

2203.

CHARTER — CITY OF CLEVELAND—YEARS 1924 AND 1931 —
SALARY AND COMPENSATION—EMPLOYEES IN CLASSIFIED
SERVICE.

SYLLABUS:

Salary and compensation of employes in the classified service of the City of Cleveland under the provisions of the city charters of 1924 and 1931 discussed.

Columbus, Ohio, April 19, 1940.

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

Gentlemen:

This will acknowledge receipt of your request for my opinion wherein you propound certain questions relative to the salary and compensation of employes of the City of Cleveland, which questions are prompted by a communication from one of your examiners assigned to said city. Receipt of the latter communication is also hereby acknowledged.

Effective January, 1924, the charter of the City of Cleveland was amended to provide for a city manager form of government. Section 102 of said charter provided as follows:

“The council shall by ordinance establish a schedule of compensation for officers and employes in the classified service, which

shall provide uniform compensation for like service as determined by the grading and classification of the civil service commission. The schedule of compensation so established, and any changes therein, shall be reported promptly to the civil service commission. Such schedule of compensation may establish a minimum and maximum for any grade, and an increase in compensation, within the limits provided for any grade, may be granted by the city manager or other appointing authority upon the basis of efficiency and seniority records."

Under the authority of the above quoted section, the city council passed the following ordinance which was embodied in the Municipal Code as Section 257:

"The salaries or compensation of employes in the classified service of the city shall be fixed by the city manager or other appointing authority, in accordance with the provisions of the charter and ordinances of the City of Cleveland, and according to the schedule of compensation hereby established, as set forth in the following sections of this division. Except as provided in section 347 no member of the classified service shall be paid less than the minimum, nor more than the maximum established in such schedule for the grade to which such employe belongs. In cases where the nature or circumstances of the employment make it necessary or expedient that the city furnish lodgings, subsistence, clothing, or other personal services to any employe or employes, the city manager shall give such circumstances proper consideration in fixing the compensation attaching to such positions."

The schedule of compensation referred to in the section above was set out in the Municipal Code as Sections 261 to 338, inclusive. As stated in the letter from your examiner, those sections "establish the schedule referred to in Section 257 and have classified such employes into groups with a minimum and maximum wage. This schedule also provided that many of these groups be granted subsistence, others maintenance, some subsistence and maintenance and others with either subsistence or maintenance. Our question hinges upon the interpretation of the words 'subsistence' and 'maintenance' and what council intended by their usage of these words. To illustrate:

'Section 268. Nurse Group. (*Subsistence and maintenance* furnished shall be taken into consideration when fixing compensation under this section).

'Section 270. Physicians Group. (This schedule covers part time employment and also that in which *maintenance or subsistence* may be furnished).

'Section 275. Pupil Nurse Group. (*with maintenance*).

'Section 317. Farm Workers. (*Subsistence*).'

Other classes with similar provisions could be added but to save repetition only those needed to indicate council's usage have been listed. Each of these groups contain a further breakdown into classes of positions within each group and the minimum and maximum compensation established for each."

In view of the schedule adopted by the city council, you inquire as to the legislative intent in using in some instances the word "subsistence," in other instances "maintenance," "maintenance and subsistence" and "maintenance or subsistence." A search of a number of dictionaries fails to reveal any substantial difference in meaning between "subsistence" and "maintenance."

In Volume II of *The New Century Dictionary* under the heading of Synonyms, Antonyms, and Discriminations, we find the following:

"Maintenance. Syn.: continuance, preservation; support, subsistence, sustenance, livelihood, living. See living."

"Subsistence. Syn.: see living, n."

"Living, n. Syn.: livelihood, subsistence, sustenance, support, maintenance; benefice, cure, curacy.

