

curred in the performance of official duty is stated in *Richardson vs. State*, 66 O. S. 108, at page 111, as follows:

“To make such expenses an additional burden on the public funds would require a plain and unequivocal provision of the statute. An intent to do so will not be implied.”

No statute has been found imposing a duty upon or authorizing local health officers to attend conventions of health associations outside the state or making the expense of such attendance a burden on the public funds, nor is there any authority conferred upon local boards of health to direct such attendance. If it had been intended to permit the expenditure of public funds for such purpose, it is but reasonable to presume that the legislature would have spoken on the subject, as it has done in the numerous instances referred to in opinion No. 85, *supra*. The doctrine of that opinion is adhered to, and requires a negative answer to your inquiry.

Section 4404 G. C. referred to in the letter of the city solicitor, amended 108 O. L. 247, and in force at the time the expenses involved in this inquiry were incurred, relates solely to the establishment of a board of health by the municipal council, and contains no authority, express or implied, authorizing the board of health to send delegates to conventions at public expense, or making the expense of such attendance a charge against public funds. And while sections 4450 and 4451 G. C., also referred to in the opinion of the city solicitor, confer authority upon the city council to borrow money to defray necessary expenses incurred in preventing the spread of dangerous communicable diseases, and also authorize the city council to pass the necessary appropriation ordinances covering expenses incurred by the board of health under the provisions of the chapter of which those sections are a part, yet an examination of all the statutes having any relevancy to the subject will disclose, as already stated, that no duty is imposed or authority conferred upon local boards of health, or their appointees or assistants, with respect to attending conventions outside the state at public expense.

You are therefore advised that the expenses incurred by the Canton health commissioner in attending the convention of the American Public Health Association at New Orleans, are not a legal charge against public funds.

Respectfully,

JOHN G. PRICE,

Attorney-General.

982.

TOLEDO CHARTER—COUNCIL MAY DISCONTINUE DIVISION “D” OF ASSESSMENTS AND LICENSES IN DEPARTMENT OF FINANCE AND TRANSFER DUTIES TO CLERK OF COUNCIL—DIRECTOR OF FINANCE MAY NOT DELEGATE SUCH DUTIES TO CLERK OF COUNCIL OR TO ANOTHER DEPARTMENT.

1. *Under section 102 and 34 of the Toledo charter (Volume 1, Supplement to the General Code, page 1178) the council may legally discontinue Division “D” of assessments and licenses in the Department of Finance and transfer the duties thereof to the clerk of council.*

2. *The director of finance may not legally delegate any of the duties of the division of assessments and licenses to the clerk of council or to another department.*

COLUMBUS, OHIO, February 3, 1920.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent request for the opinion of this department, as follows:

“We are respectfully calling your attention to sections 101 and 102 of the charter of the city of Toledo, Ohio, which sections may be found on page 1197 and 1198 of volume 1 of the supplement to the General Code of Ohio and are respectfully requesting your written opinion upon the following matters:

Question 1:

In view of the provisions of section 102, may the council legally transfer any of the functions established by the charter to a certain department to another department?

For illustration, may council legally transfer the duties of division D, division of assessments and licenses under the department of finance to the clerk of the council or another department?

Question 2:

May the director of finance legally delegate any of the duties of the division of assessments and licenses to the clerk of council or another department?”

Sections 3, 34, 101, 102, 103, 104, 105, 120 and 133 of the charter of the city of Toledo, are pertinent.

From your letter, directing attention to this charter, as contained in volume 1 of Page and Adams Supplement to the General Code, it is assumed that the charter has not been amended in this respect and this opinion construes such charter as found in the supplement.

Section 3 in part provides:

“All persons holding office at the time this charter goes into effect shall continue in office and in the performance of their duties until provision shall have been other wise made in accordance with this charter for the performance or discontinuance of the duties of any such office. When such provision shall have been made the term of any such officer shall expire and the office be deemed abolished. The powers and duties which are conferred and imposed upon any officer, commission, board or department of the city under the laws of the state shall, if such officer or department is abolished by this charter, be thereafter exercised and discharged by the officer, board or department upon whom are imposed corresponding functions, powers and duties under this charter.”

Section 34, entitled “Duties of Clerks,” provides:

“The clerk shall attend the council as its secretary, shall keep its records, and make an annual report giving a summary of its proceedings, and shall perform such other duties as are given him by this charter or which may be prescribed by ordinance.”

Section 101, entitled “Administrative Departments and Divisions,” in part provides:

"The following administrative departments and divisions thereof are hereby established: * * *

2. Department of Finance.

* * * * *

(d) Division of Assessments and Licenses."

In the same chapter, under the head of "Change in Divisions," section 102 provides:

"The council may discontinue any division established by the preceding section, may create new divisions, and may determine, combine and distribute the functions and duties of divisions."

The procedure for making such changes is outlined in section 103, which reads:

"An ordinance within the provisions of the preceding section shall require for final passage the concurrence of two-thirds of the members of the council. The final reading shall be at a regular session of the council, and at least ten days shall elapse between the second and third readings."

Section 104 relates to the powers and duties of directors of departments and invests such directors with the "supervision and control of his department." It also contains this provision:

"Subject to the approval of the mayor, the directors shall establish and maintain regulations for the co-ordination of the work of, and co-operation in the service of, the several departments and divisions, to the end that efficiency and economy may be secured."

