dinance or law, or whether it is in any other respect invalid, and ought not to be paid. I agree with counsel that there is more or less peril to the officer in deciding these matters, but the right and the duty to decide these matters must be vested somewhere; somebody must decide it, and that duty is, by law, imposed upon the auditor, and he is given full power and ample means to protect himself against an unwarranted payment. He may make full inquiry into the validity of the demand; he may call before him any person or officer; he may make full investigation; and he may resort to the courts. In a doubtful case he may have the matter adjudicated by the proper court; so that, while the duty is imposed upon him to decide the matter at his peril, and while it would seem to be a hardship, yet he is as fully provided with means of protection as anybody could be, and, as I said, the responsibility of deciding must be vested somewhere, and, of course, the best place to vest it is in that office. He is the officer that has to act on the claim when it is presented."

Upon the authority of the foregoing statutes and the case of *Crawford* vs. *Milligan, supra,* I am of the opinion that a finding can be made by your Bureau against the Village Clerk involved in this matter.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1465.

BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES—PLENARY POWERS TO REQUIRE FINANCIAL REPORTS OF CHARTER CITIES—MAY MAKE FINDINGS, WHEN—MAY NOT ENFORCE PAYMENT ON FINDING OF INDEBTEDNESS TO MUNICIPAL LIGHT PLANT—ADMINISTRATIVE FUNCTION OF LOCAL SELF-GOVERNMENT.

SYLLABUS:

1. *The Bureau of Inspection and Supervision of Public Offices of the State of Ohio has plenary power to require financial reports from a charter city, to examine into its financial affairs and make such finding against the city as the records, files and vouchers warrant.*

2. *In a case where a charter city is indebted to its municipal electric plant for street lighting, the Bureau may make a finding as to the amount of such indebtedness but it can not enforce payment, Sections* 280 *and* 3982-1, *General Code of Ohio, to the contrary notwithstanding.*

3. *Payment by a charter city under such state of facts and under the law of today is an administrative function to be performed by such charter city in the exercise of its power of local self-government as delegated by the Constitution of the State of Ohio.*

COLUMBUS, OHIO, November 15, 1937.

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

GENTLEMEN: I am in receipt of your communication of recent date with enclosure from your Cleveland examiner. I note that you desire answers to the following questions:

> "Question 1. Are the provisions of Section 280, G. C., requiring one department to compensate another for all service rendered and properly transferred, at full value in money, applicable to charter cities?
>
> Question 2. Under the conditions set forth in the correspondence, is city council authorized by the provisions of Section 3982-1, G. C., or other statute or charter provision, to provide street lighting to be furnished by the municipal plant without compensation?
>
> Question 3. If the answer to question two is in the negative, may our Examiner render finding for recovery against the General Revenue Fund for the value of such lighting as furnished by the Municipal Plant without charge?"

You make reference to Sections 280 and 3982-1, General Code, and to Opinion No. 1418, found in the Opinions of the Attorney General for 1927, Volume IV, page 2594. Due consideration will be given such sections and former opinion herein. Your Cleveland examiner puts the whole matter very tersely in quoting Opinion No. 1418, above referred to, wherein he says:

> "But in said opinion he says, practically, that it is none of our business to see that the transactions between the departments are paid for in full or not. He says it shall not be taken into consideration by us."

Frankly, I think the examiner gave the opinion the proper interpretation. Now your Bureau desires that I shall either affirm or reverse

that opinion. Let it be borne in mind at all times that a charter city is being dealt with herein. If Cleveland were not a charter city, these questions could not arise. I am starting with what I regard as the fundamental proposition of law involved herein, namely, that Cleveland gets all its power to legislate from the Constitution of Ohio and not from the General Assembly. Prior to the adoption of the Constitution of Ohio in 1912, municipalities had such express powers as were delegated by the General Assembly and implied powers sufficient to carry the powers expressly delegated into effect, and that was the limit of municipal authority. Such is the law today, except as to charter cities.

The Constitutional Convention of 1912 was without doubt impressed with the idea that the people at large of the state were being denied their full voice in the matter of government. This impression is evidenced by the provisions made for local self-government, initiative and referendum and the enlargement generally of the powers of municipalities.

