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MUNICIPAL FOREST—VILLAGE MAY PROVIDE BY ORDINANCE OR CHARTER FOR COMMISSION TO CARE FOR AND MANAGE FOREST — JURISDICTION AND DISBURSEMENT OF INCOME FROM OPERATION OF FOREST ESTABLISHED IN NON-CHARTER VILLAGE—EMPLOYES, MUNICIPAL EMPLOYEES, SUBJECT TO GENERAL PROVISIONS OF LAW — COMPENSATED, PROVISIONS SECTION 4219 G. C.

SYLLABUS:

1. *A village wherein a municipal forest exists or is created by authority of Section 5650-1, of the General Code of Ohio, may provide by ordinance or by charter provision, for a municipal commission or board to be appointed by the mayor or otherwise, to care for and manage the said forest on forestry principles and may, in its discretion, provide that the chief forester of the State of Ohio shall be one of the members of the said commission or board if agreeable to him.*

2. *When a municipal forest is established in a non-charter village by authority of Section 5650-1, General Code, and a commission or board created to manage, control and administer the said forest, moneys resulting from the operation of the forest as well as funds appropriated by the village council for the use of the forest commission or board in managing or administering the forest shall be and remain in the municipal treasury from which they may be disbursed only through warrants issued by the village clerk upon vouchers approved by the said board, the same as are funds appurtenant to other municipal institutions and activities.*

3. *The employes of a municipal board or commission of forestry established in a municipality to manage and control a municipal forest established by authority of Section 5650-1, General Code, are municipal employes and their appointment is subject to the general provisions of law with respect to the appointment of municipal employes and their compensation should be fixed by the council of the village as provided by Section 4219, of the General Code of Ohio.*

Columbus, Ohio, June 13, 1940.

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

Gentlemen:

I am in receipt of your request for my opinion, which reads as follows:

"We are inclosing herewith a letter from our Examiner of the accounts of the Village of Poland, Mahoning County, Ohio, together with an ordinance passed by the Council of said Village, to create a Board of Commissioners of Municipal Forest, as authorized or provided in section 5650-1 of the General Code.

As this is the first instance in which a municipality of this state has taken action under the authority of section 5650-1, G. C., supra, and as it is deemed advisable that we be correctly informed as to the proper organization, powers and duties of such a board of forestry, may we request that you examine the inclosures and give us your opinion on the following questions:

1. Is the Board of Commissioners of the Municipal Forest as provided for in the ordinance, in accordance with the provisions of law governing the creation, management and control of a municipal forest?

2. Under the provisions of section 5650-1 G. C. supra and other sections of law governing the disbursement of village funds, may the Board of Commissioners of the Municipal Forest legally receive and disburse all moneys resulting from the operation of the municipal forest, including all moneys that may be appropriated by the village council from funds raised by general taxation directly, or shall said receipts be deposited in the village treasury and be disbursed through warrants issued by the village clerk upon vouchers approved by said board, in like manner to all other village funds?

3. If the said board, as provided for in the ordinance, is found to be properly authorized and organized, is this board authorized to provide for and fix the rates of compensation of its employes, notwithstanding the provisions of section 4219 G. C., which would seem to give such power to the village council?"

As appears from the enclosures with your letter, the ordinance passed by the Council of the Village of Poland which is the basis of your inquiry, consists of nine sections. Section 1 thereof sets out the purpose of the ordinance as follows:

"That for the purpose of creating a municipal enterprise which shall be self sustaining, there is hereby constituted THE POLAND MUNICIPAL FOREST."

Section 2 of the ordinance contains a description of five parcels of land comprising the said Municipal Forest.

Sections 3, 4, 5, 6, 7, 8 and 9 of said ordinance read as follows:

“III.

The care and management of said Poland Municipal Forest shall be vested in a Board of Commissioners, SIX in number, of whom one shall at all times be the Chief Forester of the State of Ohio. The remaining Commissioners shall be appointed in rotation by the Mayor of Poland Village, by and with the consent of Village Council for a term of SIX years, the first appointees hereunder to serve for a term of TWO years, and FOUR years and SIX years respectively, as designated by the Mayor and Council of Poland Village, and all subsequent appointees to serve for the full term of SIX years.

IV.

It shall be the duty of said Board of Commissioners to cooperate with the State Board of Forestry at all times, and to so organize the planting and cutting cycles of forest trees, in conformity with the recommendations and plans of said State Board of Forestry, as to derive the maximum annual revenue from said forest and to apply the same to the care and upkeep thereof, to the end that the said municipal forest may pay its own way, and relieve the taxpayers of the burden and expense of its upkeep and management.

V.

The Board of Commissioners aforesaid shall serve without compensation, but may fix and pay such reasonable compensation to employees actually engaged in the service of the Board as may be deemed proper. Books of original entry shall be opened by the Board of Commissioners as of the day whereon the Board is organized for business, and such books shall show in detail every item of expense incurred and every item of income received by the Board of Commissioners. The books of original entry so kept shall be open at all times to the Mayor and Council of Poland Village and to their duly appointed auditor, and shall likewise be open to the State Auditor of Ohio and his deputies. Annual statements of income and expense shall be issued by said Board of Commissioners at the close of each calendar year, one copy of which statement shall be included in the minutes of Village Council and one copy shall be posted upon the Village Bulletin Board at the City Hall.

VI.

The Board of Commissioners aforesaid shall have and is hereby given requisite power and jurisdiction under G. C. 5650-1 to carry into effect the object for which said municipal forest is created, and may promulgate and enforce such rules and regulations for policing said forest and for conducting the management of same, as are found necessary. For a violation of any of the rules so promulgated by

the Board of Commissioners for maintaining order in said municipal forest and for protecting the same, a fine in the amount of not less than ten dollars or more than one hundred dollars may be imposed by the Mayor's Court of Poland Village, upon information and arrest as in case of a violation of Village Ordinances.

VII.

The Board of Commissioners shall organize by electing one of its members chairman, one vice chairman and one of its members secretary and treasurer, the persons so chosen to serve for a period of TWO years. The Treasurer shall give an official bond in such amount as may be fixed by the Board.

VIII.

Suitable trails for driving, riding and walking through said municipal forest shall be opened by the Board of Commissioners, and picnic grounds and amusement grounds shall be provided and properly marked for the convenience of the public at such locations as the Commissioners may select.

IX.

This Ordinance shall be submitted to and approved by the State Board of Forestry, and acceptance by the Chief Forester of Ohio of appointment to membership on the Board of Commissioners of the Poland Municipal Forest shall constitute an agreement for the continuation of said municipal forest for a period of not less than twenty years. PROVIDED, HOWEVER, that the Municipality of Poland and the State Board of Forestry may at any time, by mutual consent abandon the said enterprise."

The authority for the establishment of a municipal forest will be found in Section 5650-1 of the General Code of Ohio, which reads as follows:

"The governing body of any municipality, township or county of this state shall have power to accept donations of land suitable for the growth of timber which shall be known as municipal, townships, or county forests, and may manage the same on forestry principles. The governing body of any municipality, township or county in this state where funds are available or have been levied therefor may, when authorized by a majority vote of the electorate voting at any general election, purchase or obtain by condemnation proceedings, any tract of land suitable for a forest which is conveniently located for the purpose, and under the direction of the state forester shall manage the same on forestry principles. Such municipality, township or county is authorized to levy and collect an annual tax of not exceeding three mills on the dollar of its assessed real estate valuation in addition to all other taxes authorized or permitted by law to procure and maintain such forests."

Inasmuch as the village of Poland has not adopted a charter under and in pursuance of Section 7, Article XVIII of the Constitution of Ohio, it

operates and functions under general laws enacted by the Legislature with respect to the government of villages. To be sure, it possesses certain home rule powers as extended by Section 3, of Article XVIII of the Constitution of Ohio even though it has not adopted a charter. The home rule powers extended by Section 3 of Article XVIII to municipalities has never been held to include the power to fix by ordinance merely, the internal government of a municipality differently than is provided by general law. That is to say that in order to effect a change in the mode of exercising the powers granted to a municipal corporation when that mode is fixed by statute, it must be done by charter provisions and cannot be accomplished by the mere enactment of an ordinance. As it is sometimes expressed, the distribution of powers within the municipal government is governed by general laws unless provided otherwise by a charter duly adopted. See Opinions of the Attorney General for 1921, page 1276. The question of just how far a municipality may go in providing the mode of exercising its powers or in designating the officers to administer the laws applicable to it, in some other manner than that provided by general law without adopting a charter, has not been considered to any great extent by the courts of this state. An examination of the many cases in this state involving the question of home rule will disclose that in practically all of them where questions of control have arisen the municipality operated under a charter and the question of how far a municipality not having a charter may go in providing the machinery for its government has not been involved in the cases. In the case of *Perrysburg vs. Ridgeway*, 108 O. S. 245, it was held that the terms of Section 3 of Article XVIII of the Constitution of Ohio, giving to municipalities all powers of local self-government are self-executing, yet it was said in that case that the distribution of these powers within a local government is the function of a charter to be adopted by authority of Section 4, of Article XVIII of the Constitution of Ohio.

