

1861.

MUNICIPAL CORPORATION—APPROVAL BY COUNCIL OF ACTION OF DIRECTOR OF PUBLIC SERVICE IN APPOINTING CEMETERY EMPLOYEES UNDER SECTION 4162 G. C. MAY BE HAD BY RESOLUTION—SUCH RESOLUTION NOT SUBJECT TO REFERENDUM—WHEN COMPENSATION BECOMES OPERATIVE FOR SUCH EMPLOYEES.

1. *The approval by council of the action of the director of public service in appointing cemetery employes under section 4162 G. C. may be had by resolution, and the vote thereon should be taken by yeas and nays and entered upon the journal, as required by section 4224 G. C.*

2. *The confirmatory or approval resolution of council approving appointments made by the director of public service under section 4162 G. C., is not subject to the referendum provisions of section 4227-2 G. C.*

3. *Persons appointed by the director of public service under section 4162 G. C. are entitled to pay from the time of commencing work, provided the action of the director is approved by council.*

COLUMBUS, OHIO, February 21, 1921.

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

GENTLEMEN:—Your letter of recent date relative to certain cemetery employes, was duly received, and omitting formal parts, reads as follows:

“We desire to call your attention to section 4162 G. C., under which the director of service appoints and fixes the terms and compensation of cemetery employes subject to the approval of council. We are stating an instance under which the director of public service fixed the compensation of cemetery employes on April 1, 1920, and council by resolution approved same on April 13, 1920.

Question 1: Does the approval required by section 4162 G. C., require an ordinance or resolution, or may council render such approval by motion and vote properly recorded?

Question 2: If such approval requires ordinance or resolution, is such ordinance or resolution subject to the 30 day provision of section 4227-2 of the General Code?

Question 3: In general when does such compensation fixed as described above actually become operative, immediately after the same has been fixed by the director of public service, immediately after the action of council, or after the expiration of the 30 day referendum period?”

(1) Section 4162 G. C. referred to in your letter, is one of the statutes governing public cemeteries located within cities, and is as follows:

“The director shall direct all the improvements and embellishments of the grounds and lots, protect and preserve them, and, subject to the approval of the council, appoint necessary superintendents, employes, and agents, determine their term of office and the amount of their compensation.”

There can be no question that “the approval of the council,” required by section 4162 G. C., constitutes, and is, “action of council”, within the meaning of section 4224 G. C. which provides that:

"The *action of council* shall be by ordinance or resolution, and on the passage of each ordinance or resolution the vote shall be taken by 'yeas' and 'nays' and entered upon the journal," etc.

By reason of this statute it would seem that action of council can only be had by ordinance or resolution, and it would seem that the most expedient and appropriate way of confirming or approving appointments would be by resolution, rather than by ordinance. You are accordingly advised that when such action is taken by resolution, the vote thereon should be by "yeas" and "nays" and entered upon the journal. See in this connection Opinion of Attorney-General No. 1171, addressed to your department under date of April 20, 1920.

(2) The next question for determination is whether or not the resolution of confirmation or approval is subject to the provisions of section 4227 G. C. that:

"Any ordinance, or other measure passed by the council of any municipal corporation shall be subject to the referendum except as hereinafter provided. 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."

It is not believed that it was the legislative intent to include resolutions confirming or approving appointments of cemetery employes within the terms of section 4227-2 G. C., and thus subject such confirmatory resolutions to the referendum. The "other measure" or "other measures" referred to in the municipal initiative and referendum act (sections 4227-1 to 4227-7 G. C.), in my opinion refer to measures that may properly be classed as legislative in character and adopted by council in the exercise of the powers of government granted by the constitution or delegated to it by the General Assembly (section 4227-1 G. C.), rather than those of a strictly confirmatory character.

While, perhaps, not controlling, it is significant that the word "resolution" appeared in the original act (the provision being that resolutions, as well as ordinances and other measures, should be subject to the referendum), but by subsequent amendment the word "resolution" was omitted,—the provision now being, as set forth above, that "any ordinance, or other measures" passed by council, shall be subject to the referendum, etc.

(3) Since the confirmatory or approval resolution is not subject to the referendum, and is in the nature of a ratification of the action of the director of public service in appointing employes and fixing their compensation under section 4162 G. C., it would seem that there could be no objection to the appointees commencing work at the time of their appointment, and receiving pay as from that time, provided the action of the director in the premises is approved by council.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*