Living is especially applied to that which one earns in order to keep alive. In this sense the word often implies what is sufficient to live on economically, but not sufficient for luxury. Livelihood, a somewhat less common word, denotes a means of maintaining life, especially as earned, gained, or sought. Support and maintenance denote the providing of oneself or another with the means of living, support implying what is sufficient for necessary expenses, maintenance often implying more elaborate upkeep. Subsistence often and sustenance generally refer to food or what is taken directly into the body to maintain life."

From the foregoing, it appears evident that "maintenance" and "subsistence" are used interchangeably and synonymously in common parlance and by the lexicographers.

It will be noted that former Section 257 of the Municipal Code provided that:

" * * * In case where the nature of circumstances of the employment make it necessary or expedient that the city furnish lodgings, subsistence, clothing, or other personal services to any employe or employes, the city manager shall give such circumstances proper consideration in fixing the compensation attaching to such positions."

From such language, it is quite clear that the city council contemplated that the city manager in fixing the definite salary or compensation of an em-

ploye would take into consideration living expenses allowable to such employe in proper cases and when it used "maintenance" or "subsistence" in the schedule it had in mind the things enumerated in Section 257, supra, to-wit: lodgings, subsistence, clothing, or other personal services.

Under the circumstances, above and view of the interchangeability of the words, I fail to see how any logical distinction can be drawn. It is, therefore, my opinion that whenever the salary schedule provided for "maintenance," "subsistence," "maintenance or subsistence" and "maintenance and subsistence" for a class, an employe within that class might receive any and all of those things enumerated in Section 257, supra.

Your examiner further inquires "to what extent can such allowances be made? Were they intended to provide for the entire family of such employes? Would it allow the superintendent to feed and house his wife's father and her brother at the city's expense for an extended period of time. Would it allow the superintendent to feed and house a woman, employed by him as a maid, at the city's expense? Would it allow the superintendent and one of his farm employes to feed, bed, and generally care for ponies owned by them at the city's expense for a long period of time?"

The answers to those questions may readily be obtained from the very language of Section 257, supra, wherein it states that the allowances may be made "*to any employe or employes.*" It may be said without further discussion that whatever is allowed an employe by the city for his "living expenses" is confined to himself in the course of his regular employment and no further.

In November, 1931, the electors of the City of Cleveland amended the city charter by abandoning the manager form of government and replacing it with the mayor-council plan. Section 191 of the amended charter provides in part as follows:

"The council shall fix, by ordinance, the salary or compensation of the directors of departments, its own members and employes, the members of the divisions of police and fire, under the immediate control of the chiefs thereof, and of members of boards or commissions in the unclassified service of the city. The board of control shall fix the number and the salaries or compensation of all other officers and employes. * * * Salaries and compensation fixed at the time this section takes effect shall continue in force until otherwise fixed as provided in this section."

In connection therewith, your examiner comments in his letter as follows:

"All Board of Control resolutions subsequent to the adoption of the new charter fail to mention any provision for the allowance of either subsistence or maintenance to those groups which were granted such allowances under the previous charter."

Such being the case you inquire "if 'Subsistence' or 'Maintenance' is applicable in cases wherein the Board of Control has reestablished certain salaries without mention of these allowances, since the adoption of amended section 191 of the city charter."

Section 191, supra, is very specific to the effect that all salaries and compensation fixed at the time said section takes effect shall continue in force until otherwise fixed as provided in said section.

With respect to the salaries and compensation of the employes about whom you inquire, said Section 191 places the exclusive duty of fixing same upon the Board of Control. Once that Board has taken action the former salary and compensation schedule is without standing and henceforth salaries and compensation must be paid in accordance with the determination of the Board of Control.

In view of the fact that, as you state, the Board of Control has failed to provide for "maintenance" or "subsistence" in connection with the salaries and compensation of those groups formerly allowed same, in specific answer to your inquiry it is my opinion that such allowances may no longer be paid. The only allowances permissible are those made by the Board of Control under authority of Section 191, supra.

Respectfully,

THOMAS J. HERBERT,
Attorney General.