

reads into every statute, it is quite unnecessary that the legislature should expressly write into the statute. Upon the contrary, the presence of such constitutional provision is as necessarily implied in the statute, unless the language of the statute is clearly inconsistent therewith as if the same were expressly written in the statute.

The obligation of the legislature to support the constitution, imposes upon them their primary and paramount duty and the language of the statute is entirely consistent with this sound and wholesome public policy.

The express power to fix a salary does not grant by implication the power to unfix said salary. The exercise of the power agreeable to the statute exhausts that power agreeable to the statute. The power to change after once fixed, from the language of the *Locher* case, supra, shows that such power is not 'clear and distinctly granted'. The power not being so granted to the board of education, cannot be exercised by the board of education, and its attempted exercise thereof is ultra vires. *The action of the board of education in attempting to change the salary of the county superintendent, after once fixed, is illegal and void under the statute.*"

Following the reasoning of former opinions of this department on questions somewhat similar to the one presented, and directing attention to the recent decision of the supreme court, quoted herein, you are advised that it is the opinion of this department that the county board of education should fix the compensation of the county superintendent at the time of employment and such compensation cannot thereafter be changed during the term for which appointed, and a county board of education may not employ a county superintendent for a period of two years and fix his compensation at a certain amount for the first year, and at the end of the first year fix a greater amount as compensation for the second year.

Respectfully,

JOHN G. PRICE,
Attorney-General.

3139.

BOARD OF PARK COMMISSIONERS—WITHOUT AUTHORITY TO APPOINT MUNICIPAL POLICE OFFICERS OR TO EMPOWER EMPLOYEES TO ACT IN CAPACITY OF CITY POLICEMEN.

The office and duties of city policemen are created and prescribed by the provisions of sections 3617, 4368 and 4370 of the General Code, and section 4061 G. C. confers no authority upon a board of park commissioners to appoint municipal police officers or to empower employes to act in the capacity of city policemen.

COLUMBUS, OHIO, May 25, 1922.

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

GENTLEMEN:—Receipt is acknowledged of your recent communication which reads as follows:

"On January 26th, 1903, the Attorney-General held that police for park purposes should be under the control of the board of public safety the same as other police. Section 4061 G. C., provides that a board of park commissioners 'may employ a secretary, general superintendent, engineer, clerks

and such other necessary employes for carrying into effect the purposes of its creation, and shall fix the rate of its compensation and term of service of its employes'. This department is in receipt of an inquiry from the city auditor of Portsmouth, Ohio, as follows:

'In the November election the electors of the city of Portsmouth voted to create a park commission for the city.

The mayor has appointed a commission and the commission is duly organized.

Council has appropriated money for labor and material. Is it necessary for council to create the positions of policemen for the parks or, has the park commission authority to employ as many people as they think necessary without being authorized by council?

An early reply will be appreciated as I am holding payrolls until I hear from the department.'

Question: In view of the opinion and statute above quoted, would a board of park commissioners have authority to appoint park policemen under their own rules and regulations without authority of council or should such park policemen be a part of the police department of such city under the control of the director of public safety?

An early reply will be greatly appreciated."

Pertinent to the question submitted, sections 4053 to 4065 G. C. inclusive, provide for the creation and organization of the board of park commissioners of a city, and vest in such boards when created, the control and management of the public parks of the city.

Relative to employes, section 4061 G. C., authorizes the board to employ a secretary, general superintendent, engineer, clerks and such other necessary employes as may be deemed proper to effect the purposes of its creation. The section it may be noted, does not confer any police power upon the board of park commissioners.

Upon reading, however, section 4061 G. C., together with section 4059 G. C., which provides for the enforcement of the rules and regulations adopted by said board of park commissioners, it may be inferred that such a board would be authorized to provide and compensate employes of its own choice to protect park property or to enforce the rules and regulations of said board relative to such public parks. It is thought however, under such circumstances that by reason of any employment authorized, such employes could not be clothed with the powers of police officers, for the obvious reason that such power is not in the first instance delegated by statute to the said board of park commissioners.

Under the authority of section 3617 G. C., the power to organize and maintain the police and fire departments is delegated to the city council, while section 4368, provides that under the direction of the mayor, the director of public safety shall be the executive head of these departments, and shall have all powers and duties connected with and incident to the appointment, regulation, and government of said police and fire department. Section 4374 G. C. provides for the classification of the officers of the police department, while section 4372 G. C. provides that such officers and employes, subject to the rules and regulations of the director of public safety shall be under the exclusive control of the chief of police.

In view then of the provisions of the General Code, it would seem obvious, that the office of city policeman is wholly a matter of statutory provision which vests the police power in such matters in the city council and the department

of public safety. Hence it is concluded in answer to your question, that if the "park policemen" contemplated by your inquiry are to be such as may be empowered to act in the capacity of city police officers, such policemen by reason of statutory requirement must be under the control and supervision of the department of public safety.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3140.

BOARD OF EDUCATION—MAY NOT FIX SALARY OF SUPERINTENDENT OF SCHOOLS AT SPECIFIED AMOUNT AND PROVIDE THAT IN ADDITION SUPERINTENDENT SHALL RECEIVE CERTAIN PERCENTAGE OF FOREIGN TUITION COLLECTED—DUTY OF RECEIVING SCHOOL FUNDS IMPOSED UPON TREASURER OF SCHOOL DISTRICT—MONEYS RECEIVED FROM FOREIGN DISTRICT FOR TUITION PLACED IN TUITION FUND.

1. *A board of education in fixing the salary of its superintendent of schools may not fix such salary at a specified amount and provide that in addition thereto the superintendent shall receive a certain percentage of the foreign tuition collected, for the reason that such payment would not be a "fixed" salary as intended by section 7690 of the General Code, and such superintendent is not a bonded employe of the district.*

2. *The duty of receiving school funds is imposed upon the treasurer of the school district and under the provisions of section 7682 G. C. (109 O. L. 373) all money received for tuition from foreign district shall in all cases, upon its receipt, be placed in the tuition fund.*

COLUMBUS, OHIO, May 25, 1922.

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

GENTLEMEN:—Acknowledgement is made of the receipt of your communication in which you submit the following question for the opinion of this department:

"In fixing the salary of its superintendent of schools, may a board of education of a city district *fix such salary at a specified amount* and provide that in addition thereto the superintendent shall receive a certain percentage of the foreign tuition collected, at the same time making it the duty of the superintendent to collect such tuition?"

In considering this question your attention is invited to the recent decision of the supreme court in the case of *State of Ohio ex rel. Clark vs. Cook*, decided on November 22, 1921, the second branch of the syllabus reading as follows:

"2. Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted. (*State ex rel Locher, Pros. Atty., vs. Menning, 95 Ohio St., 97, approved and followed.*)"