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1. WAGES AND SALARIES—CITY EMPLOYEES—ORDINANCE FIXING SAME — ONE OF GENERAL NATURE — IN ABSENCE OF CHARTER PROVISION INCONSISTENT THEREWITH REQUIRES PUBLICATION — SECTIONS 4227, 4228, G. C.
2. EMERGENCY ORDINANCES—GENERAL NATURE—MUST BE PUBLISHED—TAKE EFFECT IMMEDIATELY—NOTWITHSTANDING PROVISIONS OF SECTIONS 4227, 4230, G. C. AS TO PUBLICATION.
3. CHARTER PROVISIONS — ADOPTED PURSUANT TO ARTICLE XVIII, SECTION 7, CONSTITUTION OF OHIO—MATTERS OF LOCAL SELF-GOVERNMENT—PUBLICATION OF ORDINANCES—PREVAIL OVER CONFLICTING AND DIFFERENT PROVISIONS OF GENERAL LAWS OF STATE.

SYLLABUS:

1. An ordinance fixing wages and salaries of city employes is an ordinance of general nature within the meaning of that term as used in Section 4227, General Code, and in the absence of any charter provision inconsistent therewith, requires publication in accordance with the provisions of Section 4228, General Code.

2. Emergency ordinances which are of a general nature must be published, but take effect immediately, notwithstanding the provisions of Sections 4227 and 4230, General Code, requiring publication.

3. Charter provisions adopted pursuant to Section 7, Article XVIII of the Ohio Constitution, relating to matters of local self-government, including the manner of publication or ordinances, will prevail over conflicting and different provisions of the general laws of the state.

Columbus, Ohio, August 17, 1951

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion, reading as follows:

“We are in receipt of a letter from our Examiner, in charge of the current audit of the City of Youngstown, raising two questions concerning the publication of municipal ordinances in a charter city.

“The City of Youngstown has adopted a home rule charter. Section 16 of said charter reads:

“Every ordinance or resolution, upon its final passage, shall be recorded in a book kept for that purpose, and shall be authenticated by the signature of the city clerk. Every ordinance or resolution of a general nature or providing for public improvements, or assessing property, shall, upon its final passage, be promptly published one time in a newspaper of general circulation throughout the city. In lieu of such publication, the council may provide for the publication of a city bulletin in which such publication may be made and in which all other publications may be made which are required by this Charter or the General Code.

“In the publication of an ordinance or resolution it shall be sufficient to state the title and the substance thereof, together with the fact that a complete copy thereof is on file and may be seen at the office of the City Clerk.’

“In order to present the questions properly for your consideration we quote from our examiner’s letter of July 15, 1950 as follows:

“Section 4227, General Code, provides in part:

“No ordinance shall take effect until the expiration of ten days after the first publication, etc.”

“The City Clerk of the City of Youngstown has not considered an ordinance fixing the salaries and wages of city employees in various city departments as being an ordinance of a general nature requiring publication in accordance with the provisions of either the city charter or the general code.

“Your examiner is in disagreement with the City Clerk over this matter, as I have always been of the opinion that an ordinance fixing salaries and wages of city officials or employees was one of a general nature, and according to the amended provisions of Section 4230, G. C., requires publication regardless of whether said ordinance was adopted as an emergency or not.

“The question has arisen as to the effective date of an ordinance recently passed, not an emergency measure, which the City Clerk failed to publish. My contention has been that if said salary ordinance had been promptly published, it would be effective 30 days after passage, but since it was not published, its provisions cannot legally be effective until the expiration of ten days after the first publication.’

“In connection with the foregoing provisions of the City Charter of Youngstown and Section 4227 of the General Code, your attention is directed to Opinions of the Attorneys General as follows:

Opinion No. 313, page 346 of 1933

Opinion No. 934, page 2005 of 1915

“May we respectfully request that you examine the Charter provisions of the City of Youngstown together with the statutes governing publication of municipal ordinances and give us your formal Opinion in answer to the following questions:

“1. Is a municipal ordinance fixing salaries and wages of city employes an ordinance of a ‘general nature’ within the meaning of that term as used in Section 16 of the Charter of the City of Youngstown and Section 4227 of the General Code?

“2. When a municipal corporation has adopted a Charter which contains provisions for publication of ordinances and resolutions different from those contained in the general laws of the State of Ohio (Sections 4227, 4228, 5229 and 4230, General Code) which authority is controlling, the state laws or Charter provisions?”

