

poration may, as a part of the compensation to its employeess, legally authorize group insurance on behalf of any or all of the employeess of such municipality.

COLUMBUS, OHIO, February 1, 1927.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.
Attention: Andrew H. Foster.*

GENTLEMEN:—I acknowledge receipt of your request for an opinion as to the authority of the City of East Cleveland legally to pay from public funds a portion of the premium on group life insurance covering members of the Fire and Police Department, the beneficiaries to be the dependents of such firemen and policemen.

And you call attention to a letter from this Department under date of May 17, 1924 relative thereto.

The Constitution of Ohio, Article XVIII, Section 3, provides:

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws.”

Section 7 of the same Article provides:

“Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of Section 3, of this Article, exercise thereunder all powers of local self-government.”

I therefore advise you that the answer to your question depends upon the provisions of the charter of East Cleveland. The interpretation of the provisions of this charter should come in the first instance from the solicitor or attorney for East Cleveland. If you should later have occasion to question such opinion, this Department will go into the matter for you, provided of course, that a copy of the East Cleveland charter, together with all legislation in respect of the particular question, is submitted to me.

For your general information, I beg to advise you that unless forbidden by its charter, the legislative authority of a municipal corporation may, as a part of the compensation to its employeess, legally authorize group insurance on behalf of any or all of the employeess of such municipality.

Respectfully,
EDWARD C. TURNER,
Attorney General.

38.

LIBRARY TRUSTEES—UNDER SECTION 4004 G. C. LIMITED TO AMOUNT OF MONEY THEY MAY EXPEND WITHOUT ADVERTISING, COMPETITIVE BIDDING OR CONTRACT—UNDER SECTIONS 4221 AND 4328 G. C. SUCH EXPENDITURES MAY NOT EXCEED FIVE HUNDRED DOLLARS.

SYLLABUS:

Except as to expenditures for the compensation of employeess, library trustees,

appointed by virtue of the provisions of Section 4004 of the General Code are limited as to the amount of money they may expend without advertising, competitive bidding, and a written contract with the lowest and best bidder, to expenditures which do not exceed five hundred dollars, as provided in Sections 4221 and 4328 of the General Code.

COLUMBUS, OHIO, February 1, 1927.

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

GENTLEMEN:—I have your communication of recent date as follows:

“The village of ——— owns and operates a public library under the provisions of Sections 4004 to 4013 of the General Code. Section 4005 provides in part that ‘in the making of contracts the trustees shall be governed by the provisions of law applicable thereto.’

We are unable to find any provisions of law applicable thereto and will appreciate your views as to whether or not such board of trustees may expend amounts in excess of \$500, which is the limitation in Section 4221, for village contracts made by council without advertising for bids and entering into a contract with the lowest and best bidder.”

Your specific question is whether or not library trustees, appointed under authority of Section 4004, may expend money in excess of five hundred dollars without advertising for bids.

Section 4004 of the General Code provides in part as follows:

“* * * the erection and equipment, and the custody, control and administration of free public libraries established by municipal corporations, shall be vested in six trustees, * * *. Such trustees shall be appointed by the mayor, * * *.”

Section 4005 of the General Code provides in part as follows:

“* * * such trustees shall employ the librarians, and necessary assistants, fix their compensation, adopt the necessary by-laws and regulations for the protection and government of the libraries and all property belonging thereto, and exercise all the powers and duties connected with and incident to the government, operation and maintenance thereof. * * * In the making of contracts, the trustees shall be governed by the provisions of law applicable thereto.”

It is apparent from the foregoing sections that the trustees, being appointed by the mayor and having charge of municipal property, to-wit, the public library established and owned by the village, must necessarily be village officers.

While the statutes relating to village libraries do not contain specific provisions limiting the powers of such trustees in making contracts, the concluding paragraph of Section 4005, General Code, above quoted, does provide such limitation.

It is well settled that in the construction of statutes the court must give effect to the intention of the legislature. This intention is to be ascertained from the language used. If the language is clear and unambiguous, there is no occasion for judicial construction. However, where the statutory provisions are doubtful, it is permissible to consider the history of the legislation, the general purpose of the provision and the evils sought to be remedied.

