

OPINION NO. 73-121

Syllabus:

1. Where a request for an opinion of the Attorney General presents a question calling for the interpretation of a municipal ordinance, and there is the possibility that the State may become a party because the expenditure of public funds is involved, it is proper for this office to express an opinion on such a question.

2. Where the City Council of Cleveland, by ordinance Section 1.4769, has specifically excluded certain city employees from hospitalization benefits, the Board of Control of said city is not authorized to include those employees so excluded.

To: Joseph T. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, November 29, 1973

Your request for my opinion states the following facts and reads as follows:

My office has been asked to express its position as to whether or not an ordinance passed by the Council of the City of Cleveland authorizes the payment by the City of any part of the cost of hospitalization coverage for uniform members of the police and fire divisions.

The City of Cleveland is presently paying part of the hospitalization coverage of its policemen and firemen pursuant to a resolution adopted by the Board of Control of said City. I am enclosing for your information a copy of Ordinance No. 69-73 which amended Section 1.4769 of the Codified Ordinances relating to hospitalization allowances for City employees.

My specific inquiry is:

Does Section 1.4769 of the Codified Ordinances of the City of Cleveland as presently effective permit the Board of Control of said City to authorize payment by the City of any hospitalization benefits for uniform members of the police and fire divisions.

The City of Cleveland is a charter city, adopted under the authority of Ohio Constitution, Article XVIII, Section 3 and Article XVIII, Section 7.

Article XVIII, Section 3 and Article XVIII, Section 7 read as follows:

Article XVIII, Section 3:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with the general laws.

Article XVIII, Section 7:

Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of Section 3 of this article, exercise thereunder all powers of local self-government.

The words in Article XVIII, Section 3, "as are not in conflict with general laws," modify the words "local police, sanitary and other similar regulations," but do not modify the words "power of local self-government." State, ex rel. Canada v. Phillips, 168 Ohio St. 191, 197 (1958); Mullen v. City of Akron, 116 Ohio App. 417 (1962). Hence, a charter city acquires the same power to legislate that the General Assembly has and the charter repeals statutes conflicting therewith, with respect to matters of purely local concern. Leavers v. Canton, 1 Ohio St. 2d 33, 37 (1964); State, ex rel. Bindas v. Andrish, 165 Ohio St. 441 (1956); Village of Perrysville v. Ridgeway, 108 Ohio St. 245 (1923); State, ex rel. City of Toledo v. Lynch, 88 Ohio St. 71 (1913); Goebel v. Cleveland Railway Company, 17 N.P. (n.s.) 337 (1915); City of Mansfield v. Endly, 38 Ohio App. 528 (1931). Consequently a charter adopted by the people of Cleveland pursuant to the Constitution governs, controls and limits city council to that which is enumerated therein. See Fitzgerald v. Cleveland, 88 Ohio St. 338 (1913); State, ex rel. Gulf Refining Co. v. De Fiance,

89 Ohio App. 1 (1950); State, ex rel. Morgan v. Rush, 37 Ohio App. 109 (1930).

The issue involved is whether the Board of Control or City Council has the power to prescribe hospitalization benefits to uniform police and fire employees of the City of Cleveland. Although your request asks for an interpretation of a municipal ordinance, there is the possibility that the state may become a party if public money has been found to be expended illegally. R.C. 117.10 states that if public money has been found to have been illegally expended, no claim shall be abated or compromised either before or after the filing of a civil action, nor shall any judgment or final order be entered into without the consent of the Attorney General. Village of Bethesda v. Mallonee, 75 Ohio L. Abs. 257 (1955).

The court in State, ex rel. Robusky v. Chicho, 17 Ohio St. 2d 1 (1967), applied R.C. 117.10 to define public money. The Section provides in part as follows:

"Public money" as used in this section includes all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance, order, or otherwise, and all public officials are liable therefor. All money received under color of office and otherwise paid out according to law is due to the political subdivision * * *.
(Emphasis added.)

Therefore because the issue revolves around who has the authority to expend public money and there is a possibility that the State may become a party, I conclude that it is within my power to interpret Section 1.4769. See R.C. 109.14. Many of my predecessors have also seen fit to answer questions concerning municipal ordinances. See Opinion No. 2125, Opinions of the Attorney General for 1938; Opinion No. 317, Opinions of the Attorney General for 1937; Opinions No. 393 and 394, Opinions of the Attorney General for 1927; Opinion No. 3856, Opinions of the Attorney General for 1954; Opinion No. 266, Opinions of the Attorney General for 1951; Opinion No. 802, Opinions of the Attorney General for 1949.

City Council has enacted Ordinance No. 69-73 amending Section 1.4769 to read in pertinent part as follows:

Effective January 1, 1973, all regular full time employees of the City of Cleveland, except (1) sworn members of the police and fire departments * * * shall be entitled to an allowance for hospitalization protection. * * *.

The inclusion or exclusion of any group of employees to the benefits of this ordinance shall be determined by the Board of Control upon the recommendation of the Director of a department, the commissioner of a division, or the Mayor, for any Board, Commission or miscellaneous employee.

* * * * *
(Emphasis added.)

As a rule of statutory construction, a statute must be

construed in its entirety, and the legislative intention that is contained within must be determined accordingly, and not from a part thereof. State, ex rel. Myers v. The Board of Education, 95 Ohio St. 369 (1917); Cochrel, a Minor v. Robinson, 113 Ohio St. 526 (1925); Cleveland Heights v. Glowe, 59 Ohio L. Abs. 39 (1951); Tower Realty, Inc. v. City of East Detroit, 196 F. 2d 710 (1952). By analogy, an ordinance, which is a municipality's local legislation, must also be construed in its entirety.

Reading Section 1.4769 as a whole, Cleveland City Council has specifically exempted policemen and firemen from hospitalization benefits. The authority of the Board of Control is broad enough to cover these employees, if it stood alone, but it must be read together with the rest of the ordinance. The specific exclusion of those employees leaves no doubt that the Board of Control has no power to extend coverage to them.

In specific answer to your question, it is my opinion and you are so advised, that:

1. Where a request for an opinion of the Attorney General presents a question calling for the interpretation of a municipal ordinance, and there is the possibility that the State may become a party because the expenditure of public funds is involved, it is proper for this office to express an opinion on such a question.

2. Where the City Council of Cleveland, by ordinance Section 1.4769, has specifically excluded certain city employees from hospitalization benefits, the Board of Control of said city is not authorized to include those employees so excluded.