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MUNICIPAL CORPORATION—TRUSTEES OF MUNICIPAL FIREMEN'S PENSION FUND OR MUNICIPAL POLICE RELIEF FUND WITHOUT AUTHORITY TO BORROW MONEY TO PAY PENSIONS OR REPAY SUCH LOANS FROM TRUST FUNDS.

The trustees of the municipal firemen's pension fund, or of the municipal police relief fund are without authority to borrow money with which to pay pensions, or to repay such loans from the trust funds which have come into their possession under statutory authority.

COLUMBUS, OHIO, March 24, 1920.

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

GENTLEMEN:—Your letter of recent date inquiring whether or not the trustees of the municipal firemen's pension fund and police relief fund, have authority to borrow money with which to pay pensions, and if so, how such loans are to be repaid, was duly received.

The creation and disbursement of the firemen's pension fund and police relief fund, and the duty and authority of the trustees of the respective funds, are provided for and governed by sections 4600 et seq. G. C. An examination and analysis of these statutes lead to the conclusion that the trustees are without authority to borrow money with which to pay pensions in whole or in part, or to use the pension fund to repay unauthorized loans.

(a) *Firemen's Pension Funds.*

This fund is created, not by borrowing the money in whole or in part, but by an annual tax levy upon the real and personal property listed for taxation in the municipality (section 4605), and from certain fines imposed upon members of the fire department, proceeds of suits for penalties imposed for violations of certain statutes and ordinances, certain licenses and other fees (section 4607), gifts, grants, devises and bequests of money, and real and personal property (section 4608), contributions from members of the fire department, commonly called the sub-fund (section 4609), and from interest or income received on account of lawful investments of the pension fund in certain bonds (section 4611).

In the event the municipality should fail in any year to make the levy authorized by section 4605 G. C., section 4606 contains authority for crediting the fund with a certain portion of the annual tax on the business of trafficking in intoxicating liquors. That appears to be the only statutory authority for covering or making up a deficit in the fund, and is limited to the single instance of the failure of the municipal council to make the maximum levy authorized by section 4605 G. C.

The authority of the board of trustees with respect to this fund is also prescribed by statute. By section 4603 G. C. it is provided that the board shall administer and distribute the pension fund, and by section 4612 G. C., the trustees are vested with authority, subject to approval by the director of public safety or fire chief, to make all rules and regulations for the distribution of the fund, including the qualification of those to whom it shall be paid, and the amount thereof, etc.

(b) *Police Relief Fund.*

This fund, the same as the firemen's fund, is created, not by borrowing money, but by an annual tax levied upon the real and personal property listed for taxation in the municipality (section 4621), and from certain fines imposed upon members of the police department, and certain rewards, fees, or proceeds of certain gifts and emoluments allowed by the authority in charge or control of the department, and moneys arising from the sale of unclaimed property or money (section 4623), from

gifts, grants, devises, and bequests of money, or real or personal property (section 4624), contributions from members of the police department, commonly called the sub-fund (section 4625), and from interest or income from funds invested in certain bonds (section 4627).

In event the municipality fails to make the maximum levy authorized by section 4621 G. C., section 4622 G. C. authorizes crediting the fund with a certain portion of the annual tax on the business of trafficking in intoxicating liquors, etc. That appears to be the only provision for making up a deficit in the fund, and is limited to the single instance of the failure of the municipal council to make the maximum levy authorized by section 4621 G. C.

The authority of the board of trustees of the police relief fund is prescribed by section 4619 G. C., which provides that the board of trustees shall administer and distribute the fund, and by section 4628 G. C., which provides that the trustees, subject to the approval of the director of public safety or marshal, shall make rules or regulations for the distribution of the fund, including the qualifications of those to whom the fund shall be paid, and the amount thereof.

From the foregoing synopsis of the statutes governing the firemen's pension fund and the police relief fund, it is seen that the creation of both funds and their disposition are expressly provided for by statute, and that no authority is vested in the trustees to borrow money to maintain its integrity, nor is any authority conferred upon the trustees to use any part of the trust fund with which to repay unauthorized loans. The pension fund in each case being a trust fund, it cannot be diverted for an unauthorized purpose, and the power vested in the trustees to administer and distribute the fund and to make rules and regulations for its distribution confer no such authority.

Section 109 of the Cleveland charter (1 Page and Adams Supplement to the General Code, 1000) contains provision authorizing the council to provide by general ordinance for the relief, out of the police and fire funds, of members of the divisions of police and fire temporarily or permanently disabled in the discharge of their duties, but it is expressly provided therein that nothing shall impair, restrict or repeal any provision of the general law authorizing the levying of taxes to provide for firemen, police and sanitary police pension funds, and to create and perpetuate a board of trustees for the administration of such funds.

The exact questions submitted by you have not heretofore, so far as I have been able to ascertain, been presented to or decided by this department, but the opinion reported in 1915 Opinions of the Attorney-General, Vol. III, p. 2289, in which it was held that the power to make rules contained in section 4628 G. C. confers no authority to divert moneys from the funds to which, under the law, they are to be credited, may be referred to in support of my conclusion that neither the firemen's pension fund nor the police relief fund may be used to pay unauthorized loans made by the trustees.

Respectfully,

JOHN G. PRICE,
Attorney-General.