by the employer or by the employer and employees jointly, and insuring only all of his employees, or all of any class or classes thereof, determined by conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the employer; provided, however, that when the premium is to be paid by the employer and employee jointly and the benefits of the policy are offered to all eligible employees, not less than seventy-five per centum of such employees may be so insured. * * *."

It is quite apparent that the foregoing provisions do not limit or restrict group life insurance to employes of a private concern and in my opinion are broad enough to include employes of a municipality.

It is therefore my opinion that the provisions of Section 9426-1, supra, would apply to employes of a municipality and by reason thereof an insurance company authorized to transact business in this state would have the authority to make a contract of life insurance covering employes of a municipality.

It is well settled that public moneys may not be expended for other than a public purpose. A city council may by ordinance provide for the expenditure of public funds; however, it may not do so indiscriminately. *State* vs. *Semple,* 112 O. S. 559.

The courts of other states have recognized the authority of a municipality to provide group life insurance for its employes on the ground that the expenditure was in furtherance of a public purpose. *Bowers* vs. *Albuquerque,* 27 N. Mex. 291; *Nohl* vs. *Board of Education,* 27 N. Mex. 232; *Thompson* vs. *Memphis,* 147 Tenn. 658.

The Supreme Court of Ohio in the case of *State, ex rel.* vs. Kurtz, 110 O. S. 332, in discussing the use of public moneys for the creation of a state teachers retirement fund, held as follows:

> "Contribution to a state teachers retirement fund is a proper expenditure of money for a school purpose. Such a retirement system increases the morale and tends to raise the standard of the teaching force."

The Attorney General in the 1931 opinion above referred to, in concluding that the expenditure of public moneys for group insurance was in furtherance of a public purpose, held as follows:

> "On the whole, I am of the opinion that the courts of Ohio would uphold the payment of the premium on group life or indemnity insurance for public officers and employes, providing it appeared that the public authority providing the insurance possessed the power to do so."

Although it might be argued that the premiums paid by a municipality for group life insurance would in effect be an increase in the compensation of the employes benefitted by such insurance, it would seem that inasmuch as the expenditure was in furtherance of a public purpose that a municipality would not necessarily be required to pay the premiums on such insurance as part of the compensation of the employes, but may provide for the payment of premiums in a lump sum for all employes participating.

Article XVIII, Section 13 of the Constitution of Ohio authorizes the legislature to restrict and limit by general laws the power of a municipality to incur indebtedness. In the case of *Phillips* vs. *Hume,* 122 O. S. 11, the Supreme Court of Ohio held that the restrictions imposed by such general laws cannot be avoided by a municipality under the powers of local self-government.

In 28 O. Jur. p. 911, I find the following language with authorities cited:

> "The requirements as to competitive bidding as a condition to the letting of contracts involving the expenditure of municipal funds, contained in general laws, cannot be avoided or modified by charter provisions. This holding is based upon the theory that the power of municipalities to incur indebtedness is subject, even under the home rule amendment, to the control and regulation of the General Assembly, and that such require-

ment as to competitive bidding is one method of exercising such control."

From the above, it is evident that a charter city may not modify by a provision in its charter the requirements as to competitive bidding contained in general laws. It would necessarily follow that a non-charter city would be required to comply with the general laws providing for competitive bidding as a condition to the letting of contracts involving the expenditure of public funds in excess of five hundred dollars.

The general laws relating to municipalities which require competitive bidding for the letting of contracts involving an expenditure exceeding five hundred dollars are found in Sections 4328, 4371 and 4403, General Code. These sections authorize the director of public service, the director of public safety and the board of control of each municipality to make and approve all contracts involving an expenditure in excess of five hundred dollars. Other sections of the General Code defining the duties of municipal officers other than the ones hereinabove mentioned do not authorize such municipal officers to enter into any contract on behalf of a municipality. It would seem therefore that a contract for group life insurance where the premium exceeds five hundred dollars would be governed by the provisions of the foregoing sections and would be required to be let at competitive bidding. My immediate predecessor in office determined that municipal corporations in securing public liability insurance in which the premium is in excess of five hundred dollars are governed by Sections 4328 and 4371, General Code. Opinions of Attorney General for 1934, Vol. III, page 1609.

It is therefore my opinion that if the amount of premium to be paid by a city for group life insurance in any one year exceeds five hundred dollars, the contract for said insurance would be required to be let at competitive bidding.

Respectfully,
HERBERT S. DUFFY,
Attorney General.