

no authority to accept complaints as to the valuation or assessment of property on the current tax duplicate after January 20, 1932.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4187.

MUNICIPALLY OWNED UTILITIES—MAY CONTRIBUTE TO COST OF CONSTRUCTING CITY OFFICE BUILDING—LIMITED TO AMOUNT NECESSARY TO CONSTRUCT PART TO BE USED BY SUCH UTILITY.

SYLLABUS:

Municipally owned public utilities may pay a portion of the cost of the construction of a city office building which is to be used in part by such utilities, provided that the amount paid by each utility is no more than is necessary to construct that part of the building which is to be used by such utility.

COLUMBUS, OHIO, March 26, 1932.

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

GENTLEMEN:—I am in receipt of your communication which reads as follows:

“A city in Ohio owns and operates three utilities, to-wit:

A gas distribution system, water works and electric light works.

This city desires to construct a city office building to house all departments of the city government, including the offices of the gas, water and electric departments. The contemplated building would provide space for the municipal court, city prison and police department. The administrative heads perform services for the utilities, as well as governmental duties. One office force is maintained for the gas, water and electric departments. It is planned that the utilities would contribute sixty percent of the cost of the building and the city government the remaining forty percent.

In an opinion of your predecessor, No. 2381, page 1797 of the 1928 Opinions, it was held—

‘A municipality may, by proper legislation, use surplus water revenue for the purpose of constructing that portion of a city office building to be dedicated and used for water works office purposes.’

At the request of the city solicitor, we are submitting the following question for your opinion:

Can the city and the municipally owned utilities each contribute their proportional share of the cost and construct a city office building to be used by all joint utilities, designating what portion of the building to be constructed is to be dedicated, devoted and owned by each utility and the city government?

If the utilities can unite with the city and pay their proportionate

share of the cost would any provision of the code be violated as to the commingling of funds?

In the particular city interested, a provision of their charter reads as follows:—

‘Upon the written recommendation of the city manager the council may at any time transfer an unincumbered balance of an appropriation to a purpose or object for which the appropriation for the current year has proved insufficient, or may authorize a transfer to be made between items appropriated for the same department or office; but no such transfer shall be made of the income of earnings of any public utility owned by the city, and receiving no support from taxation, to any other purpose than such utility.’”

In other words, the question arises as to whether the powers granted to municipalities in the acquiring, construction, maintenance, management and extension of public utilities are broad enough to authorize the payment by them of the cost of the portion of a city building which is to be occupied by them for office purposes, and whether such use of their funds is prohibited by law.

Full power to acquire, construct, own, lease and operate such utilities is granted to municipal corporations by article XVIII, section 4 of the Ohio Constitution. Section 3618, General Code, gives municipalities the power:

“To establish, maintain and operate municipal lighting, power and heating plants, and to furnish the municipality and the inhabitants thereof with light, power and heat, to procure everything necessary therefor, and to acquire by purchase, lease or otherwise, the necessary lands for such purposes, within and without the municipality.”

Section 3990, General Code, provides that:

“The council of a municipality may, when it is deemed expedient and for the public good, erect gas works or electric works at the expense of the corporation, or purchase any gas or electric works already erected therein, * * *.”

Section 3619, General Code, gives municipalities the power:

“To provide for a supply of water, by the construction of wells, pumps, cisterns, aqueducts, water pipes, reservoirs, and water-works, for the protection thereof, and to prevent unnecessary waste of water, and the pollution thereof. To apply moneys received as charges for water to the maintenance, construction, enlargement and extension of the works, and to the extinguishment of any indebtedness created therefor.”

Section 3961, General Code, provides as follows:

“Subject to the provisions of this title, the director of public service may make contracts for the building of machinery, water works buildings, reservoirs and the enlargement and repair thereof, the manufacture and laying down of pipe, the furnishing and supplying with connections all necessary fire hydrants for fire department purposes, keeping them in repair, and for all other purposes necessary to the full and efficient management and construction of water works.”

Section 4361, General Code, relating to the powers and duties of trustees of public affairs in villages, says:

"* * * The board of trustees of public affairs shall have the same powers and perform the same duties as are possessed by, and are incumbent upon, the director of public service as provided in sections 3955, 3959, 3960, 3961, 3964, 3965, 3974, 3981, 4328, 4329, 4330, 4331, 4332, 4333 and 4334 of the General Code, and all powers and duties relating to water works in any of these sections shall extend to and include electric light, power and gas plants and such other similar public utilities, * * *."

In the case of *Travelers Insurance Company vs. Wadsworth*, 109 O. S. 440, the second branch of the syllabus reads as follows:

"The power to establish, maintain, and operate a municipal light and power plant, under the Constitution and statutes aforesaid, is a proprietary power, and in the absence of specified prohibition, the city acting in a proprietary capacity may exercise its powers as would an individual or private corporation."

Office space is a very needful part of any public utility as it is necessary to make collections and keep books and other records, and the Attorney General's opinion of 1928 to which you refer is equally applicable to the other public utilities mentioned in your letter. A municipally owned public utility has the authority to rent or purchase office space or to construct the building therefor, and I see no valid objection to the payment by the utilities referred to of the portion of the cost of a city building, which is to be occupied by them, provided that the amount paid by each utility is no more than is necessary to construct that part which is to be used by such utility.

Section 3958, General Code, provides for the assessment and collection of water rents "for the purpose of paying expenses of conducting and managing the water works."

Section 3959, General Code, provides as follows:

"After paying the expenses of conducting and managing the water works, any surplus therefrom may be applied to the repairs, enlargement or extension of the works or of the reservoirs, the payment of the interest of any loan made for their construction or for the creation of a sinking fund for the liquidation of the debt. The amount authorized to be levied and assessed for water works purposes shall be applied by the council to the creation of the sinking fund for the payment of the indebtedness incurred for the construction and extension of water works and for no other purpose whatever."

Section 3960, General Code, provides in part as follows:

"Money collected for water works purposes shall be deposited weekly with the treasurer of the corporation. Money so deposited shall be kept as a separate and distinct fund."

Section 6602-87a, General Code, provides that council may appropriate any unappropriated funds of the water department for the purpose of paying a portion

opinion referred to. This opinion therefore is applicable to your question. With reference to the use of water works funds it says on page 1799:

"The only difficulty presented by your inquiry is the fact that, in the present instance, instead of the construction of separate buildings, the municipality contemplates the erection of one municipal building only, a part of which is to be used for water works purposes and for the construction of this part it is sought to use surplus water revenues. The contract will, of course, be let as a whole and the amount of the water funds to be used for this purpose will, I take it, be appropriated for the purpose of the contract. Upon completion the building will, of course, be operated as a municipal structure and the question resolves itself into whether or not this commingling of funds would be violative of the provisions of the Code, heretofore quoted."

On page 1800, it is said in this opinion:

"In this instance the Legislature has already made the municipality a quasi trustee with respect to the surplus water revenues. The provision of adequate office space for water works purposes is, in my opinion, no violation of the duties of the municipality as such trustee. If, in order to make such provision, the municipality, in the exercise of a reasonable discretion, determine that the most advantageous course to pursue is to include such office space in the municipal building, in my opinion it may be done. In the appropriation of the moneys of the surplus water revenues for this purpose appropriate language should be used indicating that a certain definite portion of the proposed structure is set aside and dedicated for use for water works purposes and such dedication, by formal action of council, would constitute a declaration of trust so that the municipality would hold such office space in trust for water works purposes, which trust would be enforceable by the courts if violated."

There would need to be no transfer of any funds from any of the utilities to the funds of any other department of the city and the monies paid out would be used for the authorized purposes of such utilities and, in my view, such use would violate none of the provisions of the statutes nor the provision of the charter quoted in your letter.

I am of the opinion therefore that municipally owned public utilities may pay a portion of the cost of the construction of a city office building which is to be used in part by such utilities, provided that the amount paid by each utility is no more than is necessary to construct that part of the building which is to be used by such utility.

Respectfully,
GILBERT BETTMAN,
Attorney General.