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PUBLIC EMPLOYES RETIREMENT BOARD—AUTHORIZED TO RECEIVE CONTRIBUTIONS FROM DOG WARDEN AND DEPUTY WARDENS OF CUYAHOGA COUNTY AND FROM COUNTY BASED ON COMPENSATION PAID SUCH OFFICERS BY COUNTY—NOT AUTHORIZED TO RECEIVE CONTRIBUTIONS BASED ON COMPENSATION PAID BY ANIMAL PROTECTIVE LEAGUE.

SYLLABUS:

The public employes retirement board is authorized to receive contributions from the dog warden and deputy wardens of Cuyahoga County, and from the county itself, based on the compensation paid to such officers by the county, but is not authorized to receive such contributions based on compensation paid to such persons by the Animal Protective League.

Columbus, Ohio, October 21, 1948

Mr. Fred L. Schneider, Secretary, Public Employes Retirement System  
Columbus, Ohio

Dear Sir:

I have before me your letter in which you request my opinion as to whether the retirement board is authorized to accept a savings fund contribution from persons paid by the Animal Protective League, in Cuyahoga County. I note your statement that the County Commissioners of Cuyahoga County have initiated jointly with the Animal Protective League a system whereby the dog warden and deputy dog wardens are employed jointly, and each employer pays one-half of the full salary. I note, also, that these salaries are paid directly to the employes by each employer.

Statutes relative to the organization and support of societies for the prevention of cruelty to children and animals are contained in Chapter 5 of Division VI, Title IX of the General Code. This chapter is entitled, "Humane Societies." Sections 10062 to 10066, General Code, which were formerly included in Section 3714 of the Revised Statutes, relate expressly to humane societies which have always had for their object the prevention of cruelty to *children and animals*. Section 10067, General Code, which was Section 3715 of the Revised Statutes, reads as follows:

“Societies for the prevention of acts of cruelty to animals may be organized in any county, by the association of not less than seven persons. The members thereof, at a meeting called for the purpose, shall elect not less than three of their members directors, who shall continue in office until their successors are duly chosen.”

Section 10070, General Code, authorizes the appointment by any of said societies of “agents” in the various counties and municipalities to enforce the laws against cruelty to persons or animals. Section 10072, General Code, provides in part as follows:

“Upon the approval of the appointment of such an agent by the mayor of the city or village, the council thereof shall pay monthly to such agent or agents from the general revenue fund of the city or village, such salary as the council deems just and reasonable. Upon the approval of the appointment of such an agent by the probate judge of the county, the county commissioners shall pay monthly to such agent or agents, from the general revenue fund of the county, such salary as they deem just and reasonable. The commissioners, and the council of such city or village may agree upon the amount each is to pay such agent or agents monthly.”

This provision would appear to be in the nature of a subsidy to employes of the society rather than a provision for the employment and compensation of public employes.

We find, however, in the statutes relating to dog wardens, provisions which appear to me to lead to a somewhat different conclusion. Section 5652-7, General Code, provides in part as follows:

“County commissioners *shall appoint or employ a county dog warden and deputies* to such number, for such periods of time, and at such compensation, as such county commissioners shall deem necessary to enforce the provisions of the General Code relative to the licensing of dogs, the impounding and destruction of unlicensed dogs, and the payment of compensation for damages to live stock inflicted by dogs.” (Emphasis added.)

This section further requires such wardens and deputies to give bond and to make weekly reports to the county commissioners.

Section 5652-8, General Code, contains the following provision:

“Provided, further, that the county commissioners may *designate and appoint* any officer or officers *regularly employed by any society organized as provided by sections 10062 to 10067,*

*inclusive*, of the General Code, to act as county dog warden or deputies for the purpose of carrying out the provisions of this act, if such society whose agent or agents are so employed, owns or controls a suitable place for keeping and destroying dogs.”  
(Emphasis added.)

This section appears to me to authorize such an arrangement as your letter discloses. It assumes that the appointees in question are “regularly employed” and therefore probably compensated to some extent by the society. When the county commissioners duly “appoint” these same persons as dog wardens they certainly become public employes, and as such, entitled to such compensation as the county commissioners may allow, and become subject to the provisions of the public employes retirement law, including the obligation to contribute a certain percentage of their compensation to the employes savings fund as required by Section 486-68, General Code. This contribution is deducted by the county from the payroll. The county’s contribution is based on the same payroll. Neither can take any account of the wages paid by the “society.” Such society is not within the purview of the public employes retirement system in any respect. It therefore has neither duty nor right to make contributions to the retirement funds, nor has the retirement board any authority to receive or administer them.

I note an opinion by one of my predecessors, in 1928 Opinions of the Attorney General, page 2193, wherein it was held :

“When, in accordance with the provisions of Section 10072, General Code, a board of county commissioners has appropriated money to be paid to a humane society agent, such humane society is not thereby precluded from paying such agent an amount as salary in addition to such amount appropriated by said commissioners.”

In the course of his opinion the then attorney general expressed the view that the agents of a humane society were not employes of the county, since it was merely appropriating money to pay the compensation of the humane society’s agents as authorized by Section 10072, General Code. However, the opinion made no reference to Section 5652-7 et seq., General Code, relating to “dog wardens.” That opinion, in so far as relates to the non-public character of the employes of the humane society, does not alter my conclusion that the dog wardens and deputies under the provisions of Section 5652-7 et seq., General Code, are clearly public employes.

You are accordingly advised that the public employes retirement board

is authorized to receive contributions from the dog warden and deputy wardens of Cuyahoga County, and from the county itself, based on the compensation paid to such officers by the county, but is not authorized to receive such contributions based on compensation paid to such persons by the Animal Protective League.

Respectfully,

HUGH S. JENKINS,  
Attorney General.

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1. MAYOR OF VILLAGE — RESIGNATION OR DEATH — PRESIDENT PRO TEM OF COUNCIL BECOMES MAYOR — SEAT IN COUNCIL VACATED — DUTY OF COUNCIL TO FILL VACANCY AND ELECT ANOTHER MEMBER OF COUNCIL AS PRESIDENT PRO TEM — SECTIONS 4217, 4256 G. C.
2. WHEN PRESIDENT PRO TEM OF VILLAGE COUNCIL SUCCEEDS TO OFFICE OF MAYOR AND REFUSES TO TAKE OATH OF OFFICE OR GIVE REQUISITE BOND AS MAYOR, UPON FAILURE OR REFUSAL FOR TEN DAYS, VILLAGE COUNCIL MAY DECLARE OFFICE VACANT — NEWLY ELECTED PRESIDENT PRO TEM SHALL BECOME VILLAGE MAYOR.

SYLLABUS:

1. Under the provision of Section 4256, General Code, upon the resignation or death of the mayor of a village, the president pro tem of the council becomes the mayor, and his seat in the council is thereby vacated. Thereupon it becomes the duty of the council under the provisions of Section 4217, General Code, to fill such vacancy and to elect another member of council as president pro tem.
2. When the president pro tem of a village council who has succeeded to the office of mayor by reason of the death or resignation of the mayor, with knowledge of such death or resignation fails or refuses to take the oath of office or to give the required bond as such mayor, and such failure or refusal continues for ten days, the council of said village may declare such office of mayor vacant, whereupon the newly elected president pro tem shall become the mayor.