

to elect officers under the new plan of government. It is believed that the same reason that forbids the election to be held looking to the adoption of a plan of government less than ninety days before a regular municipal election, would operate against it being held on the regular municipal election day.

Respectfully,

C. C. CRABBE,

Attorney General.

2756.

QUESTIONS RELATING TO CONTRACTS ENTERED INTO BY VILLAGE
COUNCIL ANSWERED—SECTION 4224 G. C. CONSTRUED.

SYLLABUS:

1. *A mayor of a village cannot cast the deciding vote when the vote of the members of council is a tie upon the resolution or ordinance of the village when such resolution or ordinance involves the expenditure of money as contemplated by section 4224 G. C., but in cases where, by resolution or ordinance the council has previously provided for the authorization of a contract and has provided for and appropriated the money involved in the contract price of the improvement, the mayor may cast the deciding vote in the formal letting of the contract to the successful bidder.*

2. *The section of council in awarding a contract involving the expenditure of money must be by ordinance, unless prior thereto, such expenditure has been authorized by ordinance.*

3. *An ordinance awarding a contract involving an expenditure of money must be read on three different days, unless the rule be dispensed with by three-fourths vote of all members elected to council, unless prior to the time of awarding said contract, the money involved in the same has been provided and authorized by ordinance of council.*

COLUMBUS, OHIO, September 4, 1925.

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

GENTLEMEN:—Acknowledgment is made of your recent request for an opinion as follows:

“In accordance with the provisions of section 4221 General Code, the council of a village advertised for bids for furnishing three traffic lights, the cost of which exceeds \$500.00. Bids were received and opened and a vote taken to award the contract to the low bidder. Three members voted ‘Yea,’ and three members voted ‘No.’ Section 4255 General Code, provides that the mayor of a village should be president of council but shall have no vote except in case of a tie. Section 4224 General Code, reads:

“The action of council shall be by ordinance or resolution, and on the passage of each ordinance or resolution the vote shall be taken by ‘yeas’ and ‘nays’ and entered upon the journal, but this shall not apply to the ordering of an election, or direction by council to any board or officer to furnish council with information as to the affairs of any department or office. No by-law, ordinance or resolution of a general or permanent nature, or granting a franchise, or creating a right, or involving the expenditure of money, or the levying of a tax, or for the purchase, lease, sale, or transfer of

property, shall be passed, unless it has been fully and distinctly read on three different days, and with respect to any such by-law, ordinance or resolution, there shall be no authority to dispense with this rule, except by a three-fourths vote of all members elected thereto, taken by yeas and nays, on each by-law, resolution or ordinance, and entered on the journal. No ordinance shall be passed by council without the concurrence of a majority of all members elected thereto.'

"Question 1. May a mayor cast the deciding vote in the letting of a contract?

"Question 2. Must the action of council in awarding a contract be by ordinance or resolution?

"Question 3. Would such ordinance or resolution require reading on three different days unless the rule be dispensed with by a three-fourths vote of all members elected to council?

"Your opinion in relation to this matter will be appreciated."

Section 4221 General Code, provides for the letting of contracts by villages, and is as follows:

"All contracts made by the council of a village shall be executed in the name of the village and signed on behalf of the village by the mayor and clerk. When any expenditure other than the compensation of persons employed therein, exceeds five hundred dollars, such contracts shall be in writing and made with the lowest and best bidder after advertising for not less than two nor more than four consecutive weeks in a newspaper of general circulation within the village. The bids shall be opened at twelve o'clock noon on the last day for filing them, by the clerk of the village and publicly read by him."

Section 4328 General Code, provides that an expenditure by cities in excess of five hundred dollars shall be by ordinance of council, and is as follows:

"The director of public service may make any contract or purchase supplies or material or provide labor for any work under the supervision of that department not involving more than five hundred dollars. When an expenditure within the department, other than the compensation of persons employed therein, exceeds five hundred dollars, such expenditure shall first be authorized and directed by ordinance of council. When so authorized and directed, the director of public service shall make a written contract with the lowest and best bidder after advertisement for not less than two or more than four consecutive weeks in a newspaper of general circulation within the city."

There is no specific provision as to the form of proceedings by villages in any of the foregoing sections.

