

ment is illegal and void and the party is not entitled to compensation for his services as such sanitary policeman."

In view of the foregoing sections of the General Code and the authorities quoted, I am of the opinion that a member of the board of trustees of The Ohio Soldiers' and Sailors' Orphans' Home can not legally be appointed by such board as Superintendent or "Acting Superintendent" of said home. The two positions are incompatible.

The Eighty-seventh General Assembly, in its act to make general appropriations, appropriated the sum of Twenty-Five Hundred Dollars (\$2,500.00) per year as salary for the Superintendent of the Ohio Soldiers' and Sailors' Orphans' Home.

The question then presents itself whether or not Miss B., having performed the duties of Superintendent, is entitled to receive the amount of money appropriated by the Legislature for such office for the period of time she so served.

You inform me that the minutes of the Board state that "Miss B. was requested to remain at the Home and represent the Board until a Superintendent is employed." It is readily apparent from this statement that Miss B. was not appointed to any additional position or office for which compensation is provided for by law.

I know of no lawful authority to permit Miss B. to receive the compensation provided by law for the office of Superintendent of such home. It may be that the sundry claims heard, upon the presentation of a proper claim therefor, might allow the claim of Miss B. as a claim against the State of Ohio for the payment of which no moneys have been appropriated and recommend to the General Assembly the allowance of compensation to Miss B. for the services performed by her.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2195.

APPROPRIATION—FOR CITY PLANNING COMMISSION—COMMISSION CANNOT HIRE ENGINEERING FIRM WITHOUT SPECIFIC APPROPRIATION—HOME RULE PROVISIONS OF ARTICLE XVIIII, OHIO CONSTITUTION, CONFER NO EXTRATERRITORIAL AUTHORITY.

SYLLABUS:

1. *By the terms of Section 4366-5, General Code, the council of a city is without authority to make an appropriation in a lump sum to cover the necessary expenses and to pay the compensation of the employes of a city planning commission created and operating under the provisions of Sections 4366-1 et seq., General Code.*

2. *A city planning commission created and operating under the provisions of Section 4366-1 et seq., General Code, is not a special appropriating authority, as that term is defined in Section 5625-1, General Code.*

3. *Where the council of a city appropriates a lump sum for the use of a city planning commission created and operating under the provisions of Sections 4366-1, et seq., General Code, for all purposes, such planning commission may not employ an engineering firm without a specific appropriation from which the expenditure to pay the compensation of such employes may be made.*

4. *The home-rule provisions of the Ohio Constitution found in Article XVIIII do not confer any extraterritorial authority.*

COLUMBUS, OHIO, June 4, 1928.

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

GENTLEMEN:—This will acknowledge your recent communication as follows:

“Section 4366-5, G. C., reads:

‘The commission shall have power to control, appoint or employ such architects, engineers, and other professional service, and to appoint such clerks, draughtsmen and other subordinates as it shall deem necessary for the performance of its functions; the expenditures for such service and employments to be within the amounts appropriated for such persons by the council of the municipality; and council shall provide for the expenses and accommodations necessary for the work of the commission.’

Question: When council appropriates a lump sum for the use of a city planning commission for all purposes may such commission make a contract with an engineering firm without a specific appropriation from which such expenditure shall be made?”

From your question you apparently have some doubt as to the authority of council to make a lump sum appropriation for the use of the city planning commission, leaving the detailed expenditure thereof to the judgment of the commission. In substance you inquire whether in the event that such a lump sum appropriation is made the commission may make a contract with an engineering firm without a specific appropriation from which this specific expenditure shall be made, and, when you speak of specific appropriation I assume that you mean an appropriation by council.

While Section 4366-5, General Code, which you have quoted, obviously evidences the intention that the commission shall exercise some discretion as to its employes, the latter portion of the section seems clearly to authorize and require council to place definite limitations on each item of expenditure for personal service.

You will observe that this section, after conferring power upon the planning commission “to control, appoint or employ such architects, engineers and other professional service, and to appoint such clerks, draughtsmen and other subordinates *as it shall deem necessary* for the performance of its functions,” expressly provides that “the expenditures for *such service and employments*” shall be “within the *amounts* appropriated for *such persons* by the council of the municipality.” This clause, limiting the amount of the expenditures to pay the salaries of the engineers and other employes of the planning commission to such sums as may be appropriated by council, specially modifies and limits the grant of power made in the first clause of the sentence; and the language of this limiting clause is such as clearly to show that a separate appropriation by council for each employe is contemplated. The expenditures are required to be within the “amounts” appropriated by council for “such persons”; that is, not one amount is to be appropriated by council to cover all personal service, but separate amounts must be appropriated to pay the salaries of “such persons”, the words “such persons” plainly referring to the architects, engineers, clerks, draughtsmen and other subordinates authorized to be selected and appointed by the planning commission in the first clause of the sentence.

