

district has no funds, then such antitoxin may be paid for by the county commissioners in cases of indigency.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2654.

MUNICIPAL HOSPITAL—PARTIAL—COMPENSATION OF SUCH EMPLOYEES IN WAY OF MAINTENANCE, ETC., SUBJECT TO APPROVAL OF COUNCIL—WHAT ORDINANCE OR RESOLUTION FIXING SALARIES AND COMPENSATION OF EMPLOYEES OF SAID HOSPITAL SHOULD CONTAIN.

1. *Partial compensation in the way of maintenance, board, lodging, laundering, etc., allowed employes of a municipal hospital in addition to their salaries under the provisions of section 4035, is subject to the approval of council.*

2. *The ordinance or resolution of council under the provisions of section 4214 G. C. fixing the salaries and compensation of the employes of a municipal hospital or approving such salaries and compensation as fixed by the Director of Public Safety under section 4035 G. C. should include the items of maintenance, board, lodging, laundering, etc., allowed such employes as partial compensation for their services.*

COLUMBUS, OHIO, December 2, 1921.

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

GENTLEMEN:—Receipt is acknowledged of your letter of recent date reading as follows:

“We respectfully request your written opinion upon the following matter:

In an ordinance fixing compensation of the employes of a municipal hospital, must the provisions that maintenance, i. e., board, lodging, laundering, etc., be made a part of such ordinance to entitle such employes to both salary and maintenance, or could the ordinance stipulate the salaries and the director of public safety by an adopted rule provide for the maintenance of such employes?”

The question submitted by your inquiry, involves, it is thought, the construction of sections 4035 and 4214 G. C.

Section 4035 G. C. provides as follows:

“The director of public safety shall have the entire management and control of such hospital, when completed and ready for use, and subject to the ordinances of council, shall establish such rules for its government, and the admission of persons to its privileges, as he deems expedient. Such director may also employ a superintendent, steward, physicians, nurses, and such other employes as he deems necessary, and fix the compensation of all persons so employed, which compensation shall be subject to the approval of the council.”

It is observed that this section of the General Code, by its express terms,

vests in the director of public safety full and ample authority to manage and control such municipal hospital, when completed and ready for use. The section further, and in unequivocal language, authorizes the director of public safety, in addition to the powers conferred of making rules for the government of said hospital, to employ

“a superintendent, steward, physicians, nurses, and such *other employes* as he deems necessary, *and to fix the compensation of all persons so employed*, which compensation shall be subject to the *approval of council*.”

This section is a revision of section 2156 R. S., 67 vs. 71, formerly providing that the board of hospital commissioners should manage and control such hospitals. This, however, was inconsistent with the provisions of the municipal code placing the management of municipal hospitals in the director of public safety. The language of this old statute has practically been unaltered, and now appears almost verbatim in present section 4035 G. C. under consideration.

While the section discussed apparently authorizes the director of public safety to fix the compensation of *all the employes* in this department of the municipal government, the fact should not be overlooked that such compensation should it be so fixed, is in addition thereto, subject to the approval of council.

It is noted also that the entire provisions of this section are limited by the two phrases contained therein, to wit:

“Subject to the ordinances of council,”

appearing in the first paragraph of the section, and:

“Subject to the approval of council,”

as it occurs in the second paragraph.

It may be particularly noted that the plan suggested by your communication of fixing the partial compensation mentioned by rule or regulation of this section, irrespective of any ordinance or resolution of council, would obviously be affected by the provisions of section 4035 G. C., which expressly provides that such rules and regulations are to be made “subject to the ordinances of council.” Thus it would seem that while the legislature had bestowed upon the director of public safety the power and authority to have entire control of the municipal hospital as contemplated by this section, and the fixing of the salary and compensation of the employes thereof, it would likewise seem evident that the limitations conferred simultaneously off-set the positive powers of the director of public safety in such matters as the section covers, by conferring in reality upon council, the power and authority apparently bestowed upon the director of public safety in the matter of the fixing of the compensation of the employes of this department.

However, section 4214 G. C. provides as follows:

“Except as otherwise provided in this title, council, by ordinance or resolution, shall determine the number of officers, clerks and employes in each department of the city government, and shall fix by ordinance or resolution their respective salaries and compensation, and the amount of bond to be given for each officer, clerk or employe in each

department of the government, if any be required. Such bond shall be made by such officer, clerk or employe, with surety subject to the approval of the mayor."