Your letter indicates that you are also interested in the effective date of operation for ordinances of a general nature, and the effect of emergency ordinances of general nature on the publication requirements in Sections 4227, 4227-3, 4228 and 4230, General Code.

Section 4227, General Code, provides in part:

“* * * Ordinances of a general nature, * * * shall be published as hereinafter provided before going into operation. No ordinance shall take effect until the expiration of ten days after the first publication of such notice. * * *”

In regard to your first question, whether an ordinance fixing wages and salaries of city employes is of a general nature, you are referred to Opinion No. 934, Opinions of the Attorney General for 1915, page 2005. In that opinion, on page 2006, my predecessor in office stated very clearly, that:

“* * * an ordinance fixing salaries is an ordinance of general nature, and, under the provisions of section 4227, G. C., requires publication. * * *”

It seems only reasonable that an ordinance fixing wages and salaries of city employes should be construed to be of a general nature as distinguished from ordinances of a special nature, such as assessing ordinances, having a direct financial or other effect on only a portion of the general public. See *Kohler Brick Co., et al., v. City of Toledo, et al.*, 10 O. C. C. (N. S.) 137, 10 O. C. D., 599 (1907,) and Opinion No. 524, Opinions of the Attorney General for 1927, page 829, cf. *Massillon Electric & Gas Company v. Orrville (Vil.)* 36 O. C. C. 43 (1914.) It will affect the entire public. The money will probably come from general funds contributed by the public as a whole, not merely from those whose salaries and wages are being fixed by the ordinance. The obvious purpose of the publicity requirement in Section 4227, *supra*, is to serve as a useful and effective check upon the municipal administration by way of informing the general public of all legislative action directly affecting them financially or otherwise. An ordinance fixing wages and salaries should fall within the purpose of that publicity requirement. Hence, I hold that such ordinance is of a general nature within the meaning of that term as used in Section 4227, and must be published.

As to the effective date of ordinances and other measures passed by the city council, we may refer to Section 4227, *supra*, which provides for publication of ordinances of a general nature or providing for an improvement, and further that “no ordinance shall take effect until *after* the expiration of ten days after the first publication.” It will be observed that there is nothing in the language of that section which declares affirmatively

that the ordinance shall take effect immediately upon the end of such ten day period.

We note further the provision of Section 4227-2, General Code, which provides:

“* * * No ordinance or other measure shall go into effect until thirty days after it has been filed with the mayor of a city or passed by the council in a village, except as hereinafter provided.”

This section is part of the law providing for the initiative and referendum, first enacted in 1911 (102 Ohio Laws, 521.) These provisions for initiative and referendum were enacted into the General Code a year prior to the adoption on September 1, 1912, of Section 1f, as an amendment to Article II, of the Ohio Constitution. Section 1f reads as follows:

“The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.”

There might seem to be an irreconcilable inconsistency between Section 4227-2 and Section 4227, *supra*, in that the latter appears to establish ten days after the first publication as the effective date of an ordinance, whereas Section 4227-2 requires a lapse of thirty days before it may go into effect. If there were any outright inconsistency we would have to resolve it in favor of Section 4227-2, because it is the later enactment. However, it does not appear that there is any necessary inconsistency. It is manifestly possible that an ordinance would take effect thirty days after its passage, and that the ten days after its first publication may, in the meantime, have elapsed. There is a possibility that the publication of the ordinance may have been delayed to some extent, even beyond the thirty day period, in which event, it would appear that the ordinance would not take effect until sometime after the thirty day period. This situation was commented upon in Opinion No. 691, Opinions of the Attorney General for 1946, page 8. The then Attorney General, in the course of the opinion, said:

“It appears to me that these conflicts may be resolved if we keep in mind that Section 4227 was the fundamental law and that the provisions of the initiative and referendum statutes in so far as they are in apparent conflict may be regarded as exceptions. While Section 4227 provides that, ‘No ordinance shall take effect

until the expiration of ten days after the first publication', Section 4227-2 provides that, 'No ordinance or other measure shall go into effect until thirty days after it shall have been filed with the mayor of a city or passed by the council in a village, except as hereinafter provided.' These two provisions can both be complied with in the enactment of an ordinance and there is no necessary conflict."

