

724.

APPROVAL—OFFICIAL BONDS FOR THE FAITHFUL PERFORMANCE OF DUTIES AS FOLLOWS:

- 1—C. ERWIN NOFER, CHIEF OF RECORDS AND CHIEF OF DRIVERS' LICENSE DIVISION, ETC.
- 2—CLYDE E. HAEGER, RESIDENT DISTRICT DEPUTY.
- 3—EDWARD M. HUBER, AUDITOR OF THE BUREAU OF MOTOR VEHICLES.

COLUMBUS, OHIO, June 11, 1937.

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

DEAR SIR: You have submitted for my consideration the following official bonds:

1. Bond of C. Erwin Nofer, Chief of Records and Chief Drivers' License Divisions of the Department of Motor Vehicles of the State of Ohio and Great American Indemnity Company of New York in the sum of \$10,000.00.

2. Bond of Clyde E. Haeger, Resident District Deputy Director in Madison and Fayette Counties, New Amsterdam Casualty Company in the sum of \$5,000.00.

3. Bond of Edward M. Huber, Auditor of the Bureau of Motor Vehicles, State of Ohio and Great American Indemnity Company of New York in the sum of \$10,000.00.

After examination, it is my opinion that each of the three bonds is correct as to legality and form. I have, therefore, endorsed my approval on each of said bonds and am returning the same herewith.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

725.

ABSENCE OF MEMBERS FROM COUNCIL MEETINGS—EXCUSED WHEN—CLEVELAND CITY CHARTER DOES NOT EMPOWER COUNCIL TO EXCUSE PAST ABSENCES.

*SYLLABUS:*

*Section 27 of the charter of the City of Cleveland empowers council to authorize absences of council members from council meetings at or*

*before the date of the occurrence of such absences; however, this section of the city charter does not authorize council to excuse absences at any time after the occurrence of such absences.*

COLUMBUS, OHIO, June 11, 1937.

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

GENTLEMEN:

I have your letter of recent date requestong my opinion on several questions arising out of the following ordinance, which was unanimously passed on March 22, 1937, by the council of the City of Cleveland, Ohio:

“An emergency ordinance excusing the absence of certain councilmen from attendance at the regular meetings of council hereinafter stated and releasing them from deduction from their regular salary incident to such absence.

Whereas, the records of the clerk of council show the following councilmen to have been absent from the regular meetings of council held on the dates set opposite their respective names:

Ernest J. Bohn—8-24, 8-31, 9-3-1936.

L. N. Bundy—6-15, 10-8, 11-30, 12-21 and 28, 1936.

J. P. Chambers—12-28-1936; 1-18-1937.

E. J. Chapek—12-21 and 28, 1936; 1-18, 1937.

T. F. McCafferty—10-8, 1936.

H. J. McFarland—1-20 and 27, 1937.

J. A. Artl—1-6, 10, 20, 27; 2-3, 4, 17, 24, 1936.

A. L. DeMaioribus—1-6, 10, 20, 27; 2-3, 4, 17, 24, 1936.

Wm. C. Reed—1-6, 10, 20, 27; 2-3, 4, 17, 24, 1936.

Whereas, during the period from the first meeting in January until the first meeting in March, 1936, the council recessed from one session to another owing to the controversy then pending as to who was the legally elected president, and by incident to which controversy councilmen Artl, De Maioribus and Reed were by agreement absent from all intervening meetings in order to prevent any prejudicial interference being drawn from their attendance at any such meeting and

Whereas, the absence of some of the other councilmen above noted was caused by illness or by business necessarily calling them out of the city; and

Whereas, this ordinance constitutes an emergency in that the same provides for the usual daily operation of a municipal department; now, therefore,

Be it Ordained by the council of the City of Cleveland:

Section 1. That the absence of councilman Ernest J. Bohn, L. M. Bundy, Jno. P. Chambers, R. J. Chapek, T. F. McCafferty, H. J. McFarland, J. A. Artl, A. L. De Maioribus and Wm. G. Reed on the dates hereinbefore recited from the meetings of the council held on said dates be and the same is hereby excused.

Section 2. That no deduction from the pay of any one of said councilmen shall be made by reason of any of the absences above noted.

Section 3. This ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two thirds of all members elected to council, it shall take effect and be in force immediately upon its passage and approval by the mayor; otherwise it shall take effect and be in force at the earliest period allowed by law."

The questions propounded in your recent communication are as follows:

1. Is the emergency ordinance excusing absences of members of council in conflict with the Charter of the City of Cleveland?
2. May the absence of a former member of the incumbent council be included in the ordinance under consideration?
3. If the absence of members of the incumbent council are authorized by proper legislative action, may the present council excuse absence of members of a former council?
4. When and how and by whom are salary deductions made for unauthorized absences from regular council meetings?

