Note from the Attorney General's Office:

1937 Op. Att'y Gen. No. 37-1464 was overruled by
1974 Op. Att'y Gen. No. 74-048.

outside of the limitation imposed by Article XII, Section 2, of the Constitution as certified by the County Auditor.

In the case of *State, ex rel.*, vs. *Commissioners,* 122 O. S., page 456, the court therein held that the provisions of Section 2293-21, General Code, relating to the publication of notice of an election upon the question of issuing bonds, are mandatory, so that the only deviation from the mandatory provisions of Section 2293-21, General Code, considering the fact that this is an issue of bonds in conjunction with federal participation, is that part of Section 8 of House Bill No. 544 which allows the publication to be four times in one or more newspapers; otherwise, the mandatory provisions of Section 2293-21, General Code, prevail.

In the case of *State, ex rel.*, vs. *Rees,* 125 O. S., 578, the court in very plain language held that the Uniform Bond Act must be strictly construed and that substantial compliance therewith is not sufficient.

In view of the above mentioned discrepancies, I am therefore of the opinion that the same are material and I therefore advise your Board against the purchase of these bonds.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1464.

VILLAGE COUNCIL MAY NOT OFFER REWARD FOR APPREHENSION AND CONVICTION OF FELONS—MEMBERS OF COUNCIL MAY NOT BE HELD LIABLE FOR REWARD PAID PURSUANT TO ILLEGAL ORDINANCE —CLERK LIABLE FOR AMOUNT OF REWARD PAID ON ILLEGAL WARRANT.

SYLLABUS:

1. *A village council is unauthorized to pass an ordinance providing a reward for information leading to the apprehension and conviction of a felon.*

2. *The members of a village council are neither jointly nor severally responsible for a reward paid in pursuance of an illegal ordinance purporting to authorize the payment of a reward for information leading to the apprehension and conviction of a felon.*

3. *A village clerk is individually liable for the amount of a reward paid upon his warrant issued in pursuance of an illegal ordinance purport-*

ing to authorize the payment of a reward for information leading to the apprehension and conviction of a felon.

COLUMBUS, OHIO, November 15, 1937.

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

GENTLEMEN: I have your letter of recent date in which you request my opinion on the following questions:

> "In checking accounts of the Village of Waite Hills, Lake County, Ohio, we find that council adopted ordinance No. 1931-32 on the 30th day of November, 1931, providing for the offer of a reward to the person or persons who presented information leading to the arrest and conviction of the murderer or murderers of G. D. F., in the sum of One Thousand Dollars ($1000); further, that resolution No. 1937-16 was passed by the council of said Village May 2nd, 1937, providing for the payment of the aforesaid reward to two persons, in the amount of Five Hundred Dollars ($500) each.
>
> We also find that on May 5, 1937, same date as the payment of the reward by the Village, that the Village received from John and Francis Sherwin for the F. reward, the sum of Five Hundred Dollars ($500) indicating that the payment of said reward cost the Village the net sum of Five Hundred Dollars ($500).
>
> It is indicated by the provisions of Section 2489 of the General Code, that the county commissioners may offer a reward for the detection or apprehension of any person charged with or convicted of a felony, and upon conviction may pay the reward from the county treasury, and it is indicated by Opinion No. 3580, found at page 1692 of Attorney General's Opinions for 1934, that the county commissioners are unauthorized to pay such a reward from the county treasury unless the person detected or apprehended has subsequently been convicted.
>
> We are unable to find any authority for a village to offer or pay a reward for the detection or apprehension or arrest of a person charged with murder.
>
> Therefore, may we inquire
>
> First—Was the council of the Village of Waite Hills authorized to offer the reward in question?
>
> Second—If the council was unauthorized to offer and pay such reward, may our Examiner render a finding for re-

covery against those officers jointly and severally responsible for the illegal payment of the reward in the net amount of the cost to the Village?

For your further information we are inclosing copy of resolution No. 1937-16 of the Village of Waite Hills."

An exhaustive search of the General Code of Ohio fails to disclose any statutory authority for either a village or city council to offer and pay a cash reward out of municipal funds for information leading to the arrest and conviction of a murderer or murderers either pursuant to the resolution passed by the council of a municipal corporation or otherwise.

In the absence of express statutory authority, the only other legal authority for the payment of a reward for the apprehension and conviction of a felon by a village council would have to be predicated upon the general broad powers of a municipality. On this point McQuillin Municipal Corporations, 2nd Ed. Vol. I, Section 403 at page 1006, states as follows:

> "But, in the absence of express authority, a municipal corporation may not offer rewards for information leading to the arrest and conviction of violators of state laws, although committed within the municipal limits. The local corporation is not charged with the execution of the general criminal laws of the state. This is not a municipal or corporate purpose, but a duty devolving upon the state."