An exception to both of the above limitations is found in Section 4227-3, General Code, where it is provided:

"* * * Ordinances or other measures providing for appropriations for the current expenses of any municipal corporation, or for street improvements petitioned for by the owners of a majority of the feet front of the property benefited and to be especially assessed for the cost thereof as provided by statute, and emergency ordinances or measures necessary for the immediate preservation of the public peace, health or safety in such municipal corporation, shall go into immediate effect. * * *"

In this connection, we should also note the provisions of Section 4228, General Code, which provides the manner in which all municipal ordinances and resolutions, and certain other matters, shall be published, to wit, in two newspapers of opposite politics published and of general circulation in the municipality, with certain alternatives in case there are no such newspapers. We should also note the provisions of Section 4230, General Code, as amended, effective October 11, 1945. The last sentence of that section reads as follows:

"Except as herein provided, all ordinances *including emergency ordinances*, shall be published in accordance with the provisions of Section 4228, General Code." (Emphasis added.)

Although this provision might seem to be inconsistent with Section 4227-3, *supra*, providing that emergency ordinances and certain others, shall go into immediate effect, this situation was clarified by the 1946 Opinion No. 691, to which I have referred. It was there pointed out that while the purpose of the emergency clause in Section 4227-3, General Code, is to give immediate effect to certain legislation when it is deemed by the legislative body that immediate effectiveness is necessary for the "preservation of the public peace, health or safety," yet it is quite proper that the legislature should have required such ordinance to be published even after it became effective, in order that the public may be advised of the contents thereof.

The same principle was recognized in Opinion No. 1009, Opinions of the Attorney General for 1927, page 1768, which was long prior to the provision of Section 4230, above quoted, expressly requiring emergency ordinances to be published.

You direct my attention to a provision of the Charter of the City of Youngstown, which undertakes to provide a medium for publication of ordinances entirely inconsistent with Section 4228, General Code, to wit, a City Bulletin, it being also provided that only the title and substance of the ordinance need be published reference being made to the complete text of the ordinance on file in the office of the City Clerk.

Your inquiry is as to which authority controls when municipal charter provisions are different from the general laws of Ohio. I would refer you first to Article XVIII of the Ohio Constitution, Sections 3 and 7. Section 3 provides as follows:

“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.” (Emphasis added.)

Section 7 provides as follows:

“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.” (Emphasis added.)

In view of the fact that these sections were adopted at the same time, and that Section 3 is incorporated by reference into Section 7, it seems clear that they must be construed together when determining the validity of charter provisions authorized under Section 7. It is also clear that Section 7 applies only to municipalities adopting charters thereunder; that Section 3 is applicable to *all* municipalities; and that the limitations provided therein apply with equal force to Section 7.

In the early case of *Billings, et al., v. The Cleveland Railway Co.*, 92 Ohio St., 478 (1915), Johnson, J., at page 483, referring to the adoption of the Home Rule Amendment, said:

“ * * The people made a new distribution of governmental power. * * * The source of authority and the measure of its extent is the constitution. The powers conferred by such a charter,*

adopted within the limitations stated, are not affected by the general statutes of the state."

At page 484, he states :

"It was contemplated by the framers of the amendment to the constitution that the provisions in a charter, adopted by a city, would differ from the general laws of the state, within the limits defined by the constitution. The object of the amendment was to permit such differences and to make them effective."

The limitations upon the powers conferred by charters are that their provisions must relate to purely "local self-government," and that they must not operate beyond the physical limits of the municipality. Nor may the "police, sanitary and other similar regulations," permitted under Section 3, conflict with the general laws. Numerous charter provisions, not "police, sanitary or similar regulations," which conflicted with, and were different from the general laws of Ohio, have been upheld when operating physically and governmentally on a purely municipal scale. See *Hile v. City of Cleveland*, 107 Ohio St., 144, 141 N. E., 35 (1923); *Fitzgerald v. City of Cleveland*, 88 Ohio St., 338, 103 N. E., 512 (1913); *Reutner v. City of Cleveland*, 107 Ohio St., 117, 141 N. E., 27 (1923); *Froelick v. City of Cleveland*, 99 Ohio St., 376, 124 N. E., 212 (1919.)

In the case of *State ex rel. Hile v. Cleveland*, 26 Ohio App., 265 (dismissed by Supreme Court,) the court had before it the validity of the proceeding of the council of the City of Cleveland in issuing certain bonds, and one of the questions raised was that the publication of the ordinance in the "City Record" as required by the city charter was improper, and that it must be published in certain newspapers in accordance with Section 4228, General Code. The court held that the provisions of the charter prevailed over the statute, and referred to an unreported case by the same court wherein a like conclusion was reached and publication under Section 4228 was enjoined.

