

an excise tax, with respect to having individuals in his employ, equal to 3 per centum of the total wages (as defined in section 1607-b) paid by him during the calendar year with respect to employment (as defined in section 1607-c) after December 31, 1938."

Under the above statute, the Federal Government since December 31, 1938, collects taxes for any given year upon wages actually *paid* during that year, and pays no attention to the year in which the employment occurred. (See Ruling of Guy T. Helvering, Commissioner of Internal Revenue, dated September 6, 1940, No. 478-Mim. 5107 of Unemployment Compensation Interpretation Service issued by the Social Security Board supplemental of September 15, 1940.) This Federal Act in no way affects the interpretation to be placed upon Sections 1345-1(e) and 1345-4, General Code.

Therefore, in specific answer to your question it is my opinion that, under the provisions of Sections 1345-1(e) and 1345-4, General Code, the bonus of \$1,000, paid in 1940, was part of the employee's wages for the year 1939, and, as such, was taxable as wages in 1939, and was no part of the employee's wages for 1940.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

3132.

HOSPITAL, MUNICIPAL.—JOINT PURCHASING SERVICE—
AGENCY, HOSPITAL COUNCIL—MAY NOT EXPEND FUNDS
TO PURCHASE SUPPLIES AND EQUIPMENT FOR ALL HOS-
PITALS WITHIN CERTAIN LOCALITY.

SYLLABUS:

A municipal hospital may not expend funds for a joint purchasing serv-

ice accomplished through the agency of a hospital council which purchases supplies and equipment for all hospitals within a certain locality.

Columbus, Ohio, December 18, 1940.

Bureau of Inspection and Supervision of Public Offices,
State House Annex,
Columbus, Ohio.

Gentlemen:

This will acknowledge receipt of your recent request for my opinion wherein you state that the City Hospital of Lakewood, Ohio, has, in years past, joined with the other hospitals of that area in making purchases of supplies and equipment through The Cleveland Hospital Council. With that preface you ask the following question:

“Is it legal for the Lakewood City Hospital to contract with the Hospital Council at a cost of \$420.00 per year, for the joint purchasing of supplies, etc., in order to take advantage of the discounts afforded by the quantity purchasing power of said Hospital Council?”

The charter of the City of Lakewood makes provision for a municipal hospital in Article XIX. The pertinent sections of that article are as follows:

“Section 1. The Council of the City of Lakewood shall have the power by ordinance to establish a municipal hospital and for such purpose may, in accordance with the general law, issue and sell bonds in such amounts as may be necessary for the procuring of the necessary real estate and the erection, furnishing, equipping and maintaining said hospital or for the purpose and acquisition of any existing hospital and its furnishings and equipment.

Any such hospital shall be operated, controlled and managed by a Board of Trustees consisting of eight members, one of whom shall be the Mayor, who by virtue of his office shall be president of said Board, and six trustees to be appointed by the Mayor with the approval of Council, and the persons holding the office of Commissioner of Health of Lakewood shall constitute the eighth member of said Board. Such trustees shall be resident freehold electors of Lakewood and they shall not receive any compensation for their services.”

“Section 3. The said Board of Trustees shall have the entire control and management of such hospital and shall establish such rules for its government and the admission of persons to its privileges as it deems expedient, and shall annually appoint the professional staff as determined by approved hospital administration. Said Board shall also employ a superintendent, who shall not

be under civil service, and such assistants, nurses, physicians and surgeons and such other employees as said Board deems necessary, and fix their compensation, which compensation shall, however, be subject to the approval of the Council."

No other sections of the city charter, to my knowledge, make any reference to the trustees of the hospital nor does any other section of the charter grant any further authority to the trustees of the hospital.

It is the general rule of law that municipal expenditures may be made only for a purpose expressly authorized by law or when the expenditure can be necessarily implied from express powers given by law. The rule is stated in *McQuillin Municipal Corporations*, Second Edition, Vol. 5, page 933, as follows:

"Indebtedness incurred by the municipality and expenditures made must be for an authorized purpose. If no express power exists as mentioned, it must arise from necessary implication and unless the municipality may be fairly implied to have the power to make the expenditure involved for the purpose and in the mode adopted, the power will be denied."