This particular question has never been adjudicated by the courts of Ohio. However, in the comparatively recent case of *City of Los Angeles* vs. *Gurdane, et al.*, 59 Fed. (2d) 161 (1932), the court considered whether a reward of ten thousand dollars offered by the City of Los Angeles for the arrest and conviction of the person or persons implicated in a kidnapping and murder of a twelve-year-old school girl could be paid to the persons who apprehended the convicted murderer. In holding that the offer of a reward is not within the municipality's broad general powers, the court said at page 164:

> "The appellees also rely upon the 'general broad powers of the municipality' as the city's authority for offering a reward of the kind we now have under consideration. While the question does not seem to have been directly decided by the Supreme Court of California, the jurisprudence of this state shows a clear tendency away from any such holding.

> In 22 Cal. Jur. pp. 828, 829, Sec. 3, we find the following language: 'No doubt a private person may offer such rewards as he pleases, if public policy is not violated. But a public officer cannot bind the state or any of its subdivisions by such an offer unless authority is conferred by legislation. Various statutes authorize the giving and offering of rewards, the most important being that which empowers the governor to offer rewards not exceeding one thousand dollars each for the apprehension of any convict who has escaped from a state prison, or of any person who has committed an offense punishable with death, or for the arrest of each person who robbed or attempted to rob any person in charge of a conveyance engaged in carrying passengers or any private conveyance within the state. The authority of the governor so conferred is limited to the apprehension of the criminals specified, and does not include services rendered in furnishing evidence to convict.'
>
> Follow other limitations of the Governor's power to offer or to pay rewards. These limitations indicate, first, that the power to offer rewards for crimes is regarded in California as primarily belonging to the state; and, second, that even officers of the state are strictly circumscribed in the exercise of that power."

In view of the absence of any express statutory authority and the further fact that the authority to offer and pay a reward for the apprehension and conviction of a felon does not lie within the general broad powers of a municipality, I am of the opinion that the council of the Village of Waite Hills, Ohio, had no authority to offer and pay the reward in question.

In considering the personal liability of the members of the village council for the unauthorized expenditure of public funds, I am not unmindful of the provisions of Section 286-1, General Code, which are, in part, that if the report rendered by your examiners shows that any public money has been illegally expended the officer of the affected political subdivision receiving such report may institute a civil action in the proper court in the name of the political subdivision or taxng district to which such public money is due. However, it is my opinion that under the facts of this particular case such an action could not be successfully maintained against the members of a village council. This precise question was presented to the Supreme Court of Ohio in the case of *Hicksville* vs. *Blakeslee,* 103 O. S. 508. In that case an action was instituted against the members of a village council based on a report of the Bureau of Inspection and

Supervision of Public Offices in which report it was charged that the village council unlawfully authorized by resolution, the expenditure of public funds for the payment of a commission, attorney fees and other expenses to secure a market for a bond issue. In denying the personal liability of the members of the village council, Judge Robinson stated at page 517:

> "The demurrer then presents the square question whether a councilman acting in good faith who votes for an unauthorized and therefore void and illegal resolution or ordinance thereby becomes liable to the village for such sum as may thereafter be paid under the supposed authority of such void resolution or ordinance. That legislative officers are not liable personally for their legislative acts is so elementary, so fundamentally sound, and has been so universally accepted, that but few cases can be found where the doctrine has been questioned and judicially declared."

In a further enunciation of this principle the court states at page 519:

> "The exercise of discretion by a village councilman in voting for a resolution or an ordinance void by reason of a statutory limitation upon the power of the council is no different from the exercise of discretion by a member of the general assembly in voting for a statute void by reason of a constitional limitation upon the power of the general assembly, yet no one would claim that a legislator would be liable either in his official or in his individual capacity for the exercise of his judgment and discretion in voting for such void statute. It is apparent that the action of council in providing by resolution a plan for the disposition of the bonds in question, which they had been unable to dispose of in the regular way, was legislative in its nature, it being an attempt to enact the necessary legislation to make lawful that which was theretofore unlawful; and the fact that it was ineffective in the accomplishment of its purpose does not make it any the less legislative in its nature, and this is the more apparent when the reason why it is ineffective is considered, to-wit, because the general assembly had by legislation provided a plan for the sale of municipal bonds which the municipality was bound to follow, and with which the scheme adopted by the municipality was inconsistent. We see no reason for applying a different rule to a municipal legislator, who, in good faith, exercises his discretion in vot-

ing for a resolution void because of legislative limitations upon his power, than is applied to a state legislator exercising his discretion in voting for a statute void by reason of a constitutional limitation upon his power."

In view of the foregoing authority I am of the opinion that the members of a village council are neither jointly nor severally responsible for the illegal payment of a reward for the apprehension and conviction of a felon. The only other municipal officer involved in the disbursement of the money under consideration is the village clerk, who in the present case presumably issued the warrant for the payment of the reward.