That this construction of the section is the correct one is indicated by the provisions of the last clause of the sentence to the effect that “council shall provide the expenses and accommodations necessary for the work of the commission.” Whether this clause be construed to read that council shall provide for the necessary expenses and shall provide the accommodations necessary for the work of the Commission, or that council shall provide for the expenses and for the accommodation necessary, it

is clear that council is the appropriating authority and is to determine the amount of the expenditures for these two purposes.

For the above reasons it is my opinion that by the terms of Sections 4366-5, General Code, the council of a city is without authority to make a blanket appropriation to cover the necessary expenses and the cost of the personal service deemed necessary by the city planning commission.

In your question you do not make it clear whether the lump sum appropriation, to which you refer, was made to cover personal service as well as the expenses and the cost of the accommodations necessary for the work of the commission, or whether it was made for the necessary expenses and accommodations, exclusive of the cost of personal service.

If made only to pay expenses other than personal service, I think it clear that such moneys can not be expended to pay the salaries of any engineer, who might be employed, or any other employe. Clearly money appropriated for one purpose can not be diverted to another.

And if the appropriation were made in a lump sum, to cover all expenses of the commission and all the cost of personal service as well, in my opinion, the answer must be the same. It is fundamental that a legislative body, such as a city council, can not delegate its legislative powers. As above pointed out, it seems apparent that the Legislature intended council to control the amount of the expenditures by the planning commission for its various employes, and it follows that the council should, when making an appropriation for the planning commission, fix the maximum to be spent to pay the salary of each person hired by the commission. In determining the amounts to be appropriated, within which expenditures may be made to pay the salaries of the various architects, engineers, clerks, draughtsmen and other subordinates employed by the planning commission, council is exercising a power which cannot be delegated. When acting pursuant to the statutory grant of power contained in Section 4366-5, General Code, council must act in accordance with that statute. By attempting to make a blanket appropriation the effect, both in law and in fact, is to attempt to delegate to the planning commission power here reposed in the council alone, viz., the power to appropriate.

If the planning commission could be said to be a special appropriating authority, as that term is used in the statutes, a different conclusion might be reached. But the planning commission does not come within the definition of this term as defined in Section 5625-1, General Code. This section reads in part as follows:

“* * *

(j) ‘Special Appropriating authority’ shall mean each board of directors, trustees, commissioners or other officers *having by law or charter* the control of the detail appropriation and of the expenditures of the funds of any children’s home, library, hospital, municipal university or other institution or activity, except a district authority.

* * *” (Italics the writer’s.)

This term has previously received the consideration of this department, viz., in Opinion No. 1580 rendered to your Bureau under date of January 16, 1928, from which I quote the following:

“The term ‘special appropriating authority’ is new to our law. It appears first and only in House Bill No. 80 as enacted by the 87th General Assembly. The language of this act purporting to define what is meant by ‘special appropriating authority’ is that contained in Section 5625-1, clause (j), supra. This language as a definition leaves much to be desired. It is stated that the term ‘special appropriating authority’ means the officers or officer, whether

a board of trustees, directors, commissioners or otherwise, *who have by law or charter the control of the detail appropriation and of the expenditure of the funds of all institutions and activities except those institutions or activities controlled by a 'district authority'*. In so far as the definition enumerates certain institutions or activities, to wit, children's homes, libraries, hospitals and municipal universities, no difficulty is encountered. But the section goes farther and includes each 'other institution or activity, except district authority' thus making it all inclusive of these officers and boards, who by law or charter have the control of the detail appropriation and expenditure of the funds which are allotted for the carrying out of the purposes of the institution or activity, except a district authority.

It seems clear, however, that unless the board or officer has complete charge of the detailed expenditure of the funds allotted to the institution or activity such board or officer does not come within this classification, but is merely a subordinate agency, under the control of the subdivision or taxing authority. That is to say, if the expenditures are controlled, or the detail appropriation of the moneys, allotted to the institution or activity, is controlled by some superior authority other than the board or officer such board or officer is not a 'special appropriating authority'. This interpretation is fortified by the language of Sections 5625-11 and 5625-31, General Code, (112 O. L. 396, 405) which read in part as follows:

'Section 5625-11. The taxing authority of a subdivision shall establish a special fund for the current expenses of each special appropriating authority other than those authorities whose special funds, provided by special levies, are established under the provisions of Section 9 of this act. Into such funds shall be transferred from the general fund of the subdivision such moneys as are appropriated by the taxing authority thereof for the purposes of such special appropriating authorities * * *.'

