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MUNICIPAL CORPORATION—CITY AUDITOR AND DUTIES OF CLERK OF WATERWORKS MERGED UNDER SECTION 4276 G. C.—SALARY CANNOT BE PAID IN WHOLE OR IN PART FROM WATERWORKS FUNDS.

The salary of the auditor of a municipality which has merged the duties of the clerk of the waterworks with those of the auditor under section 4276 G. C. cannot be paid in whole or in part from the waterworks funds referred to in sections 3955 et seq. G. C.

COLUMBUS, OHIO, April 16, 1920.

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

GENTLEMEN:—Your letter of recent date directing attention to sections 3955 et seq. G. C., and inquiring whether or not a portion of the salary of a city auditor may legally be paid from the waterworks funds referred to in these statutes, in cities where the duties of the clerk of the waterworks have been merged with the duties of the city auditor under authority of section 4276 G. C., was duly received.

Examination of the statutes referred to discloses that the purposes to which waterworks funds may be applied are as follows:

Section 3619. Maintenance, construction, enlargement and extension of the works, and to the extinguishment of any indebtedness created therefor."

"Section 3958. Expenses of conducting and managing the waterworks."

"Section 3959. Repairs, enlargement or extension of the works or of the reservoirs, the payment of the interest of any loan made for their construction or for the creation of a sinking fund for the liquidation of the debt." Also, that amount levied and assessed for waterworks purposes shall be applied "to the creation of the sinking fund for the payment of the indebtedness incurred in the construction and extension of waterworks and for no other purpose whatever."

"Section 3973. Money received for the supply of certain surplus water may be applied 'to the payment of the principal and interest of the bonds issued for the construction of such waterworks, or other expenses incident to the maintenance of the waterworks.'"

"Section 3974. Amount received for certain supply of water shall be applied 'to the payment of the interest on the sum borrowed for the construction of such waterworks, or to defray the expenses of their management.'"

"Section 3977. The assessment and collection of a certain tax are authorized for the purpose of paying the 'interest on the money borrowed for the erection and completion of waterworks, during the erection and completion thereof, and before they are put in operation.'"

"Section 3978. The assessment and collection of a certain tax are authorized for the purpose of paying the 'interest of any loan which a municipality has made for the erection or extension of waterworks, and after they have been put in operation, and for the building of machinery.'"

It will thus be seen from the foregoing resume of the statutes relating to the expenditure and application of waterworks funds, that no provision is made author-

izing the use of any part thereof in paying, either in whole or in part, the salary of the city auditor, and, after careful investigation, I have been unable to find any statutory provision that would justify the application of the funds for such purpose.

It has, I understand, been suggested that the use of waterworks funds for such purpose might be warranted by section 4276 G. C., which authorizes certain cities to merge the duties of the clerk of the waterworks with those of the city auditor, etc. That statute reads as follows:

"The auditor shall keep the books of the city, exhibit accurate statements of all moneys received and expended, and of all property owned by the city and the income derived therefrom, and of all taxes and assessments. In cities having a population of less than twenty thousand the city council may, by a majority vote, merge the duties of the clerk of the waterworks, if any, clerk of the board of control and clerk of the city council with the duties of the city auditor, allowing him such additional assistants in performing such additional duties as council may determine."

While the statute quoted authorizes the city council to merge the duties of clerk of the waterworks with those of city auditor, it makes no provision for additional salary or compensation for the auditor on account of additional duties resulting from the merger; and not only that, but the statute has, in effect, provided that if the city auditor is unable to perform the additional duties, the city council may meet the situation by allowing him additional assistants. In other words, this statute, while authorizing the imposition of additional duties upon the city auditor, falls short of authorizing the payment to him of additional salary or compensation on account thereof.

It is the well settled rule in this state that the imposition of additional duties upon a public officer does not *per se* entitle him to additional compensation, and a *fortiori* should this be true when the statute imposing such duties makes provision for the appointment of assistants to perform them. See cases cited in 6 Page's Ohio Digest, pp. 12768 et seq., 3 Supplement, pp. 7702 et seq.

It may not be improper to add that the question under consideration does not involve the power or authority of the city council to increase the salary of the city auditor, and to provide for the payment of the increase from the proper fund. See in this connection 1916 Opinions of Attorney-General Vol. I, p. 597, which holds that where a merger of duties is effected under authority of section 4276 G. C., there can be no increase in the city auditor's salary or compensation during his term of office; and section 4213 G. C., which provides that "the salary of any officer, clerk or employe shall not be increased or diminished during the term for which he was elected or appointed," etc.

Respectfully,
JOHN G. PRICE,
Attorney-General.