It is noted that this section of the General Code expressly provides:

*"Except as otherwise provided in this title, council, by ordinance or resolution, shall determine the number of officers, clerks and employes in each department of the city government, and shall fix by ordinance or resolution their respective salaries and compensation." * * **

The italicized language of this section is thought to be significant in that it definitely excepts from the operation of its provisions any other provisions of law, appearing in this "title," which provide otherwise for the similar things contemplated by the section itself; that is to say, if there should appear in this "title," another provision of law which expressly provided for the fixing of compensation of employes of the city government by another or its own method, other than by ordinance or resolution of council, then such section apparently would be excepted from the operation of section 4214 G. C. It is noted that the word "title" as used in this section of the General Code, in previous legislative enactments reads as "act," appearing last as such in House Bill 914, 99 O. L. 562, and appearing in the Code after the recodification of 1910 as "title."

It is obvious that the "title" referred to by this section is Title XII, part first, of the General Code, entitled "Municipal Corporations," and in which "title" in chapter 4, division 4, appears as section 4035 G. C. previously mentioned; also under chapter 1, division 5 of the same "Title," may be found section 4214 G. C.; from which condition of facts, it would appear that the provisions of section 4035 G. C. were unaffected by the limitations of section 4214 G. C., since section 4035 G. C. otherwise provides in this "title" for the fixing of compensation of the employes of the municipal hospital, and comes within the exception expressly stipulated by the opening phrase of section 4214 G. C.

Arriving at such a conclusion, it would seem but a logical step further to conclude that the power to fix the salaries and compensation of the employes of the municipal hospital contemplated, is vested in the director of public safety by the express provisions of section 4035 G. C., and who is under the provisions of the same authorized, subject to the approval of council, to fix such employes' compensation and salaries.

It is noted, however, that while section 4035 G. C. authorizes the fixing of such salaries and compensation by the director of public safety, such a procedure requires the approval of council by the terms of the same section.

It may also be observed in this connection, that section 4035 G. C. provides that the director of public safety shall have the entire management and control of such hospital, when completed and ready for use, and *subject to the ordinances of council*, shall establish rules for the government thereof, etc. It would thus seem, even though the excepting clause of section 4214 G. C. exempts section 4035 G. C. from its operation, nevertheless the limitations imposed by this section upon itself, are thought to have a tendency to subject its provisions back again within the operating influence of section 4214 G. C., which expressly require that salaries and compensation of *all employes* of the city government be fixed and determined by ordinance or resolution of council.

Thus it is thought to be properly concluded that even should full power and effect be given to the provisions of section 4035 G. C., in the end, however,

council has a supervision over, or check upon any action taken under its provisions, amounting in practical effect, to the final determination of the salaries and compensation of the employes under consideration.

In specific answer to your question, therefore, it is believed that the items indicated, such as maintenance, board, lodging, laundering, etc., being a part of the compensation allowed employes of the municipal hospital, should be included in the general ordinance or resolution of council, fixing the salary and compensation of such employes. Since it is believed by such a procedure sections 4214 and 4035 G. C. may be harmonized and irregular or questionable methods avoided.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2655.

ROADS AND HIGHWAYS—HOW PROPERTY OWNERS' SHARE CALCULATED ON STATE AID HIGHWAY IMPROVEMENT—WHERE BIDS TAKEN ON TWO TYPES OF IMPROVEMENT, STATE PROVIDES GREATER AMOUNT FOR MORE COSTLY TYPE—ADDITIONAL AMOUNT PROVIDED BY STATE NOT CREDITED FOR LESS COSTLY TYPE.

1. *Under the terms of section 1214 G. C. and related sections, the property owners' or assessment share of the cost of a state aid highway improvement, is calculated by applying to the whole cost of the improvement (excepting cost of bridges and culverts), the percentage fixed as the property owners' share and not by applying such percentage to the whole cost after deducting the state's share.*

2. *If bids are taken on two types of improvement, and the state has provided a greater amount as the state's share of the more costly type than for the less costly type, and the improvement is in fact made on the less costly type, then and in that event, the improvement project is not to be credited with the additional amount set aside by the state for the more costly type, as compared with the less costly type.*

COLUMBUS, OHIO, December 2, 1921.

HON. KENNETH LITTLE, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—You have submitted for the opinion of this office the following:

“Intercounty highway No. 1 ‘National Road’ is now being improved in this county with state aid, and the commissioners have carried all their legislation through with the provision that the property owners within one mile on either side are to pay 25 per cent of the total cost, and are now raising the question as to whether the state aid is deducted from the total cost before the computing of the 25 per cent. In other words, do the abutting property owners get credit for state aid, or does it inure solely to the benefit of the county's portion, keeping in mind particularly the fact that all legislation for the improvement of this road provides for the property owners to pay 25 per cent of the total cost.

Also, it appears that the state allowance was greater than that for