'Section 5625-31. Each special fund under the control of a special appropriating authority shall be established by a transfer in a lump sum, from the general fund, unless otherwise prescribed by this act, which transfer shall be duly authorized by the taxing authority of the subdivision; but expenditures from such special fund shall only be made upon the authority of an appropriation by the special appropriating authority. The requirement of a certificate from the county auditor shall apply to any appropriation for the benefit of any special fund authorized by the taxing authority of the subdivision, but not to any appropriation by the special appropriating authority.'

Applying the reasoning of the opinion quoted above, I think it plain that the planning commission is not to be regarded as a special appropriating authority.

However, there is another reason why the planning commission cannot be said to be a special appropriating authority. It will be observed that Section 5625-1, supra, provides that the term "special appropriating authority" shall mean each board of officers having *by law or charter* "the control of the detail appropriation and of the expenditures of the funds of any children's home, library, hospital, municipal university or other institution or activity." I am not inclined to believe that it was the intention of the Legislature, when enacting this section, to include within the term "special appropriating authority", any boards of officers not theretofore performing functions of the nature under consideration. Before the enactment of this section, the board of trustees of children's homes, libraries and hospitals and the board of directors of municipal universities exercised control of the detailed appropriation and expenditure of the funds of such institutions and activities. Cognizant of this fact, the Legislature enacted Section 5625-1 in such form as would continue the powers of

these boards. Recognizing, however, that certain other boards, not specifically named, might also be vested with the power and authority in question, the words "other institution or activity" were added to include these other boards. It is more than doubtful, however, if it were intended to include within the term, any board not vested with the control of the detailed appropriation and of the expenditure of the funds of any institution or activity under the control of such board at the time of the enactment of the section.

It is one of the well established rules of statutory construction that, where general words follow the enumeration of particular classes and things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. This is known as the *ejusdem generis* rule. As stated in 36 Cyc. 1120:

"The particular words are presumed to describe certain species and the general words to be used for the purpose of including other species of the same genus. * * * The words 'other' or 'any other' following an enumeration of particular classes are therefore to be read as 'other such like,' and to include only others of like kind or character."

At the time of the passage of Section 5625-1 the planning commission was not charged *by law or charter* with the duty of administering any institution or activity, for which it has control of the detailed appropriation and expenditures. Nor does it have such control *by law or charter* now, the duties of the planning commission being prescribed by Section 4366-2, General Code (enacted May 27, 1915, 106 v. 455), reading as follows:

"The powers and duties of the commission shall be to make plans and maps of the whole or any portion of such municipality, and of any land outside of the municipality, which in the opinion of the commission bears relation to the planning of the municipality, and to make changes in such plans or maps when it deems same advisable. Such maps or plans shall show the commissions' recommendations for new streets, alleys, ways, viaducts, bridges, subways, parkways, parks, playgrounds, or any other public grounds or public improvements; and the removal, relocation, widening or extension of such public works then existing. With a view to the systematic planning of the municipalities, the commission may make recommendations to the mayor, council and department heads concerning the location of streets, transportation and communication facilities, public buildings and grounds. The commission shall have the power to control, preserve and care for historical land marks; to control in the manner provided by ordinance the design and location of statuary and other works of art, which are or may become the property of the municipality; and the removal, relocation and alteration of any such works belonging to the municipality; and the design of harbors, bridges, viaducts, street fixtures and other public structures and appurtenances. Whenever the commission shall have made a plan of the municipality, or any portion thereof, no public building, street, boulevard, parkway, park, playground, public ground, canal, river front, harbor, dock, wharf, bridge, viaduct, tunnel, utility (whether publicly or privately owned) or part thereof shall be constructed or authorized to be constructed in the municipality of said planned portion of the municipality until and unless the location thereof shall be approved by the commission; provided that in case of disapproval the commission shall communicate its reasons for disapproval to council, and the department head of the department which has control of the construction of the proposed improvement or utility; and council, by a vote of not less than two-

thirds of its members and such department head shall together have the power to overrule such disapproval. The narrowing, ornamentation, vacation or change in the use of streets and other public ways, grounds and places shall be subject to similar approval, and disapproval may be similarly overruled. The commission may make recommendations to any public authorities or to any corporations or individuals in such municipality or the territory contiguous thereto, concerning the location of any buildings, structures or works to be erected or constructed by them."

