

1071.

APPROVAL, BONDS OF CITY OF HAMILTON, BUTLER COUNTY—
\$48,000.00.

COLUMBUS, OHIO, October 18, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

1072.

COUNCIL—CLEVELAND—CREDITING MEMBERS PRESENT AT AD-
JOURNED MEETING ONLY AS OFFICIALLY PRESENT VALID.

SYLLABUS:

The council of the city of Cleveland may legally adjourn a regular session to the day upon which the next regular session will be held, and a member of council attending such session, even though he has not been in attendance previously, cannot be regarded as having been absent.

COLUMBUS, OHIO, October 19, 1929

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

GENTLEMEN:—Your recent communication reads as follows:

“Section 7 of the City of Cleveland’s Charter provides in part as follows:

‘The salary of a member of the Council shall be \$1,800 per year-----
Any member absent from a regularly called meeting of Council, -----
shall forfeit two per centum of his annual salary for each such absence.’

To avert the absentee penalty stipulated in the foregoing charter provision the following practice is resorted to:

When a member is absent from a meeting, and the day’s business has been transacted, the session is recessed to 6:55 P. M. of the date fixed for the next meeting—five minutes prior to the hour for the regular session. At the 6:55 P. M. session the roll is called and council immediately adjourns to 7 P. M. No business is ever transacted at the 6:55 P. M. session. If a member was absent from the session which had been recessed, but is present at the 6:55 P. M. recess session, he is credited with being officially present at the meeting from which he was absent.

Question: Is the procedure above outlined legal?”

The power of a legislative body to recess or adjourn a regular meeting to some definite time, is well recognized, and is a universal practice. The legislature of Ohio frequently has adjourned after three or four months continuous regular session, to a date near the end of the biennium period. The reason for such practice is obvious—for some cause, the body deems it expedient to be in session, rather than to finally adjourn, and in order to keep the session alive for the purpose of

considering any matters that may properly come before such a session, it adjourns or recesses to another date, without finally adjourning.

As stated in 29 Cyc., page 1691 :

"Members of deliberative bodies are bound to take notice of the time of adjournment and be present at the time and place of adjournment without special notice. Where a regular meeting is adjourned, any business which would have been proper to consider at that meeting may be considered and acted on at the adjourned meeting."

While in the case you mention, according to the statement of facts, no other business is considered at the time to which the meeting was adjourned before the next regular session is to begin, it is believed that the motive of the legislative body in adjourning would not be the subject of judicial inquiry.

I do not have before me a copy of the charter of the City of Cleveland, but assume that there are no other provisions thereof which would affect the question which you present. It is to be noted that the provision of the charter which you quote stipulates that a member of council shall receive an annual salary of \$1,800.00. Standing alone, this would require the payment irrespective of the attendance of a councilman at the meetings. This is the general rule, which is set forth in 46 Corpus Juris, p. 1015, as follows :

"The right to the compensation attached to a public office is an incident to the title to the office and not to the exercise of the functions of the office; hence, the fact that officers have not performed the duties of the office does not deprive them of the right of compensation, provided their conduct does not amount to an abandonment of the office."

This being the general rule, it is only by reason of the additional portion of the charter section that any deduction from the annual compensation is permitted. This deduction is in the nature of a forfeiture of something which would otherwise accrue by reason of holding the office of councilman, and not by reason of attendance at council meetings.

It is a familiar principle of law that forfeitures are not favored, and will not be enforced except where clear authority therefor exists.

In view of these considerations, I am of the opinion that the council of the City of Cleveland may legally adjourn a regular session to the date upon which the next regular session will be held, and that a member of council attending such session, even though he has not been in attendance previously, cannot be regarded as having been absent.

Respectfully,

GILBERT BETTMAN,
Attorney General.