I quote, in what I regard as logical order, those provisions of the Constitution of 1912 that bear upon the questions you submit, viz:

SECTION 3, ARTICLE XVIII.

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws."

SECTION 7, ARTICLE XVIII.

"Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of Section 3 of this article, exercise thereunder all the powers of local self-government."

SECTION 4, ARTICLE XVIII.

"Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility, the products or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to the property and franchise of any company or person supplying to the municipality or its inhabitants the service and product of any such utility."

SECTION 6, ARTICLE XVIII.

> "Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality."

SECTION 13, ARTICLE XVIII.

> "Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertaking conducted by such authorities."

In determining the scope of the power and authority of charter cities, Section 3 of Article XVIII creates the confusion. The first grant of power is comprehended in the following words "Municipalities shall have authority to exercise all powers of local self-government." Had the convention quit at that point, the section would have needed no interpretation, but it proceeds with another grant of power as follows, "and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." The inclination to apply the limitation *"as are not in conflict with general laws"* to both grants confuses the mind and renders the section meaningless. Under the grant of local self-government, municipalities would surely have had the right to exercise reasonable police power and that is, in all probability, the reason why the grant of police power was limited to such "as are not in conflict with general laws." It would be sheer folly to assume that the delegates to the Constitutional Convention were what is denominated "Indian givers." In plain words, to give with one hand and take back with the other. If the limitation were applied to the general grant of local self-government, it would read as follows:

> "Municipalities shall have authority to exercise all powers of local self-government * * * as are not in conflict with general laws."

It is readily evident that such a provision would be meaningless. It is permissible to consider possible results in the construction of constitutional provisions. If municipalities were limited to the exercise of such powers of local self-government as were not in conflict with general laws, a city could adopt a charter today and the General Assembly could come along tomorrow and take all of its power away by the enactment of general laws.

The police power is susceptible of abuse. It is like unto a dangerous plaything in the hands of an inquisitive child in that the dangerous feature is the most attractive and consequently, the first discovered, and it was likely for this very reason that our "constitutional fathers" limited its exercise by municipalities.

This process of reasoning brings me to the unalterable conclusion that under the constitutional grant, charter cities have all powers of local self-government, except that their local police, sanitary and other similar regulations shall not conflict with general laws. It is likewise evident from the constitutional provisions above quoted that municipalities may acquire, own and operate public utilities and may sell the surplus service or product produced by same, so long as the amount sold does not exceed fifty per cent of the output. Likewise, your bureau has constitutional authority to examine the vouchers, books and accounts of all municipal authorities.

I said at the outset that I would consider sections 280 and 3982-1, General Code, and I have done so, but I am of the opinion that neither section in any wise affects any of the questions submitted by you. As I view it, the Constitution of Ohio is a complete answer to your question. A city charter is not a mere scrap of paper. It has more than the ordinary degree of sanctity. It is in truth the city's constitution, subject only to the constitution of the state. It contains the grant of power from the people of the city to its officials. The constitutional grant of the right to local self-government does not ipso facto invest cities with such power. The charter is prepared and presented to the people of the city and by their ballot they adopt or reject it. If it is adopted, it evidences the grant of power from the people of the city to their officials. If the people act unwisely in the adoption of a charter, the people alone can remedy its defects. Funds are merely bookkeeping devices, but indispensable perhaps under our form of government. It makes little difference, I take it, in a charter city if a particular fund shows a deficit and another fund a surplus, so long as all moneys are properly accounted for. When I say, properly accounted for, I mean accounted for in consonance with the law.

Answering your questions specifically, I am of the opinion that Section 280, General Code, does not apply to charter cities, to the extent that you can compel such city to comply therewith. You have full power

to examine into the financial affairs of a charter city and make such finding as reflects its true financial condition and that is the end of your jurisdiction in this particular case. Your examiner states:

"* * * on August 1, 1937, there were 53,910 consumers of the Cleveland Electric Light Plant, and this number of consumers represented about one-fifth of the number of electrical consumers in the city of Cleveland, yet, we find that the Cleveland Electric Light Plant, owned by the city, furnished 80.6 per cent of the street lighting of the city while the Cleveland Electric Illuminating Company, its competitor, furnished but 19.4 per cent of the street lighting. We also find that on Aug. 1, 1937, and in a few days we will have the total for October 1, 1937, indicates that the city of Cleveland owed the Cleveland Electric Light Plant $2,876,036.13, this was owed by practically one-fifth of the electrical consuming populace of said city. The general fund is required to furnish the street lighting for the city, and they owe this to the Cleveland Electric Light Plant. Now, therefore, if the Cleveland Electric Light Plant cannot collect this from the city of Cleveland, why should it be carried as an asset of the plant, or as an account receivable, if, as Mr. Turner would seem to indicate, the city can not be made to pay the Cleveland Electric Light Plant this amount for street lighting, and that ('paid at its full value' see Section 280 G. C.,) means nothing.

It seems peculiar that one-fifth of the taxpayers (consumers of the Cleveland Electric Light Plant) should be compelled to furnish the street lighting for 80.6 per cent of the city's population, and that is true because the consumers of the city's plant are the only ones that furnish revenue for its upkeep and maintenance."

Your examiner, I assume, when he mentions Mr. Turner, refers to the Hon. Edward C. Turner, who was Attorney General of Ohio when Opinion No. 1418, Opinions of the Attorney General for 1927, was rendered. In that opinion, Attorney General Turner held flatly in answer to an inquiry from your Bureau that your right to require reports from municipalities did not necessarily include the authority to require the actual payment from one fund to another. Permit me to quote from that opinion:

"I might add that I do not feel it within the authority of your bureau to determine as against the municipality just how the various departments and purposes of local government shall

be distributed. In other words, it may seem of advantage to the municipality to combine one or more departments under one head or to provide for separate departments from those ordinarily recognized as incident to the public service. These matters, which in my opinion, reside wholly within the field of local self-government, and I can not see wherein Section 14 of Article XVIII extends authority to your bureau, to prevent any internal arrangement of its business which a municipality may desire. So long as the report filed with you is a true reflection of the amount of expenditures of each purpose which the municipality recognizes as such, then I feel that compliance has been had with all the requirements which can be made of such municipality under the authority contained in the section of the Constitution above referred to.

I am of opinion therefore, that the council of a charter city may legally provide by ordinance for administrative action, ignoring the provisions of Sec. 280 of the General Code, requiring that each department, improvement or public service furnishing service or property to another shall pay therefor at its true value."

I am placing no stamp of approval on the failure of the City of Cleveland to pay its municipal plant, for its street lighting, but the matter of payment is an administrative function to be exercised by the legislative department of the city under its right to local self-government. You do not divulge in your communication or enclosure just what legislation, if any, was enacted by the city council relative to what I will denominate "free street lighting," hence the question of an exercise of police power does not come within the purview of your inquiry.

Boiling it down to its last essence, your inquiry amounts to this—the City of Cleveland, a charter city, is indebted to the Cleveland Electric Light Plant, which is its municipal plant, in a sum approximating three million dollars at the present time. Query: Under the Constitution and Laws of Ohio, can the Bureau of Inspection and Supervision of Public Offices of the State of Ohio make a finding against the City of Cleveland and in favor of the Cleveland Electric Light Plant in the amount of such sum as is actually due and enforce its payment? My answer must be that you can make such finding against the city as the records, files and vouchers warrant, but you cannot enforce payment. Under the facts stated and the law as it exists, payment is an administrative function to be performed by the charter city in the exercise of its power of local self-government as delegated by the Constitution of Ohio.

I concur in Opinion No. 1418, Opinions of the Attorney General for the year 1927, herein referred to.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1466.

APPROVAL—BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO, $47,000.00.

COLUMBUS, OHIO, November 15, 1937.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.
GENTLEMEN:

RE: Bonds of City of Cleveland, Cuyahoga County, Ohio, $47,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated September 1, 1937. The transcript relative to this issue was approved by this office in an opinion rendered to your board under date of September 17, 1937, being Opinion No. 1173.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said city.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1467.

APPROVAL—BONDS OF MAPLE HEIGHTS VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, $57,000.00.

COLUMBUS, OHIO, November 15, 1937.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.
GENTLEMEN:

RE: Bonds of Maple Heights Village School District, Cuyahoga County, Ohio, $57,000.00.