In attempting to determine the personal liability of the village clerk for the unauthorized expenditure of public funds, some enlightenment is found in the following statutes:

Section 4283, General Code, provides:

> "In the following provisions of this chapter, the word 'city' shall include 'village,' and the word 'auditor' shall include 'clerk.' "

Section 4285, General Code, provides:

> "The auditor shall not allow the amount set aside for any appropriation to be overdrawn, or the amount appropriated for one item of expense to be drawn upon for any other purpose, or unless sufficient funds shall actually be in the treasury to the credit of the fund upon which such voucher is drawn. When any claim is presented to him, he may require evidence that such amount is due, and for this purpose may summon any agent, clerk or employe of the city, or any other person, and examine him upon oath or affirmation concerning such voucher or claim."

Section 4286, General Code, which seems to refer directly to the preceding sections provides in part as follows:

> "* * * * If the auditor approves any voucher contrary to the provisions of this title, he and his sureties shall be individually liable for the amount thereof."

The foregoing statutes seem to indicate that a village clerk is charged with some responsibility in seeing that public funds are not indiscriminately disbursed upon the mere appropriation ordinance of

council but has the means of determining the legal sufficiency of such expenditures. On this point the personal liability of a village clerk for the issuance of a warrant pursuant to an unauthorized ordinance is considered in the case of *Crawford* vs. *Milligan,* 13 O. Dec. 494. In that case a taxpayer sought to restrain a city treasurer and a city auditor from making any further disbursements of public funds for the maintenance of a so-called "Tax Bureau" and further sought the refund of thirty-seven thousand dollars disbursed by these two officers pursuant to the authority of the ordinance creating the "Tax Bureau." This action was based upon the claim that such a "Tax Bureau" was unauthorized and illegal and the disbursements pursuant thereto were illegal expenditures of public funds. The court decided that the ascertainment of the taxation value of property was not a municipal function and therefore the creation by the city council of a "Tax Bureau" to perform that function was unauthorized and illegal.

Proceeding to the question as to the right of public officers to disburse public funds pursuant to an unauthorized ordinance, the court said at page 487:

> "The defendants offered in evidence certain ordinances passed by the council, making appropriations for the expenses of the tax bureau. These were excluded, for the reason already stated, to-wit, that the subject-matter does not fall within the delegated powers of the municipality, and that such ordinances can therefore have no legal validity to authorize the disbursements complained of. These ordinances, so far as they undertake to appropriate funds for the expenses of the so-called tax bureau, are inoperative, because the tax bureau is an institution not provided for or recognized by law; and there is therefore no power in the council to appropriate funds to maintain such outlying, nondescript body, or to tax the people to create a fund for such unauthorized purpose.
>
> These ordinances were excluded for the further reason that there is no complaint here that these defendants are disbursing funds not appropriated, or funds not appropriated for the purpose for which they are being expended. The petition raises no question of informality in the disbursements; it questions only their legality, however formal the pretended authorization. The appropriation of funds, by ordinance, is simply one of the prerequisite steps to the making of a disbursement, that is, upon other grounds, by

virtue of some law or some other ordinance, authorized and legal. So that, strictly, there is no place in this case for proof of an appropriation by ordinance; it is not called for; it is not questioned.

It was urged in argument that these appropriation ordinances, even though unauthorized and invalid, are a shield to the auditor and the treasurer from an order of the court, in this case, for the restoration of this money to the public treasury. I think they could not have this effect, and for two reasons: First, a void ordinance like a void law, can not validate the acts of an officer, not even for the protection of the officer. I know there are some authorities that look in the direction of protection by an invalid statute, but these authorities do not go to the extent suggested in this case. Where a statute has been held, by the Supreme Court of the state, to be valid, and is afterward held by the same court to be invalid, contracts made and official acts performed ad interim, have been sustained for the protection of those who acted in reliance upon the adjudged validity of the law. The cases sustaining municipal bonds so issued, and the unreported decision of our Supreme Court in the Scott liquor law cases, are illustrations of this doctrine. But I know of no decision, and I know of no principle, that goes to the extent of protecting an officer in the doing of acts required by an invalid ordinance that had not theretofore received such judicial sanction.

In the next place, Secs. 1545-57 and 1545-59, Rev. Stat., provide that:

'Whenever a claim shall be presented to the city auditor he shall have power to require evidence that the amount claimed is justly due and is in conformity to law and ordinance, and for that purpose he may summon before him any officer, agent or employe of any department of the city, or any other person, and examine him upon oath or affirmation relative thereto, which oath or affirmation he may administer.'

'If the city auditor shall draw a warrant for any claim contrary to law or ordinance, he and his sureties shall be individually liable for the amount of the same.'

I think these statutes clearly impose upon the auditor the obligation to determine, and at his peril, whether, when a claim is presented to him and he is asked to issue a warrant upon the treasury, whether it is valid; whether it rests upon a valid or-

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.*