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SYLLABUS:

1. Under the decisions of the Ohio Supreme Court rendered in *The State ex rel. Canada v. Phillips, Director of Public Safety*, 168 Ohio St., 191, municipalities operating under a charter form of government have the right to proceed under the terms of their charter and the municipal legislation enacted pursuant thereto with respect to augmentation of police departments by the appointment of special police officers on a temporary basis.

2. Cities operating under one of the statutory forms of government are enabled under the terms of Section 737.05 to appoint special police officers on a temporary basis.

3. Villages operating under one of the statutory forms of government are permitted under the terms of Sections 737.16 and 737.17, Revised Code, to appoint special police officers on a temporary basis.

Columbus, Ohio, April 22, 1963

Hon. Roger W. Tracy
Auditor of State
State House
Columbus, Ohio

Dear Sir:

I have your request for my opinion which involves the right of municipalities to enter into a contract, on a temporary basis, for the hire of private police investigators as an adjunct to the regular police department and is quoted in part as follows:

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“Does a municipal corporation, operating either under an unrestricted charter or under one of the statutory forms of municipal government, have the authority to contract with a private individual or firm for the services of special investigators in connection with a criminal investigation conducted by the police department of the municipality?”

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With respect to municipalities operating under a charter, I believe that the ruling as set forth in Sections three, four and seven of the syllabus in *The State, Ex rel. Canada, Appellant v. Phillips, Director of Public Safety, Appellee*, 168 Ohio St., 191, decided in the Supreme Court of Ohio in 1958, is the prevailing law in this state and is quoted as follows:

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“3. The authority of the General Assembly, to enact laws applicable to cities pursuant to Section 10 of Article XV of the Constitution, is an authority to enact such laws to be applicable in cities only where and to the extent that such laws will not restrict the exercise by such cities of their powers of local self-government.

“4. The words, ‘as are not in conflict with general laws’ found in Section 3 of Article XVIII of the Constitution, modify the words ‘local police, sanitary and other similar regulations’ but do not modify the words ‘powers of local self-government.’

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“7. Where a municipality establishes and operates a police department, it may do so as an exercise of the powers of local self-government conferred upon it by Sections 3 and 7 of Article XVIII of the Constitution; and, if it does, the mere interest or concern of the state, which may justify the state in providing similar police protection, will not justify the state’s interference with such exercise by a municipality of its powers of local self-government.

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In rendering its decision, the Supreme Court considered the following excerpts from the Ohio Constitution:

Section 10, Article XV:

“ ‘Appointments and promotions in the civil service

of the state, the several counties, and cities shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision.’ ”

Section 3, Article XVIII:

“ ‘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, Article XVIII:

“ ‘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 can only conclude from the above that provisions of a charter, in matters of purely local self-government, will supersede general state laws wherever there may be a conflict. While the City of Columbus was under consideration in the *Canada* case, *supra*, it is reasonable to believe that the decision would apply to all municipalities operating under a charter form of government.

Cities operating under one of the statutory forms of government are confined to the language of Section 737.05, Revised Code, which is quoted below:

“The police department of each city shall be composed of a chief of police and such other officers, patrolmen, and employees as the legislative authority thereof provides by ordinance.

“The director of public safety of such city shall have the exclusive management and control of all other officers, surgeons, secretaries, clerks, and employees in the police department as provided by ordinances or resolution of such legislative authority. He may commission private policemen, who may not be in the classified list of the department, under such rules and regulations as the legislative authority prescribes.”

There is nothing in this statute to prevent the director of public safety of such a city with proper legislative authority from engaging temporary policemen to augment the regular police force.

Municipalities that have not acquired city status, or villages, are governed in the appointment of police officers by the provisions of Sections 737.16 and 737.17, Revised Code.

Section 737.16, Revised Code:

“The mayor shall, when provided for by the legislative authority of a village, and subject to its confirmation, appoint all deputy marshals, policemen, night watchmen, and special policemen. All such officers shall continue in office until removed therefrom for the cause and in the manner provided by section 737.15 of the Revised Code.”

Section 737.17, Revised Code:

“All appointments made under sections 737.15 and 737.16 of the Revised Code shall be for a probationary period of six months’ continuous service, and none shall be finally made until the appointee has satisfactorily served his probationary period. At the end of the probationary period the mayor shall transmit to the legislative authority of the village a record of such employee’s service with his recommendations thereon and he may, with the concurrence of the legislative authority, remove or finally appoint the employee.”

These statutes clearly grant authority to the mayor of a village acting under legislative direction to appoint special policemen for purposes such as you have stated in your inquiry. There is one noteworthy exception to the general rule as expressed in Opinion No. 1019, Opinions of the Attorney General for 1957, page 451, and is summed up in the syllabus of that opinion to wit:

“The contract for police services entered into by a village and a partnership business entity is not authorized by law.”

In this opinion, the general law is interpreted to mean that a municipality can only contract with individuals for police services and I concur with the former ruling of this office.

I am therefore of the opinion and you are so advised that:

1. Under the decision of the Ohio Supreme Court rendered in *The State, ex rel. Canada V. Phillips, Director of Public Safety, supra*, municipalities operating under a charter form of government have the right to proceed under the terms of their charter and the municipal legislation enacted pursuant thereto with re-

spect to augmentation of police departments by the appointment of special police officers on a temporary basis.

2. Cities operating under one of the statutory forms of government are enabled under the terms of Section 737.05 to appoint special police officers on a temporary basis.

3. Villages operating under one of the temporary forms of government are permitted under the terms of Section 737.16 and 737.17, Revised Code, to appoint special police officers on a temporary basis.

Respectfully,
WILLIAM B. SAXBE
Attorney General