I must assume that the ordinance under consideration was enacted by council under the supposition that it had the proper authority pursuant to Section 27 of the charter of the City of Cleveland, which reads in part as follows:

"For each absence of a member from regular meetings of the council, unless authorized by a two-thirds vote of all members thereof, there shall be deducted a sum equal to two per cent (2%) of the annual salary of each member. \* \* \*"

If the foregoing provision of the city charter can be interpreted to mean that absences from council meetings may be *excused*, by appro-

priate action of the council, after they have occurred, then this wholesale absolution is not in conflict with the organic law of the municipality. However, if the power vested in council by Section 27, supra, is limited to the authorization of absences at the time of or prior to their occurrence, then the ordinance in question is invalid.

It is perfectly plain that the purpose of Section 27, supra, is to compel regular attendance of councilmen at council meetings. Realizing, however, that some absences would be unavoidable and not a gross evasion of duty, the charter fathers wisely provided for the authorization of absences. Consequently, I feel that it is only necessary to properly construe the word "authorized" as used in Section 27, supra, in order to determine the true intention of the framers of the charter.

It is a fundamental rule of statutory construction that words must be interpreted in the sense in which they are ordinarily used and understood unless some other interpretation is clearly indicated. Looking to the ordinary understanding of "authorize", Webster's New International Dictionary (1927) defines it as:

"To clothe with authority, warrant, or legal power; to give a right to act; to empower."

Ballentine's Legal Dictionary (1930) provides the following definition:

"The primary meaning of the word is to empower, to give a right to act."

In the construction of words, legislators are presumed to know the simple rules of grammar and are further presumed to have expressed their will in the proper grammatical terms. See McQuillin's Municipal Corporations, Volume 2, page 912. The framers of the charter of the City of Cleveland presumably used the terms which they wished to exactly express their intentions; and in the present instance the term "authorized", which is a participial adjective, is used in the past tense and not in the present perfect tense.

Consequently, in looking to the ordinary understanding and the grammatical use of the term under consideration, I am constrained to the belief that "authorized" as here used can only mean a right to pursue a certain course of action at some time in the future, that is, the legal right of a councilman to absent himself from a future council meeting. Considering the grammatical tense in which this term is used, it seems to be clearly contemplated that when the roll call at a council meeting

reveals an absence, the clerk has only to decide if such absence was authorized at some time in the past.

In order to validate this ordinance, which is purely an attempt to excuse absences incurred in the past, the term "authorized" would have to be given the synonymous meaning of "excuse". The synonyms for the term "excuse" as given by Webster's New International Dictionary, 1927, are: exculpate, exonerate, absolve, pardon, condone, forgive, all of which terms connote the idea of justifying an act that has happened in the past. As indicated hereinbefore, "authorize" is the legal right or empowerment to act in the present or the future. Furthermore, it seem that the ordinance herein considered is an attempted approval or ratification of past absences, for the perfectly plain purpose of circumventing the monetary penalty provided by the charter. The term "authorize" is distinguished from "approve" in Words & Phrases, Third Series, Volume 1, page 742, as follows:

"Public Service Commission Law, Sec. 70, prohibiting electric corporations from acquiring stock of other similar corporations unless authorized to do so by Public Service Commission, does not empower commission to approve transfer already made; word 'approve' having broaded significance than 'authorize,' and meaning to ratify or confirm thing already done, or to sanction thing that may be done in future, and 'authorize' meaning to permit a thing to be done in future. *Gray vs. Gill*, 210 N.Y.S. 658, 660."

Inasmuch as my construction of the word "authorize" clearly indicates that the framers of the charter of the City of Cleveland intended that absences of councilmen from council meetings be authorized at or before their occurrence, and not excused, pardoned or ratified after their occurrence, it is my opinion that the ordinance herein considered is in conflict with the charter of the City of Cleveland.

In view of my opinion that council did not possess the power to excuse the absences enumerated in the emergency ordinance, it is unnecessary for me to decide whether the absences of a former member of council incurred within the present term of council may also be excused, and the further question as to the power of the present council to authorize absences of members of a former council.

The ministerial duty of making salary deductions for absences from council meetings as provided by Section 27 of the charter presumably rests upon the clerk of council. Section 31 of the charter provides:

“The clerk shall keep the records of the council and perform such other duties as may be required by this charter or the council.”

Inasmuch as the recording of absences is a necessary part of the proceedings of the city council, it naturally follows that the clerk of the council is required to certify absences to the payroll clerk who in turn probably reports such absences to the city auditor. The salary deductions for absences from council meetings are presumably made at the close of the payroll period in which the absences occurred. However, it seems that the ministerial details of handling salary deductions lies properly within the province of the officer charged with that duty. Consequently, I hesitate to offer any opinion on the detail of the handling of salary deductions.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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726.

APPROVAL—TRANSCRIPT OF PROCEEDINGS RELATING TO THE SALE OF THREE CERTAIN PARCELS OF OHIO AND HOCKING CANAL LANDS, RESPECTIVELY TO SEVERAL GRANTEES NAMED THEREIN.

COLUMBUS, OHIO, June 11, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval transcripts of your proceedings as Superintendent of Public Works for the sale of three certain parcels of abandoned Ohio and Hocking Canal lands, respectively, to the several grantees therein named.

These sales and the respective proceedings of your department relating to the same, designated with respect to the names of the several grantees, the locations of the parcels of land sold and the purchase prices to be paid by the respective grantees for the parcels of land sold, are as follows :