Section 4224 General Code, provides as follows:

"The action of council shall be by ordinance or resolution, and on the passage of each ordinance or resolution the vote shall be taken by 'yeas' and 'nays' and entered upon the journal, but this shall not apply to the ordering of an election, or direction by council to any board or officer to furnish

council with information as to the affairs of any department or office. No by-law, ordinance or resolution of a general or permanent nature, or granting a franchise, or creating a right, or involving the expenditure of money, or the levying of a tax, or for the purchase, lease, sale, or transfer of property, shall be passed, unless it has been fully and distinctly read on three different days, and with respect to any such by-law, ordinance or resolution, there shall be no authority to dispense with this rule, except by a three-fourths vote of all members elected thereto, taken by yeas and nays, on each by-law, resolution or ordinance, and entered on the journal. No ordinance shall be passed by council without the concurrence of a majority of all members elected thereto."

The letting of a contract as designated by your letter must necessarily involve the expenditure of money, and the provisions of the foregoing sections must be strictly construed as to the proceedings for such expenditure. The provision therein that no by-law, ordinance or resolution of a general or permanent nature, or granting a franchise, or creating a right, or involving the expenditure of money, or the levying of a tax, or for the purchase, lease, sale or transfer of property shall be passed, unless it has been fully and distinctly read on three different days, etc., seems to specifically provide the method of passage of a resolution or ordinance for any of the purposes therein designated. This section having prescribed the method of passing an ordinance for such purposes then recites:

"No ordinance shall be passed by council without the concurrence of a majority of all members elected thereto."

There may be some contention that the proceedings of council awarding a contract for an improvement does not come within the provisions of section 4224 General Code. In the case of *City of Cincinnati vs. Bickett et al.*, 26 O. S., 49, the Court said on page 55:

"We think the law did not require that the resolution awarding the contract should be concurred in by two-thirds of the members of council, It was not a resolution of a general or permanent nature within the meaning of section 98 of the municipal code."

However, section 4328 General Code, now provides that all contracts of cities involving an expenditure of more than five hundred dollars shall be authorized and directed by ordinance. There does not seem to be any reason why specific provision should be made for cities and not for villages, unless it can be concluded that section 4224 General Code, already provided the similar proceedings for villages.

In the case of *State ex rel vs. Henderson*, 38 O. S., 644, the court held:

"It is not every ordinance that may result in the expenditure of money that is intended to be included, but only such as directly involve such expenditure."

In this case it was held that the preliminary ordinance providing for bids for a street railway route was not an ordinance "involving the expenditure of money." The inference is left in this case that the subsequent proceedings awarding the contract to the successful bidder would be the proceedings involving the expenditure of money.

It should be admitted that there must be some proceeding of council by ordinance or resolution, duly passed, as provided in section 4224 General Code, giving authority for the expenditure of the money necessary to pay the contract price of the improvement. When such a resolution or ordinance has been legally passed as provided in section 4224 General Code, then it could not be held that a further proceeding of such nature would be required.

Section 4221 General Code, as above quoted, provides a mandatory provision for the letting of a contract, and provides that the same shall be in writing, and made with the lowest and best bidder, after advertisement, etc. It would then seem that the letting of the contract after all proceedings have been had for an improvement, and the money provided and appropriated for use would be a mere formality to be completed by the officials in regular course of business, and in that event, the provisions of section 4255 General Code, would apply as to the vote of the mayor in case of a tie by the members of council.

Section 4255 General Code, provides :

“The mayor shall be elected for a term of two years, commencing on the first day of January, next after his election, and shall serve until his successor is elected and qualified. He shall be an elector of the corporation. He shall be the chief conservator of the peace within the corporation, and shall have the powers hereinafter conferred, perform the duties hereinafter imposed, and such other powers and duties as are provided by law. He shall be the president of the council, and shall preside at all regular and special meetings thereof, but shall have no vote except in case of a tie.”

This section cannot be construed to repeal by implication statutory provisions that require a vote of council of more than a majority thereof, and could not apply where the authority of council shall be by the concurrence of a majority of all members elected thereto as is the case in section 4224 General Code.

It would therefore appear that a mayor could not cast the deciding vote in actions by council under the provisions of section 4224 General Code.

It seems then that there must be a differentiation in the answer to your questions as follows :

The provisions of section 4224 General Code, must be applicable in the proceedings of council providing for the expenditure of the money involved in the contract, and the formalities of the proceedings therein provided must be strictly followed. Such expenditure can only be authorized by a majority vote of the members elected to council or by a three-fourths vote of the members thereof, on a suspension of the rules, as to three readings of the ordinance, but in cases where such proceedings have been had prior thereto, then the formality of letting or awarding the contract will not require a further proceeding as contemplated for such expenditure of money.

Respectfully,
C. C. CRABBE,
Attorney General.