In the case of *Slingluff, et al vs. Weaver, et al.*, 66 O. S., 621, the first syllabus is in part as follows:

“The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the lawmaking body which enacted it. And where its provisions are ambiguous, and its meaning doubtful, the history of legislation on the subject, and the consequences of a literal interpretation of the language may be considered; * * *”

This case was followed by the court in the case of *Erie Railroad Company vs. Steinberg*, 94 O. S., 189. At page 203 of the opinion the court said:

“Where, however, the meaning is doubtful, the history of legislation on the subject may be considered in connection with the object, purpose and language of the law, in order to arrive at its true meaning.”

There can be no doubt of the intention of the legislature to limit the power of library trustees in the making of contracts. The only uncertainty arises in determining the limitation to which the legislature referred in the concluding sentence of Section 4005, above set out.

By act passed October 22, 1910, 96 O. L., p. 20, the legislature enacted Senate Bill No. 1, entitled:

“AN ACT to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent the abuse of such powers, as required by the constitution of Ohio, and to repeal all sections of the Revised Statutes inconsistent herewith.”

Section 198 of the act provided as follows:

“All contracts made by the council of any village shall be executed in the name of the village and signed on behalf of the village by the mayor and clerk and shall be made subject to the provisions of Sections 143 and 144 of this act so far as the same are applicable.”

Sections 143 and 144 of the act provided for the method of making contracts by the directors of public service of cities and provided for written contracts after advertising in all cases involving the expenditure of more than five hundred dollars.

Section 218 of the same act provided for the custody, control and administration of free public libraries established by municipal corporations and contained the provision now appearing as the last sentence in Section 4005, General Code, above quoted.

Thus the legislature specified the proceedings and the limitation in the section governing cities and adopted those provisions, so far as applicable, by reference, as to villages and library trustees. There is no other provision of law to which the legislature could have referred in said Section 4005, and any other conclusion than the one herein reached would render entirely meaningless the language in question.

Section 143 of the act became Sections 4328 to 4332 of the General Code, both inclusive. The provisions of Section 198 of the act are now found in Section 4221 of the General Code. You will observe from these sections that the five hundred dollar limitation does not apply to expenditures for compensation of employes.

I am therefore of the opinion that library trustees, appointed under authority of Section 4004 of the General Code, may not expend money in excess of five hundred dollars, other than for the compensation of employes, without advertising, competitive bidding and the making of a written contract with the lowest and best bidder.

Respectfully,

EDWARD C. TURNER,

Attorney General.

39.

ENFORCEMENT LAWS FOR PROTECTION, PRESERVATION AND PROPAGATION OF BIRDS, FISH AND GAME—UNDER SECTION 1444, G. C., DUTY OF PROSECUTING ATTORNEY TO PROSECUTE—FAILURE DOES NOT DEPRIVE COURT OF JURISDICTION OR ENTITLE CASE TO BE DISMISSED.

SYLLABUS:

In a prosecution instituted under provisions of Section 1444 of the General Code, relating to the enforcement of the laws for the protection, preservation and propagation of birds, fish and game, by the terms of such section it is the duty of the prosecuting attorney of the county in which the offense was committed, to prosecute such action, but the failure or neglect of such prosecuting attorney to prosecute such action does not deprive the court of jurisdiction to hear and determine the same, or entitle the defendant to have such case dismissed.

COLUMBUS, OHIO, February 1, 1927.

Department of Agriculture, Division of Fish and Game, Columbus, Ohio.

GENTLEMEN:—Under date of January 12, 1927, you submitted to this office a letter from one of the deputies in your department, requesting an opinion upon the following question propounded therein:

Does the failure or neglect of the prosecuting attorney to prosecute a case in which the defendant is charged with a violation of the laws for the protection, preservation and propagation of birds, fish and game, as required by Section 1444 of the General Code, deprive the court, before whom an affidavit charging such violation has been properly and legally filed, of jurisdiction to hear and determine such case and entitle the defendant to have such proceeding dismissed?

Section 1444 of the General Code provides:

“Sheriffs, deputy sheriffs, constables, marshals, chiefs of police and other police officers shall enforce the laws for the protection, preservation and propagation of birds, fish and game and for this purpose they shall have the power conferred upon wardens. Prosecution by any officer for offenses not committed in his presence shall be instituted only upon the approval of the prosecuting attorney of the county in which the offense is committed, and said prosecuting attorney shall prosecute such action.”

It was the purpose of the legislature in enacting this statute to prevent promiscuous