The case of *State ex rel. Toledo v. Weiler*, 101 Ohio St., 123, was an original action in mandamus to compel the publication of a certain bond ordinance in the Toledo City Journal, a publication of the city itself, created by its charter. The court in the Weiler case, *supra*, cited this case, saying :

"While the question made in that case was not as to where the ordinance should be published, it is reasonable to suppose that

the Supreme Court would not have compelled the publication of said ordinance in the Toledo City Journal if Section 4228, General Code, was controlling, but would have required the ordinance to be published in two English newspapers of opposite politics. The Supreme Court did, by mandamus, order the publication of said ordinance in said Journal."

In Opinion No. 313, Opinions of the Attorney General for 1933, page 346, it was held:

"Ordinances of a general nature, except in municipalities organized under section 7, article XVIII of the Ohio constitution which have specifically provided otherwise by charter, must be published in their entirety and where published by caption only do not meet with the requirements of section 4228, of the General Code."

While it appears clear to me that based only upon a consideration of the constitutional provisions relative to home rule, a municipality would have a clear right to make provision not only for a distribution of powers different from those set out in the statutes, but also a procedure to be followed in the exercise of its powers of local self-government, I find that the legislature, itself, following the adoption of the home rule amendment, has seen fit to take specific action conceding to municipalities the right to put into their charters provisions differing from those of the general law. Thus, the General Assembly in 1914 added to the statutes relating to the initiative and referendum Section 4227-1 et seq., a new section, 4227-12, General Code, reading as follows:

"The provisions of sections 4227-1 to 4227-13 inclusive shall not apply to any municipality that has or may hereafter adopt its own charter which contains an initiative and referendum provision for its own ordinances and other legislative measures."

Still later, it enacted the general provision found in Section 4676-1, General Code, reading in part as follows:

"Municipal corporations now or hereafter operating under a special charter adopted in accordance with the constitution of the state of Ohio, which charter provides for or authorizes in whole or in part a method of procedure in the passage and publication of legislation, the making of improvements and the levying of assessments differing from the method prescribed by general law, may pass and publish such legislation, make such improvements and levy such assessments either under the provisions of the gen-

eral law or in accordance with the procedure so provided for or authorized by such local charter. * * *.”

It should be observed that there is no constitutional or other fundamental principle requiring any publication of municipal ordinances. In this respect they stand on the same footing as the enactments of the legislature. As said in *McQuillin on Municipal Corporations*, Vol. 5, Sec. 16.76, p. 295:

“Publication or notice of pendency of ordinances, unless required by charter or statute, is not necessary to their enactment or validity. However, since all valid ordinances have the force of law within the municipal territory, are binding upon inhabitants and strangers, operate upon property within the corporate limits, and require all persons upon whom they are binding to take notice of them, it is a reasonable requirement that notice of the pendency of ordinances shall be given in some appropriate manner before they are permitted to take effect. * * *.”

Sections 3 and 7 of Article XVIII, to which reference has been made, are preceded by Section 2, of the same article, which provides:

“General laws shall be passed to provide for the incorporation and government of cities and villages * * *.”

Read in connection with the home rule powers which follow, it appears to me that we should conclude that the provisions of the statutes relating to publication and effective date of municipal ordinances are to be followed, except to the extent that a municipality, exercising its right of self-government, has provided otherwise. This idea was expressed by Judge Shauck, in the case of *State ex rel. Toledo v. Lynch*, 88 Ohio St., 71, the first case decided in reference to the home rule amendment. At page 93, of the opinion, he said:

“But the amended article authorizes the electors of a municipality to secure some immunity from the uniform government which it perpetuates as the primary status of all municipalities, and to entitle their municipality ‘to exercise all powers of local self-government.’ ”

Accordingly, in the case you present, it is my opinion that in so far as the charter of the city of Youngstown contains provision inconsistent with the statutes relative to the passage, publication and effective date of ordinances, such charter provision will prevail; but as to matters

not so provided by such charter, the general laws relative thereto should be observed.

In specific answer to your questions, it is my opinion that:

1. An ordinance fixing wages and salaries of city employes is an ordinance of general nature within the meaning of that term as used in Section 4227, General Code, and in the absence of any charter provision inconsistent therewith, requires publication in accordance with the provisions of Section 4228, General Code.

2. Emergency ordinances which are of a general nature must be published, but take effect immediately, notwithstanding the provisions of Sections 4227 and 4230, General Code, requiring publication.

3. Charter provisions adopted pursuant to Section 7, Article XVIII of the Ohio Constitution, relating to matters of local self-government, including the manner of publication or ordinances, will prevail over conflicting and different provisions of the general laws of the state.

Respectfully,

C. WILLIAM O'NEILL

Attorney General