

fore established by the Board of Control, which ordinance it is not necessary to set forth in this opinion. On January 11, 1934, the board of control passed Resolution No. 1889, referred to in your communication, changing in some respects the rates theretofore approved by council, which rates it appears have not as yet received the approval of council.

In the case of *Bauman, et al, vs. The State, ex rel. Underwood, Director of Law*, reported in 122 O. S. 269, the court held that the charter is an authority superior to an ordinance in a charter city, and the council cannot, by ordinance, divest itself of power conferred upon it by the charter. If it could do so in a single instance, then manifestly it could, by a general ordinance, divest itself of all power conferred by the charter, and thereby render the charter practically inoperative.

The charter limits, governs and controls the council very much the same as the Constitution limits, governs and controls the General Assembly.

Upon examination, this case discloses that while it is not with reference to rates, or the exact question involved, it does signify the court's opinion as to the authority of the provisions of a city charter. It regards them as paramount and similar to a constitution and if a law or resolution transgresses or conflicts with the constitution, it is illegal; and as the city council in this instance has not strictly followed the terms of the city charter, they have not given to this resolution of the board of control the necessary legal status to make it an effective act.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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614.

APPROVAL—BONDS OF CITY OF AKRON, SUMMIT COUNTY,  
OHIO, \$2,000.00.

COLUMBUS, OHIO, May 19, 1937.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

GENTLEMEN :

RE: Bonds of City of Akron, Summit County, Ohio,  
\$2,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated October 1, 1933. The transcript relative

to this issue was approved by this office in an opinion rendered to the Industrial Commission under date of May 19, 1936, being Opinion No. 5560.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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615.

CITIES—POWER TO INSURE PUBLIC PROPERTY, PROPRIETARY FUNCTION—LIABILITY IN TORT—CONSTRUCTION AND MAINTENANCE OF PUBLIC WAYS—CONTRACTS, RECOVERY.

*SYLLABUS:*

1. *A city has implied power to insure its public property, and like power to enter into a contract for indemnity insurance in so far as its proprietary functions are concerned.*

2. *A city is not liable in tort to persons injured by it in the exercise of a governmental function, unless made so by statute, as in the case of the enactment of Section 3714, General Code. The construction and maintenance of the public ways of a city were recognized governmental functions, but when the General Assembly, by the enactment of such section imposes specific duties upon the city relative to the exercise of such governmental function, the city must perform such specific duties or render itself liable in tort.*

3. *A charter city has no authority to enter into a contract in excess of five hundred dollars without following the provisions of its city charter relative thereto which are in conformity with the general code. A contract in excess of five hundred dollars otherwise entered into, is void, and money paid thereunder can be recovered in accordance with the rules of equity recognized by the common law in cases of rescission.*

4. *Recovery cannot be had by the city where the contract has been fully executed and no effort has been made by the city to put the party to whom the money was paid into status quo. State, ex rel, vs. Fronizer, et al., 77 O. S. 7.*