For this additional reason, therefore, as well as those first above discussed, I conclude that a city planning commission is not a special appropriating authority within the meaning of Section 5625-1, General Code.

It is here proper to point out that the above discussion is confined to the respective powers and duties of the council of a city and a city planning commission, where such commission is created and acting under Sections 4366-1 et seq. of the General Code. No consideration whatever is given and no determination is made as to the powers and duties of council, where a planning commission is created by a municipality under the home rule provisions of the Constitution.

In this connection your attention is directed to the case of *The Prudential Co-operative Realty Co. vs. City of Youngstown*, 118 O. S. 204, decided by the Supreme Court of Ohio on March 7, 1928, and reported in the May 7, 1928, issue of the Ohio Law Bulletin and Reporter.

In that case, in discussing the home rule powers of municipalities in connection with Sections 4366-1 et seq., General Code, Chief Justice Marshall said as follows:

"Municipalities in Ohio have only such powers as are conferred upon them, either directly by the Constitution, or by the Legislature under authority of the Constitution. While the home-rule provisions of the Ohio Constitution, found in Article XVIII, confer certain powers upon municipalities, and while the provisions of that article are self-executing, *the provisions of that article do not confer any extraterritorial authority. The direct authority given by that article is expressly limited to the exercise of powers within the municipality.* The city of Youngstown therefore has only such authority in the matter of examining and checking plats of lands outside of the city as may be found to be conferred by statute.

Section 4366-1, General Code, provides for the establishment of a city planning commission. Section 4366-2 defines the powers and duties of the planning commission, in part, as follows:

"The powers and duties of the commission shall be to make plans and maps of the whole or any portion of such municipality, and of any land outside of the municipality, which in the opinion of the commission bears relation to the planning of the municipality and to make changes in such plans on maps when it deems same advisable."

* * *

Section 4366-5 provides for the employment of architects, engineers, and other employes which the commission shall deem necessary for the performance of its planning and platting functions. Section 4366-3 provides that the planning commission shall be the platting commission. * * *

* * *

It will be seen, therefore, that legislation not only specifically confers the authority, but also states the reasons therefor. Plaintiff in error will not contend that the Legislature may not confer upon the municipality, but its

objection is directed to the exercise of that authority over property outside the municipality.

* * *

* * * We entertain no doubt of the power of the Legislature to confer authority upon the planning commission to examine and check plats of lands located outside of a city within a limit of three miles, and to refuse to indorse its approval thereon, and we entertain no doubt of the validity of the statute which forbids a plat to be recorded without such indorsement."

Summarizing my conclusions, it is my opinion that:

1. By the terms of Section 4366-5, General Code, the council of a city is without authority to make an appropriation in a lump sum to cover the necessary expenses and to pay the compensation of the employes of a city planning commission created and operating under the provisions of Sections 4366-1 et seq., General Code.
2. A city planning commission created and operating under the provisions of Sections 4366-1 et seq., General Code, is not a special appropriating authority, as that term is defined in Section 5625-1, General Code.
3. The home-rule provisions of the Ohio Constitution found in Article XVIII do not confer any extraterritorial authority.

In specific answer to your question, it is my opinion that where the council of a city appropriates a lump sum for the use of a city planning commission created and operating under the provisions of Sections 4366-1 et seq., General Code, for all purposes, such planning commission may not employ an engineering firm without a specific appropriation, from which the expenditure to pay the compensation of such employes may be made.

Respectfully,
 EDWARD C. TURNER,
Attorney General.

2196.

LAW JOURNAL—AUTHORIZED BY PROPER COURTS—FEES—AUTHORITY OF COUNTY COMMISSIONERS TO EXPEND MONEY FOR JOURNAL.

SYLLABUS:

1. *The publication by a daily law journal of the assignment of cases in such manner as may be prescribed by the judges of the courts of record of such county, other than the court of appeals, is authorized by Section 1695 of the General Code, but the fee for such services shall not exceed thirty-five cents for each case brought and such fees must be taxed in the costs and collected as other costs and cannot be paid from county funds.*
2. *The indication by the judges of the Common Pleas Court that certain services are necessary for the prompt administration of justice in the county, authorize the county commissioners to provide such services and to expend money therefor from the county treasury.*

COLUMBUS, OHIO, June 4, 1928.

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

GENTLEMEN:—This will acknowledge your recent communication, as follows:

"We respectfully request your written opinion upon the following: