

1893.

JUDGMENT—AGAINST MUNICIPALITY FOR SALARIES OF MAYOR
AND MARSHAL—BASED ON NON-CONTRACTUAL OBLIGATION—
PAYMENT BY BOND ISSUE UNAUTHORIZED.

SYLLABUS:

A judgment against a municipality for salaries of the mayor and marshal is not a judgment based on non-contractual obligations such as may be paid by issuing bonds under Section 2293-3, General Code.

COLUMBUS, OHIO, May 22, 1930.

HON. LEE D. ANDREWS, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“In your opinion to me No. 1812, under date of April 25, 1930, you state that bonds may be issued if the judgment in question was based upon a non-contractual obligation.

This question was submitted to council yesterday and they are desirous of issuing bonds to pay these judgments and inquired of me whether or not the judgments were based upon non-contractual obligations. I would like to submit the question to you as follows: The judgments are for the salaries of the mayor and marshal of the village. The salaries were fixed at about the time Judge Taft rendered his decision making the judgments illegal where the arresting officer or trial court had an interest in the costs. More than sixty days before these officers were elected in 1927, the council fixed the salaries of the mayor and marshal, both of whom were elected by the people. The revenue of the village was not sufficient to pay their salaries and they were placed in judgment. I am unable to say whether this is a contractual or a non-contractual obligation. The council prefers to issue the bonds upon the assumption that it is a non-contractual obligation.

Your early opinion on this is desired.”

As pointed out in Opinion No. 1812, under the provisions of Section 2293-3, General Code, bonds may be issued as therein provided to pay final judgments rendered against a subdivision in an action for personal injuries or based on other non-contractual obligations. You present the question of whether or not salaries of public officers are contractual or non-contractual obligations within the meaning of this section. I assume that the judgments which have been rendered against the subdivision are for salaries which were earned by the mayor and the marshal of the village.

There is considerable conflict in this country as to whether or not the obligation to pay salaries to public officers is contractual. In Throop on “Public Officers”, the text on this subject appearing on pp. 429, 430 is as follows:

“It has been often held, that an officer’s right to his compensation does not grow out of a contract between him and the state, or the municipality by which it is payable. The compensation belongs to the officer, as an incident of his office, and he is entitled to it, not by force of any contract, but because the law attaches it to the office; * * *.”

In support of this text is cited the case of *Steubenville vs. Culp*, 38 O. S. 18, the syllabus of which is as follows:

“A police officer, suspended from office, by the mayor of a city, under

the authority granted by Sections 121 and 211 of the municipal code (66 Ohio L. 170, 184), is not entitled to wages during the period of such suspension, notwithstanding the council afterward declared the cause of suspension insufficient."

In the opinion of the court at p. 23, it is said:

"Offices are held, in this country, neither by grant nor contract, nor has any person a vested interest or private right of property in them."

The foregoing principle is apparently no longer recognized in Ohio since the decision by the Supreme Court in the case of *Cleveland vs. Luttner*, 92 O. S. 493. In this case, the court definitely established the principle that in this state the obligation to pay the legal compensation to a public officer is contractual in its nature. In the per curiam opinion in which the majority of the court concurred, the following language is used:

"A public officer is a public servant, whether he be a policeman of a municipality or the president of the United States. His candidacy for appointment or election, his commission, his oath, in connection with the law under which he serves, and the emoluments of his office constitute the contract between him and the public he serves."

Since a public officer's salary is one of the elements of the contract between him and the public he serves, it must follow that a judgment against a municipality for salaries of the mayor and marshal is not a judgment based on non-contractual obligations such as may be paid by issuing bonds under Section 2293-3, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1894.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE MELBOURNE CONSTRUCTION COMPANY, CANTON, OHIO, FOR CONSTRUCTION OF A COTTAGE AT THE MASSILLON STATE HOSPITAL, MASSILLON, OHIO, AT AN EXPENDITURE OF \$78,580.00—SURETY BOND EXECUTED BY THE STANDARD ACCIDENT INSURANCE COMPANY OF DETROIT, MICHIGAN.

COLUMBUS, OHIO, May 22, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works for the Department of Public Welfare (Massillon State Hospital), and the Melbourne Construction Company, Canton, Ohio. This contract covers the construction and completion of General Contract for erection of a cottage at the Massillon State Hospital, as set forth in Item No. 1, Item No. 7 (alternate G-1), Item No. 11 (alternate G-5) of the Form of Proposal dated March 29, 1930, and calls for an expenditure of seventy-eight thousand five hundred and eighty dollars (\$78,580.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover