

I am, therefore, of the opinion that the chief of police of the city of Painesville may lawfully serve as an appraiser selected by the bailiff of the Municipal Court of that city and be paid fees for such services.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2066.

ROBBERY INSURANCE—COUNCIL ON NON-CHARTER CITY MAY NOT
PAY PREMIUMS ON SUCH INSURANCE COVERING FUNDS IN
HANDS OF TREASURER AND CLERK TO DIRECTOR OF PUBLIC
SERVICE—EXCEPTION.

SYLLABUS:

1. *Where by law or ordinance public officials or employes are required to give bond which fully protects the public against losses occasioned by theft, robbery or burglary, the paying, from public funds, of premiums for burglary or robbery insurance to cover such losses is wholly unauthorized, in the absence of specific statutory authority therefor.*

2. *Where by ordinance a city treasurer is required to give a bond for the faithful performance of duty and obligating himself to pay over all moneys received in his official capacity according to law, the payment, from public funds, of the premium on robbery or burglary insurance to cover losses which may be sustained by said city treasurer on account of robbery and burglary, is wholly unauthorized.*

3. *Where the public is secured by means of a bond of either the director of public service or his clerk from any losses of public funds in the hands of such clerk that may be sustained by reason of robbery or burglary, there is no authority to effectuate burglary or robbery insurance for the protection of such funds and pay for the same from the public treasury.*

4. *Where a public officer or employe handles public funds and is not required by law or ordinance to give bond for the faithful performance of duty or to faithfully account for such funds, burglary or robbery insurance may lawfully be procured to cover possible losses of such funds, while in the hands of such officer or employe, occasioned by robbery or burglary, and the premium on such insurance may lawfully be paid from the public treasury.*

COLUMBUS, OHIO, July 8, 1930.

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

GENTLEMEN:—This will acknowledge receipt of your inquiry which reads as follows:

“Question 1. May the council of a city not having adopted a charter, legally provide for the payment out of city funds, of the premium for robbery insurance covering funds in the possession of the city treasurer?”

“Question 2. May a city legally expend its funds for such purpose, covering funds collected by a clerk to the Director of Public Service whose duty it is to issue permits, etc., and collect moneys therefor?”

The statutes of Ohio make no specific provisions with reference to either the terms of or the amount of a bond to be given by a city treasurer or a director of public service in non-charter cities; nor do they specifically pro that those officers must give a bond.

Section 4214, General Code, provides in substance that council in a city shall by ordinance or resolution determine the number of officers, clerks and employes in each department of the city government and shall fix their respective salaries and compensation and the amount of bond to be given for each such officer, clerk or employe. Under this statute council is authorized to fix the terms as well as the amount of bond to be given by any officer, clerk or employe in the city government. It is not obligatory on council that bond be required of all such officers, clerks and employes, and in many cities no bond is required of the clerk to the director of public service. In some cities the director of public service is not provided with a clerk; in others, where a clerk is provided, such clerk is not charged by ordinance with any specific duties but is described generally as clerk to the service director. In those cases any collections of money made by the clerk to the director of public service, for permits or otherwise would be collections made by the service director and the said service director would be responsible for the moneys so collected whether lost by reason of burglary, robbery or otherwise.

In most cities at least, the treasurer and service director are each required to give a bond to cover faithful performance of duty which would include the accounting for all funds coming into their hands as such officials, and a similar bond if council sees fit may be required of a clerk to the director of public service.

Where such proper bonds are required the public is protected by means of the bond from any shortage in the accounts of these officers or clerks whether the shortage comes about by means of robbery or otherwise.

In *State vs. Ferris et al.*, 12 O. N. P., N. S., 171, where a shortage existed in the accounts of a Probate Judge in Cincinnati, the shortage having been brought about by reason of the failure of the Commercial Bank of Cincinnati, which at the time of the failure, had on deposit a large sum of money deposited by the Probate Judge of Hamilton County, it was held that the judge was responsible for the payment of this money according to law, even though it had been lost by reason of the failure of a bank over which the judge had no control. In the course of the opinion the court said:

"It has been repeatedly held in Ohio and elsewhere that a public officer cannot escape a statutory liability through theft, the failure of a bank, or other circumstances beyond his control. When through his official bond he contracts 'to faithfully pay over all moneys received in his official capacity,' he makes a binding contract permitting of no exceptions not strictly provided for in the bond itself. The bond being plain and unambiguous in its terms should be treated as any other written contract."

See also *State vs. Harper*, 6 O. S., 608; *Seward vs. National Surety Company*, 120 O. S. 47; *Loeser vs. Alexander*, 176 Fed. 270.

To effect burglary insurance to cover the funds in the hands of those officials or employes would be protecting bondsmen rather than the public who is already protected by means of the bond, and would in my opinion be an unauthorized and wholly unnecessary expenditure of public funds, especially since the premium on the bond given by such officers and employes, if they choose to give a bond of a duly authorized surety company, must be paid from the public treasury. Section 9573-1, General Code.

Of course if these officials are not required to give bond it would no doubt be lawful to protect the public against losses that might be occasioned by reason of robbery or burglary by covering those possible losses with robbery or burglary insurance, since prudent business men nowadays feel the necessity of protecting themselves by means of this class of insurance. *Insurance Company vs. Wadsworth*, 109 O. S. 440.

On several occasions during the past three years this office has been called upon

to pass upon questions involving the authority to pay, from public funds, premiums for burglary insurance for the protection of public funds in the hands of certain public officials. See Opinions of the Attorney General for 1927 at pages 874 and 2160; Opinions of the Attorney General for 1928 at page 331; Opinions of the Attorney General for 1929 at pages 413 and 1395.

The consistent holding of this office, as shown by the aforesaid opinions, has been that where by law or ordinance public officials or employes are required to give bond which fully protects the public against losses occasioned by theft, robbery or burglary, the paying, from public funds, of premiums for burglary or robbery insurance to cover such losses is wholly unauthorized, in the absence of specific statutory authority therefor.

I am therefore of the opinion in specific answer to your questions:

First, where by ordinance a city treasurer is required to give a bond for the faithful performance of duty and obligating himself to pay over all moneys received in his official capacity according to law, the payment, from public funds, of the premium on robbery or burglary insurance to cover losses which may be sustained by said city treasurer on account of robbery and burglary, is wholly unauthorized.

Second, where the public is secured by means of a bond of either the director of public service or his clerk from any losses of public funds in the hands of such clerk that may be sustained by reason of robbery or burglary, there is no authority to effectuate burglary or robbery insurance for the protection of such funds and pay for the same from the public treasury.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2067.

CONTRACT—FOR CONSTRUCTION OF ADDITION TO MUNICIPAL HOSPITAL—AWARD TO MEMBER OF PLANNING COMMISSION ILLEGAL.

SYLLABUS:

A member of a city planning commission is a municipal officer, and under the provisions of Section 3808, General Code, and the decision of the Supreme Court in the case of Wright vs. Clark, 119 O. S., 462, such member may not legally enter into a contract for the construction of an addition to a municipal hospital.

COLUMBUS, OHIO, July 8, 1930.

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

GENTLEMEN:—Acknowledgment is made of your recent communication requesting an opinion on the following question:

“May a member of the planning commission accept a contract from the city, when bids have been received, and said commissioner holds the low bid for the construction of an addition to the municipal hospital?”

In connection with your communication, you submit a letter from the Mayor of the city of L., which explains that the member of the planning commission under consideration, was appointed on said commission because he was an outstanding leader