In giving effect to the rule last quoted, the Supreme Court of Ohio, in the case of *State, ex rel. Thomas vs. Semple*, 112 O. S. 559, denied the right of a city to join and pay dues to a league of municipalities saying that since no express provision of the charter of the city concerned authorized the expenditure and since the expenditure was not necessary to carry into operation a thing expressly authorized, the expenditure could not be allowed.

A past Attorney General, in following the *Semple* case, *supra*, in *Opinion No. 109*, *Opinions of the Attorney General for 1929*, Vol. I, page 157, held that a charter city, in the absence of express charter provisions, might not expend its funds for the services of an organization known as the *Conference of Ohio Municipalities*.

There being no express provision in the charter of the city concerned allowing the expenditure and the purpose of the expenditure not being impliedly necessary to carry into operation an express provision, I find that the expenditure you inquire about may not be allowed.

In addition to the general impropriety of the expenditure by reason of the lack of a charter provision granting authority, other infirmities in the plan direct the same conclusion and confirm it.

You inform me that purchases made by the hospital through the Coun-

cil, of necessity, frequently or usually exceed the sum of Five Hundred Dollars (\$500.00). That being true, the usual restrictions of law governing purchases where the price is \$500.00 or more apply and the methods provided by law requiring advertisement and competition must be followed. It is also true that the fact the city concerned operates under a charter does not absolve the city of those restrictions. See *Phillips vs. Hume*, 122 O. S. 11, wherein at page 14 it is stated:

“The power of municipalities both to incur debts and to levy taxes may be restricted or limited by law and a municipality, by adopting a charter, can not escape from limitations imposed thereon by the General Assembly.”

It follows, therefore, that if the method of purchasing does not follow the course outlined by general law such methods of making expenditures can not be approved, even though the end sought be laudable.

It would appear further that the city, through the agency of those responsible for the management of the hospital, in joining with private institutions in purchasing, through the hospital council, attempts a thing prohibited by Section 6 of Article VIII of the Ohio Constitution. That section is as follows:

“No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association: provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state or doing any insurance business in this state for profit.”

The following quotations indicate the strictness with which the courts have treated any attempt by a municipal corporation to join with a private organization in doing any act:

Walker vs. Cincinnati, 21 O. S. at p. 54:

“The mischief which this section interdicts is a business partnership between a municipality or subdivision of the State, and individuals or private corporations or associations. It forbids the union of public and private capital or credit in any enterprise whatever.”

Wyscaver vs. Atkinson, 37 O. S. at p. 97:

“In short, the thing prohibited is the combination of any form whatever of the public funds or credit of any county, city, town or township with the capital of any other person, whether corporated or unincorporated, for the purpose of promoting any enterprise whatever.”

Under the literal rule of those cases, it is probable, therefore, that the plan of buying used by the municipal hospital concerned is in violation of Article VIII, Section 6 of the Constitution of this state.

A consideration of all of the above reasons leads me inevitably to the opinion that a municipal hospital may not expend funds for a joint purchasing service accomplished through the agency of a hospital council which purchases supplies and equipment for all hospitals within a certain locality.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

3133.

SOLDIERS' RELIEF COMMISSION — PROSECUTING ATTORNEY LEGAL ADVISER — COUNTY WHERE MEMBERS APPOINTED AND WHERE HE HOLDS OFFICE—NO AUTHORITY UNDER SECTION 2932 G. C. FOR BOARD COUNTY COMMISSIONERS TO AUTHORIZE WARRANTS TO PAY TRAVELING EXPENSES, SUCH COMMISSION, TO AND FROM COLUMBUS ACCOUNT OF CONFERENCE WITH STATE OFFICIALS TO DETERMINE LEGAL INTERPRETATION OF STATUTE—SUCH ACT NOT A DUTY OF MEMBERS, SOLDIERS' RELIEF COMMISSION.

SYLLABUS:

1. *The prosecuting attorney is the legal adviser to the members of the soldiers' relief commission for the county in which he holds office and for which such members have been appointed.*
2. *The board of county commissioners is not by Section 2932 of the*