The Legislature has not by general law made any express provision as to how a municipal forest when established, should be managed. In fact, the statute, Section 5650-1, General Code, which is the only statutory provision relating to such enterprises affords little aid as to the question of how the forest is to be administered and managed other than that when it is donated to a municipality, it may be accepted and managed "on forestry principles", and that when acquired by purchase or condemnation the municipality "under the direction of the state forester shall manage the same on

forestry principles". The authority to manage a municipal forest on forestry principles at least authorizes it to be so managed as to bring in some revenue as the general statutes relating to state forests which were enacted prior to Section 5650-1, General Code, authorize and direct that such forests may be so managed and administered. See Sections 1177-10 et seq., General Code, particularly Sections 1177-10c and 1177-10d. This power as provided with respect to state forests to operate such forests by selling wood and timber and seedling trees therefrom and which is adopted by analogy with respect to municipal forests does not, in my opinion, make of it a public utility which would require that it be managed and operated in a village by a board of trustees of public affairs nor does its management in my opinion come within the duties of a street commissioner or engineer as fixed by Section 4360, General Code. I think rather that it comes within the category of public institutions for the control and management of which the council of a village is authorized by Section 4356, General Code, to provide. Said Section 4356, General Code reads as follows: .

"The council shall provide by resolution or ordinance for the care, supervision, and management of all public parks, baths, libraries, market houses, crematories, sewage disposal plants, houses of refuge and correction, work houses, infirmaries, hospitals, pest houses, or any of such institutions owned, maintained or established by the village. When the council determines to plat any of the streets as authorized by law, it shall provide for the platting thereof."

In providing for a commission to manage and control a municipal forest by a village council, I know of no reason for saying that provision may not lawfully be made that the state forester be a member of the commission as the council of the village of Poland has done in the ordinance here under consideration.

I do not think, however, that council may delegate to such a commission the power to fix compensation of its employes as those employes clearly are municipal employes, and the Legislature has definitely provided in Section 4219, General Code, that the compensation of all municipal employes in a village shall be fixed by council.

Here again, the question of legislative control in the absence of charter provision prevails as to the internal government of the municipality. When the legislature provides that council shall fix the compensation of all municipi-

pal employes that duty rests directly with the council and it cannot be provided by ordinance that some agency may fix the compensation under the guise of an exercise of home rule power. Said Section 4219, General Code, provides as follows:

“Council shall fix the compensation and bonds of all officers, clerks and employes in the village government, except as otherwise provided by law. All bonds shall be made with sureties subject to the approval of the mayor. The compensation so fixed shall not be increased or diminished during the term for which any officer, clerk or employe may have been elected or appointed. Members of council may receive as compensation the sum of two dollars for each meeting, not to exceed twenty-four meetings in any one year.”

The same may be said of the funds appropriated for the operation of the forest and those accruing from its administration. The general law relating to municipal corporations provides that all the funds belonging to any department of municipal government shall be received and disbursed by the treasurer of the municipality. Section 4300, General Code, relating thereto is as follows:

“The treasurer shall receive and disburse all funds of the corporation including the school funds, and such other funds as arise in or belong to any department or part of the corporation government.”

In Section 4298, General Code, it is provided that it shall be the duty of the treasurer to disburse the funds of a municipality “on the order of such person or persons as may be authorized by law or ordinance to issue orders therefor.” In my opinion, it is within the power of council to authorize a municipal forest commission, as has been done in the instance here under consideration, to issue orders for the expenditure of funds pertaining to the forest which would be the basis of lawful disbursements by the treasurer of the village. Such orders, however, should first be presented to the village clerk, who is directed by Section 4281, General Code, to keep the accounts of the village, and orders for expenditures issued by the forest commission should not be honored by the treasurer until the orderly procedure established for the disbursement of village funds is complied with. That is, until a warrant is drawn by the clerk showing that a proper voucher has been received from the proper municipal department and a record made of the same.

In the light of what has been herein said, I am of the opinion in specific answer to your questions:

1. A village wherein a municipal forest exists or is created by authority of Section 5650-1, of the General Code of Ohio, may provide by ordinance or by charter provision, for a municipal commission or board to be appointed by the mayor or otherwise, to care for and manage the said forest on forestry principles and may, in its discretion, provide that the chief forester of the State of Ohio shall be one of the members of the said commission or board if agreeable to him.

2. When a municipal forest is established in a non-charter village by authority of Section 5650-1, General Code, and a commission or board created to manage, control and administer the said forest, moneys resulting from the operation of the forest as well as funds appropriated by the village council for the use of the forest commission or board in managing or administering the forest shall be and remain in the municipal treasury from which they may be disbursed only through warrants issued by the village clerk upon vouchers approved by the said board, the same as are funds appurtenant to other municipal institutions and activities.

3. The employes of a municipal board or commission of forestry established in a municipality to manage and control a municipal forest established by authority of Section 5650-1, General Code, are municipal employes and their appointment is subject to the general provisions of law with respect to the appointment of municipal employes and their compensation should be fixed by the council of the village as provided by Section 4219, of the General Code of Ohio.

Respectfully,

THOMAS J. HERBERT,
Attorney General.