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LOSS—PERSONAL EARNINGS—SUFFERED BY MEMBER OF COUNCIL WHILE ACTING IN OFFICIAL CAPACITY—NOT AN OFFICIAL EXPENSE FOR WHICH A MEMBER MAY BE REIMBURSED.

SYLLABUS:

The loss of personal earnings suffered by a member of council while acting in his official capacity, is not an official expense for which a member may be reimbursed.

Columbus, Ohio, June 16, 1950

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“A question has arisen in connection with the current examination of the records of the city of Youngstown, relative to the reimbursement of members of council for personal earnings lost due to absence from their regular place of employment while serving on a Committee of Council.

“The City of Youngstown has adopted a charter. Section 18 of said charter reads in part as follows:

“‘Each member of the council, except the president, shall receive a salary of six hundred dollars (\$600.00) a year, \* \* \*.’ Section 19 of said charter reads:

“‘Except as otherwise provided in this charter, the powers, duties and procedure of the council shall be as provided by the General Code.’

“The compensation of members of Council in non-charter cities must be fixed in accordance with the provisions of Sections 4209, 4213 and 4214 of the General Code.

“A similar question, with reference to reimbursement of members of council for time lost at private employment while serving on a committee of council to investigate smoke abatement problems, has been raised in two non-charter cities. We are unable to find where this question has been ruled upon previously.

“Attached hereto and made a part of this request is a copy

of our examiner's letter in regard to the problem at the city of Youngstown.

"Inasmuch as the answer to the foregoing is of state-wide interest, we respectfully request that you examine same, together with the enclosed copy of correspondence, and give us your formal opinion in answer to the following question :

"Is it legal for either a charter or a non-charter city to expend public funds for the purpose of reimbursing a member of city council for the loss of wages caused by such member of council being absent from his regular employment while serving on a committee of council investigating smoke control problems in another city, in the performance of councilmanic duties?"

Pursuant to Article XVIII, Section 8, of the Constitution of Ohio, the electors of the City of Youngstown adopted a Home Rule Charter. The pertinent sections of said Charter are :

Section 5.

"The legislative power of the City, except as reserved to the people by this Charter, by means of the initiative and referendum, shall be vested in a Council of seven members, elected by wards, one from each ward, and for a term of two years. A Councilman shall be an elector of the ward from which he is elected and of not less than twenty-five years of age."

Section 7.

"At eight o'clock P. M. on the first Monday in January, following a regular municipal election, the Council shall meet at the usual place for holding meetings, at which time the newly elected Councilmen shall assume the duties of their office. Thereafter the Council shall meet at such times as may be prescribed by ordinance or resolution. The Mayor, the President of the Council, or any three members thereof, may call special meetings of the Council upon at least twelve hours' written notice to each member of the Council, served personally on each member or left at his usual place of residence. Such notice shall state the subjects to be considered at the meeting and no other subjects shall be then considered unless all members of Council are present. All meetings of the Council or committees thereof shall be public and any citizens shall have access to the minutes and records thereof at all reasonable times."

Section 18.

"Each member of the Council except the President shall receive a salary of Six Hundred (\$600.00) Dollars a year, and the President shall receive a salary of Nine Hundred (\$900.00) Dollars a year, payable in equal monthly installments; provided,

however, that for each absence of a Councilman from a regular meeting of the Council, there shall be deducted Twelve (\$12.00) Dollars from his salary.

“The salary of the Mayor shall be Seven Thousand Two Hundred (\$7,200.00) Dollars a year, payable in equal monthly installments, but said salary may be changed by ordinance of Council, provided that such ordinance must be passed prior to the beginning of the term of the Mayor to be affected thereby.”

Section 19.

“Except as otherwise provided in this Charter, the powers, duties and procedure of the Council shall be as provided by the General Code.”

In 43 Am. Jur., at page 69, it is said :

“The duties of a public office include all those which fairly lie within its scope, those which are essential to the accomplishment of the main purposes for which the office was created, and those which, although incidental and collateral, are germane to, or serve to promote or benefit, the accomplishment of the principal purposes.”

Clearly making a proper investigation prior to the adoption of any legislation would fall within the scope of a councilman's official duties, and the salary prescribed in Section 18, supra, is his compensation for such duties. Can it not be said that any additional moneys paid to a councilman for carrying out said duties would be in violation of the Charter? The general law on the subject of salaries is found in Section 4213 of the General Code, which reads as follows :

“The salary of any officer, clerk or employe shall not be increased or diminished during the term for which he was elected or appointed, and, except as otherwise provided in this title, all fees pertaining to any office shall be paid into the city treasury.”

It is further said in 43 Am. Jur., at page 143, that :

“The purpose of constitutional provisions against changing the compensation of a public officer during his term or incumbency is to establish definiteness and certainty as to the salary pertaining to the office, and to take from public bodies therein mentioned the power to make gratuitous compensation to such officers in addition to that established by law.”

The members of council knew or should have known the salary attached to that office when they were elected and qualified; any personal monetary loss one incurs, in my opinion, is an obligation any councilman

must assume when he enters upon his official duties. It is further said in 43 Am. Jur., at page 154:

“Public officers are very often allowed statutory compensation for expenses incurred by them in the performance of their official duties. Such allowances for expenses are something different from salary, \* \* \* and prohibitions against changing these do not ordinarily apply to an allowance for expenses. Where, by constitutional provision, the compensation of a designated officer \* \* \* for the performance of official duties is fixed, official expenses may be allowed the officer, but not personal expenses, \* \* \*.”

In view of the foregoing, it is my opinion that the loss of personal earnings suffered by a member of council while acting in his official capacity, is not an official expense for which a member may be reimbursed.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.