

6704

MORAL OBLIGATION — MUNICIPALITY — GIFT — CLAIM —
LEGAL BASIS — CONTRACT — ACCEPTANCE — OPINIONS AT-
TORNEY GENERAL, 1939, VOLUME III, PAGE 1966.

SYLLABUS:

Moral obligations of municipalities discussed.

Columbus, Ohio, February 19, 1944

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

You have requested my opinion as follows:

“We are inclosing herewith a letter from our examiner in charge of the examination of accounts of the City of ‘N’ in which it is shown that a claim approximately nine years old, that apparently did not have a legal basis upon which to stand (such as indicated in your Opinion No. 1330, dated October 24, 1939,)”

was recognized by the council of that city and paid as a moral obligation.

May we request that you examine the inclosure and give us your opinion in answer to the following question:

If a city is unable to complete an abandoned Federal Aid project upon city property for lack of funds, and a private organization completes said project at its private expense and cost, may a city council, nine years later, legally recognize the claim of said private organization as a moral obligation and order payment thereof from the city treasury?

If the answer to the above question should be in the negative, would this Bureau be authorized to render a finding for recovery for the amount so paid as a moral obligation?

In this connection may we suggest that it is our recollection of a rather old ruling, to the effect that it is the duty of the city officials to plead the Statute of Limitations in such cases."

The letter from your examiner which accompanies your request states that the city commenced the construction of a swimming pool in the year 1934 under the C. W. A. program, and that the federal authorities in charge of such program withdrew their approval of the project until the city should furnish \$3800 for material. It also appears from said letter that the council of the city refused to appropriate the money.

Your examiner states that thereafter Wm. McKinley Post 106 American Legion passed the following resolution:

"Wm. McKinley Post 106 American Legion guarantees the credit of the Niles Park Board to the amount of \$3,800.00 for materials to complete their share of the swimming pool C. W. A. project in Waddell Park, provided the Niles Park Board agrees to repay the American Legion Post 106 from the proceeds of the operation of the pool for any obligation that Post 106 may assume under the above agreement.

Acceptance by the city of this offer of the American Legion Post was declared to be illegal by the city solicitor, and your examiner makes the following statement as to what happened after the opinion of the city solicitor was rendered:

"Later on a meeting was held of the officials in charge of the project and the City Solicitor and Engineer of the City and it was understood that this money was to be given the city as an outright gift."

The examiner further states that the material was then purchased by the park board of the city and the bills therefor presented to the American Legion Post which paid said bills out of its treasury. Nine years thereafter, the city council by ordinance declared that a moral obligation was owing by the city to said American Legion Post and authorized payment to the American Legion Post of the sum expended by it for such materials.

In my Opinion No. 1330, found at page 1966 of Volume III of the Opinions of the Attorney General for 1939, I discussed at some length the principles applicable to moral obligations and determined that in order to constitute a moral obligation "the claim must have a legal basis on which to stand." If, therefore, the American Legion Post paid for these materials in the belief that the offer embodied in the resolution adopted by it had been accepted by the municipality, it is necessary to determine whether a moral obligation existed.

Although the facts set forth in your examiner's letter are not so complete as might be desired, I infer therefrom that the American Legion Post was in no way a party to any understanding that its funds were to be given to the city as an outright gift. You will note that your examiner states that at the meeting at which "it was understood that this money was to be given the city as an outright gift," those present were the officials in charge of the project and the city solicitor and the city engineer. Apparently, no representative of the American Legion Post was at the meeting, and any understanding had among those present would not in any way be binding upon the American Legion Post.

If a similar situation arose and the parties in interest were private individuals, it seems clear that the act of submitting bills for payment in pursuance of an offer would be an implied acceptance of the offer and would therefore constitute a binding agreement. Although the municipal corporation could not legally enter into such an agreement, it does not appear that it so informed the American Legion Post, and the officials of the city proceeded to act on the understanding that the Post was making an outright gift to the city. In other words, it seems that the American Legion Post acted upon the belief that its proposition had been accepted, and paid out its money accordingly.

As between private individuals, an offer similar to that made by the American Legion Post would be deemed to have been accepted, and

a binding contract would exist. There is, therefore, a legal basis for the claim, even though it could not be enforced if resisted, and if the governing body of the municipality desires to honor such claim as a moral obligation, I believe under the circumstances it has the right so to do.

Furthermore, the principle laid down in the case of *State, ex rel. Hunt, v. Fronizer*, 77 O. S., 7, is applicable. In that case, it appears that a county made a contract for building a bridge and failed to obtain from the county auditor a certificate required by law. The statute contained language providing that "all contracts, agreements or obligations, and all orders or resolutions, entered into or passed contrary to the provisions of this section shall be void." The bridge, nevertheless, was constructed and accepted by the county and had been partially paid for. The prosecuting attorney brought an action for recovery of the money paid to the contractor under the contract. The Supreme Court held as follows:

"Section 1277, Revised Statutes, which authorizes a prosecuting attorney to bring action to recover back money of the county which has been misapplied, or illegally drawn from the county treasury, does not authorize the recovery back of money paid on a county commissioners' bridge contract fully executed but rendered void by force of section 2834b, because of the lack, through inadvertence, of a certificate by the county auditor, that the money is in the treasury to the credit of the fund, or has been levied and is in process of collection, there being no claim of unfairness or fraud in the making, or fraud or extortion in the execution of such contract for such work, nor any claim of effort to put the contractor in statu quo by a return of the bridge or otherwise, the same having been accepted by the board of commissioners and incorporated as part of the public highway."

If the city has actually paid over to the American Legion Post the money which was expended for its benefit pursuant to the agreement, it would seem that the principle of law applied in the *Fronizer* case would prevent any recovery by the city of the money so paid. The American Legion Post could not successfully sue the city, but if payment was made, a court would leave the parties where it found them.

Of course, if the American Legion Post actually made a gift of this money to the city, a different question would be presented. I have not considered or discussed the obligations and liabilities which would exist in such a situation because nothing has been submitted to me which would indicate that there was a gift made by the American Legion Post.

You are therefore advised that on the facts submitted to me a moral obligation existed in favor of the American Legion Post against the city and that no finding should be made because of the payment thereof.

Respectfully,

THOMAS J. HERBERT
Attorney General