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COUNCIL—MUNICIPAL—MAY EMPLOY PERSON TO CODIFY ITS  
ORDINANCES.

*SYLLABUS:*

*The council of a municipality may employ a person to codify the ordinances of such municipality, for the reason that such action is a necessary incident in connection with its exercise of legislative functions.*

COLUMBUS, OHIO, August 15, 1929.

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

GENTLEMEN:—Acknowledgment is made of your communication requesting my opinion as follows:

“Section 4210, G. C., authorizes council of a city to elect a president pro tem., clerk, and such other employes of council as may be necessary.

Section 4211, G. C., provides that the powers of council shall be legislative only and it shall perform no administrative duties whatever and it shall neither appoint nor confirm any officer or employe in the city government, except those of its own body, except as is otherwise provided in this title.

In Opinion No. 1667, page 1645, Opinions of the Attorney General for 1918, the bureau was advised that council of a city has authority to employ a person to obtain waivers of property abutting upon the improvement, and may fix the compensation of such person at so much per hour.

QUESTION: May the council of a city legally employ an attorney or other person for the purpose of codifying ordinances?”

As suggested in your communication, Section 4210 authorizes council to elect a president pro tem, and “such other employes of council as may be necessary,” and fix their duties, bonds and compensation. While this section is somewhat indefinite in reference to what is meant by the election of employes, yet it seems clearly to contemplate that council will have employes.

Section 4211, General Code, provides:

“The powers of council shall be legislative only, and it shall perform no administrative duties whatever and it shall neither appoint nor confirm any officer or employe in the city government except those of its own body, except as is otherwise provided in this title. All contracts requiring the authority of council for their execution shall be entered into and conducted to performance by the board or officers having charge of the matters to which they relate, and after authority to make such contracts has been given and the necessary appropriation made, council shall take no further action thereon.”

It will be observed that Section 4211 expressly provides that the powers of council shall be legislative only and that it shall perform no administrative duties and shall neither appoint nor confirm officers or employes “except those of its own body.” In this very section which gives rise to your question, there is an indication that council may appoint officers and employes of its own body. However, in constructing the section as a whole, it probably is a fair construction to hold that the appointment of employes for the council must be in connection with legislative functions as contrasted from administrative matters.

In considering your inquiry, the observation may be made that it is a fundamental principle of American government that there shall be separate and distinct divisions relative to the legislative, executive and judicial functions thereof. This same principle is adhered to in the government of municipalities, and, of course, is the underlying cause for the enactment of Section 4211, *supra*. However, it is somewhat difficult to define the line of demarcation between functions that are purely legislative and those that are administrative. It may be said that it is not every action of a legislative body of an administrative nature that constitutes an encroachment upon the executive department. In other words, the legislative body may properly provide for the exercise of administrative duties necessary in connection with the performance of its own functions.

The opinion of the Attorney General, to which you refer, held as disclosed by the syllabus that:

“Council of a city has authority to employ a person to obtain waivers of the special assessment limitations from owners of property abutting upon the improvement and may fix the compensation of such person at so much per hour.”

Said opinion carefully considered the provisions of the General Code hereinbefore referred to. It further pointed out that Section 3818 requires a notice of the passage of a resolution to be served by the clerk of council on each piece of property to be assessed in connection with certain improvements.

The conclusion therein is that the purpose of securing waivers of notices which the clerk of council is required by law to serve was to lay the foundation for legislation seeking to make the improvement, and therefore constituted the performance of a legislative function.

In connection with your inquiry, it will be noted that Section 4230, General Code, authorizes the revision and codification of ordinances in published book form. The section provides that such revision and codification may be made under appropriate titles, chapters and sections in one ordinance containing one or more subjects; in other words, after the proposed codification is made by some one employed for the purpose, apparently such codification is of no avail unless and until the council, by appropriate action, has adopted the same as its own. In order for a council to perform its functions properly as a law-making body of the municipality, it is necessary that there be a proper record of the ordinances previously passed. It would therefore seem that such codification is an essential incident in connection with the exercise of the general legislative powers of council.

I am therefore of the opinion that the council of a municipality may employ a person to codify the ordinances of such municipality, for the reason that such action is a necessary incident in connection with its exercise of legislative functions.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*