Section 105 relates to the duties of commissioners of divisions, as follows:

"The work of the several departments shall be distributed among such divisions thereof as are established by charter or by ordinance. There shall be a commissioner or chief in charge of each division who shall be appointed, and may be removed, by the director of the department. With the approval of the director of his department, each commissioner shall appoint the employes in his division and shall have supervision and control of its affairs."

It will be noted that section 102 authorizes changes in divisions alone and makes no provisions for changes of departments. Had the charter makers intended thus to include the power of changing departments, it may be presumed that the charter in this particular would have been framed after the fashion of section 79 of the Cleveland charter, which reads:

"The council may by ordinance, with the concurrence of the board of control, discontinue any department or division established by this charter, create new or additional departments or divisions and determine, combine and distribute the functions and duties of departments and divisions; but the department of public utilities shall not be so discontinued."

Section 102 must be considered in connection with sections 101 and 104. Section 101 creates certain departments, distributing the municipal powers and functions into certain main divisions. This is done in the charter, which, so to speak, is the city's constitution and was, of course, essential to the orderly exercise of such power.

Precedents for this in state and federal constitutions, and in general statute law, relating to municipal corporations, are not wanting. Indeed, the principle underlying this system of checks and balances may be said to be fundamental in our scheme of government.

The subject of section 102 is "Changes of Divisions." Section 103 provides how such things shall be effected. 104 places the supervision, control and management of each department in its director. Undoubtedly the charter makers must be held to have had in mind the history of previous legislation on such subjects establishing the general statute law with its division of powers. Undoubtedly the previously adopted charter of Cleveland was considered and discussed in its submission and adoption. The effect of these considerations, placed beside section 102, in view of the terms used in that section, leads to the opinion that the effect of this section may be stated that by its council is authorized to discontinue any division and transfer the powers and duties thereof to any other division of the same department. This is entirely clear, but whether the functions of a division in one department may be transferred to a division of another department is more attended with doubt. It certainly could not if in the charter itself the department from which it is proposed to transfer was specifically and exclusively charged with the performance of such punctions. It would therefore depend upon the character of the functions of the respective departments. They may differ very materially and no general rule is attempted, and the opinion of this department in this regards must be reserved until specific actual cases are presented.

The illustration of your first question, however, is more specific in so far as it relates to the clerk of council and involves such transfers not inter-departmental nor intra-departmental, but from one department to the clerk of the city council, a charter created employe of the city. The clerk of council stands in a different position than the director of a department or the commissioner of a division. Under section 34 his duties are of a two-fold character; (1) those created by the charter, and (2) those created by ordinance, as provided for in this section, in these words:

"Other duties as are given him by this charter or which may be prescribed by ordinance."

He is not an officer or employe of any department or division. In none of the sections creating department "D," department of finance, or in any other section, is he charged with the duties in that division. This section contemplates council prescribing additional duties for the clerk and would seem to warrant the imposition of any of such duties that are not exclusively attached to some other functionary by a charter provision which would limit the power of change granted in 102. This leads us to the sections relating to the department of finance in general and to the division of assessments and licenses particularly.

Section 120 defines the general duties of the director of finance as follows:

"The duties of the director of finance shall include the keeping and supervision of all accounts and the custody of all public money of the city; the purchase, storage and distribution of supplies needed by the various departments; the making and collecting of special assessments; the issuance of licenses; the collection of license fees; and such other duties as the council may by ordinance, require. The commissioner of the division of accounts shall be the deputy director of finance."

Section 121, 122 and 123 impose specific duties on him with reference to bond issues. Sections 124, 125, 126, 127 and 128 relate to the duties of this department as

to accounting and sections 129 and 130 create and define the duties of the division of the treasury. Sections 131 and 132 perform a like office with reference to purchases and supplies. Section 133, relating to the division of assessments and licenses, specifically defines the commissioner's duties in this mandatory language:

"The commissioner of assessments and licenses shall have charge of the preparation and certification of all special assessments for public improvements; the mailing of notices of such assessments to property owners and all other duties connected therewith; the collection of such assessments as are payable directly to the city, and the preparation and certification of all unpaid assessments to the county auditor for collection. He shall issue all licenses and collect all fees therefor, and shall pay the same to the city treasurer in the manner provided by ordinance."

Consistent with the foregoing principles, it is concluded that as to this particular division the charter has spoken specifically and imperatively, commanding that this commissioner "shall" do the things enumerated therein and indicates that the charter makers viewed the matter of assessments and licenses as intimately related to the city's finances and that its transfer to any other unrelated department was not contemplated in section 102. This seems to conflict with section 102, but it must be borne in mind that this is a division for the discontinuance of which specific and unlimited authority is granted by this section.

However, section 102 carries the power to abolish a division created by the charter and this, coupled with section 34, *supra*, is deemed sufficient to establish a distinction between transferring the duties of one department to another, on one hand, and transferring such duties to the clerk, on the other hand. This distinction may seem rather refined, but is regarded as justifiable and supports the only proper conclusion which will render the charter consistent in this regard.

Taking this power to abolish a division, coupled with the authority of section 34, the clerk, standing in a position where he may be said to be unattached and potentially receptive, may receive power and perform the functions of the discontinued division.

Your second inquiry questions the power of the director to delegate the duties of a commissioner to the clerk or to another department.

The discussion of your first question clearly discloses that the director is not given any such power. Such power is lodged in the council, nor is the director given any authority or supervision over commissioners or employes in other departments or over the clerk of the council, and your second question is, therefore, answered in the negative.

Respectfully,
JOHN G. PRICE,
Attorney-General.