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1. FIREMEN, SCHOOLS OF INSTRUCTION DESIGNED TO PROMOTE EFFICIENCY—PHRASE USED IN SECTION 4390 G. C. INCLUDES REGULARLY ESTABLISHED INSTITUTIONS OF LEARNING, INSTITUTIONS CONDUCTING CONFERENCES OR CONVENTIONS OF AN EDUCATIONAL NATURE IN ART OR SCIENCE OF FIRE FIGHTING—INSTRUCTION SHOULD BE TO PROMOTE EFFICIENCY OF FIREMEN.
2. ATTENDANCE—OFFICERS OR OTHER DESIGNATED MEMBERS OF FIRE DEPARTMENT AT CONFERENCE OR CONVENTION—LEGISLATIVE AUTHORITY OF MUNICIPALITY OR TOWNSHIP—POWER TO AUTHORIZE ATTENDANCE—SCHOOL—GREATER EFFICIENCY OF FIRE DEPARTMENT.
3. COUNCIL — AUTHORITY FOR ATTENDANCE — SPECIFIC GRANT — GENERAL ORDINANCE — TERMS, AND CONDITIONS ESTABLISHED FOR DIRECTOR OF PUBLIC SAFETY TO AUTHORIZE ATTENDANCE.

SYLLABUS:

1. The phrase "schools of instruction" designed to promote the efficiency of firemen" as used in Section 4390, General Code, includes not only regularly established institutions of learning, but may also include institutions conducting conferences or conventions of an educational nature in the art or science of fire fighting if the instruction therein given is of the nature contemplated of promoting the efficiency of firemen.

2. The legislative authority of a municipality or township has the power to authorize the attendance of its officers or other designated members of the fire department at a conference or convention when it has determined that such conference or convention is a school and that such attendance will be conducive to the greater efficiency of its fire department.

3. The council may either grant such authority specifically in each case or by general ordinance establish the terms and conditions under which its Director of Public Safety may authorize such attendance.

Columbus, Ohio, November 30, 1944

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

Gentlemen:

I have before me your request for my opinion reading as follows:

"We are enclosing a letter from the President of the Ohio Volunteer Firemen's Association, together with some programs of conferences or conventions of the Ohio Fire Chiefs Association, in connection with certain questions concerning the allowance or non-allowance of expenses of delegates to such conferences or conventions by the cities they serve and represent.

Having in mind the provisions of Section 4390 General Code, authorizing municipalities to send their firemen to 'schools of instruction', and the claim of the firemen that said conferences and conventions as above referred to are in fact 'schools of instruction', may we request that you examine the inclosures and give us your opinion in answer to the following questions: Question 1. Do the annual conferences or conventions of The Ohio Fire Chiefs, constitute schools of instruction as contemplated by the provisions of Section 4390 General Code, to the extent of making the expenses of attending such meetings reimbursable from the public funds of the municipalities to the various fire chiefs?

Question 2. If the answer to question No. 1 is in the affirmative,

is it necessary that each delegate be specifically authorized to attend such conference prior to attending the same, or is the authority granted by a prior appropriation for the specific purpose sufficient?"

Accompanying your communication, I note the letter from the President of the Ohio State Voluntary Firemen's Association and also programs of the Conference of the International Association of Fire Chiefs and the Conference of the Ohio Fire Chiefs Association, both held recently.

It has been a long established principle that traveling and other expenses of municipal officers or employes incurred in attending a convention of like officials of other municipalities were not legitimate subjects of municipal expenditure in the absence of any specific statutory authority therefor. The same principle has been applied to other administrative boards and officers, such as county commissioners and boards of education. The case of *State, ex rel. Marani v. Wright*, 17 O.C.C. (N.S.) 396 decided in 1911, is frequently referred to as establishing the principle. It was there held:

"A municipality is not liable for the traveling expenses of one of its officials incurred in attending a convention of like officials of other municipalities."

That case proceeds upon the proposition that an officer or employee of the public is presumed to be qualified for the duties of his office and that he has no right to look to the municipality or other public authority to pay the expense of acquiring or perfecting his education, and that the municipality has no authority to expend its funds for such purpose. The case was an action in mandamus by the city building inspector to obtain reimbursement for his expenses in attending a convention of building inspectors. The court in its opinion said:

"We are unable to see how such an object relates itself either directly or with reasonable necessity to the duties of the relator's office. He was presumably appointed to his present position because of his fitness by experience and education to discharge the duties of the place, and the salary paid him is presumably adapted to secure the degree of efficiency in these respects which the city desires that its building inspector shall possess. If a person relatively uneducated, inexperienced and inefficient in the discharge of the duties of the position of building inspector were appointed at a salary proportioned to his fitness,

it might as well be argued that his deficiencies may thereafter be supplemented at the charge of the municipality which he serves by directing him to attend an architectural school and to render his bills for board and tuition to the city."

This principle has been applied in a considerable number of cases coming before several Attorneys General in this state. A distinction has usually been made where the object of a trip or attendance at a conference or convention was with the view of promoting some specific enterprise contemplated by the municipality. In an opinion found in 1912 Opinions, Attorney General, p. 432, the rule and exception were stated in the syllabus, as follows:

"1. The director of public safety, the chief of the fire department, the general superintendent of the water works department, the health officer and the physician of the health department may not be allowed their expenses incurred in attending conventions for the mere purposes of general education.

2. The director of public safety and the chief of the fire department may be reimbursed for expenses incurred in attending fire chiefs' conventions, providing such a visit is the most economical and efficient method of promoting a purchase, held in immediate contemplation by the department of public safety.

3. The superintendent of the water works department, under like conditions, with reference to purchases of the water works department, may be reimbursed for expenses to such conventions, incurred in a visit authorized by the director of public service."

The then Attorney General said in the course of the opinion:

"The power to incur expense for the general education and enlightenment of its officers is not expense conferred upon municipalities by any statute nor is such a power anywhere granted to any of the officers named in your inquiry, and such a purpose is too remote as regards the powers conferred for the maintenance and operating of fire and health departments, to be regarded as a power actually necessary for the carrying into effect of those functions."

Again, in 1930 Opinions, Attorney General, p. 1091, we find the same principles laid down, the syllabus in that opinion reading as follows:

"1. The payment from city funds, of the traveling ex-

penses of a recreation director employed by a city recreation board when attending a convention of recreation officials for mere purposes of general education or the acquiring of general ideas pertaining to the duties of his position is unauthorized. If, however, the attendance upon such convention is authorized by resolution of the city recreation board which in the exercise of a sound discretion finds it necessary to send its recreation director on a trip in furtherance of a definite, presently contemplated undertaking for the benefit of the municipality the city may lawfully pay the necessary traveling expenses of such recreation director. Fourth, branch of syllabus of Opinion No. 1327, dated December 3, 1929, modified in conformity herewith.

2. The traveling expenses of a salaried police officer, incurred in investigating finger print systems, may or may not lawfully be paid from city funds, depending on whether or not such investigation is merely for the purpose of acquiring general information with respect to finger print systems, or whether it is for the purpose of determining the actual working of a system, with a view to its installation in the city department which the police officer serves.

3. The traveling expenses of municipal officers or employes, incurred in attending conventions of like municipal officers and employes can not be legally paid from public funds, even though authorized by the taxing authority of a municipal corporation, unless the attendance upon such convention is for the purpose of acquiring information relative to and necessary for the furtherance of a definite, presently contemplated undertaking for the benefit of the municipality in the performance of a duty enjoined by law."

In an opinion which I rendered on December 7, 1940, found in 1940 Opinions, Attorney General, p. 1039, it was held:

"The governing body of a city may, by ordinance or resolution, provide for a local course of training for the police department of the city and pursuant to such purpose the salary and expenses of a police officer may be paid while in attendance at a Federal Bureau of Investigation school to enable the officer to conduct such local course of training."

In the course of that opinion it was said:

"An analysis of the question and information you submit requires the conclusion that the purpose of the police officer's attendance at the Federal Bureau of Investigation school was not merely self-improvement or the securing of general information for the benefit only of the officer, but rather the securing

of information and instruction which would enable the officer, upon the completion of the instruction, to initiate and conduct a course of training for the members of the police department of the city in question. In view of those purposes, it is my opinion that the attendance of the police officer at the course of training conducted by the Federal Bureau of Investigation is for the creation and furtherance of a definite, presently contemplated undertaking for the benefit of the municipality."

The General Assembly, by its adoption of Section 4390, General Code, in 1941, has specifically granted to the legislative authorities of cities, villages and townships the authority to pay the expenses of officers and firemen of their fire departments in attending schools of instruction designed for the purpose of promoting the efficiency of its firemen. Such section reads:

"The council or other legislative authority of any city or village, or the trustees of any township, may send any of the officers and firemen of its fire department to schools of instruction designed to promote the efficiency of firemen and, if duly authorized in advance, pay their necessary expenses from the funds used for the maintenance and operation of its fire department."

The General Assembly has not defined the term "schools of instruction designed to promote the efficiency of firemen". In the absence of legislative definition of the terms used by it in its enactment, we must give to the terms therein the ordinarily accepted meaning. *Eastman v. State*, 131 O. S. 1; *Kiefer v. State*, 106 O. S. 285, 289; *Woolford Realty Co., Inc. v. Rose*, 268 U. S. 568.

The term "school" ordinarily refers to an institution for instruction or education. *American Asylum of Deaf and Dumb v. Phoenix Bank*, 4 Conn. 172, 177; *In re Sanders*, 63 Kan. 191; *State v. Kalaher*, 145 Wis. 243; *State, ex rel. Johnson v. Boyd*, 217 Ind. 348. As stated by McGary, Justice in *Weisse v. Board of Education of New York*, 32 N.Y.S. (2d) 258, 261, a school is "an institution consisting of a teacher and pupils, irrespective of age, gathered together for any branch of learning, the arts or sciences".

From the definitions above referred to, it is apparent that the commonly accepted meaning of the term "school" includes not only those institutions commonly known as "public schools" and colleges, but as

well many other institutions, such as singing schools, dancing schools, trade schools and other types of institutions giving education in the various arts and sciences and having courses of instruction lasting for varying durations of time.

From an examination of the cases which have adjudicated the question, it would seem that in order to be a school it must be an institution and the relationships of teacher and pupil must exist. In so far as I am informed, modern universities and colleges have not established colleges and schools for the education of firemen and officers of municipal fire departments. If such be the fact, it could scarcely have been the intent of the General Assembly, in the enactment of Section 4390, General Code, to use the term "school" therein as referring only to such institutions. When the term "school" as so used is construed in the light of the context, it would appear to be used in its broader sense to include those institutions existing at the time of the enactment of such section wherein instruction in the art and science of fire fighting is imparted from an instructor or instructors to his or their pupils.

In many institutions commonly conceded to be schools, instruction to the pupil is conveyed in the form of lectures. In others, as in the public schools, it is from previously prepared texts. It would seem that in so far as the two instances referred to in your request are concerned, the fact that textbooks are not used but rather the information is imparted in the form of lectures is immaterial.

A well organized conference of fire chiefs may for the period of its duration cover a large number of subjects of very vital importance to a city in perfecting the science of fire fighting in accordance with the most modern and advanced methods. An examination of the two programs submitted indicates that in each case those conferences were characterized by a series of apparently important and valuable addresses, experiments and demonstrations which were presumably highly educational to fire fighters. It would be within the discretion of the legislative body as hereinbefore suggested, to determine which of such conferences would tend to produce better public service and which officers of the department should attend at the expense of the municipality.

It is impossible, from the information submitted, for me to determine

whether or not the two conventions mentioned in your request constitute schools. I have no information which would enable me to form an opinion as to whether they are institutions and whether the type of instruction given, if any, would constitute a school. Such question must be determined in each instance by the legislative authority of the municipality or township.

As to your second question, whether it is necessary that each delegate to such convention be specifically authorized to attend such convention prior to attending the same, I am of the opinion that the council might either grant such authority specifically in each case or by general ordinance establish the terms and conditions under which its Director of Public Safety might authorize such attendance. It is not regarded as a delegation of legislative power for a municipal council to confer upon an administrative officer the discretion of ascertaining whether certain general conditions established by the council have been complied with as a condition precedent to the granting of a license or permit. It was so held in the case of *Yee Bow v. City of Cleveland, et al.*, 99 O. S. 269, where the court held:

“An ordinance imposing on an administrative officer, as a prerequisite to the issuance of a license, the duties of ascertaining whether sanitary and drainage arrangements are sufficient to protect the public health and whether ‘adequate ventilation’ and ‘adequate plumbing and drainage facilities’ are provided on the premises, does not confer arbitrary legislative or judicial powers upon such officer in a constitutional sense. If his conduct should prove to be arbitrary or palpably unwarranted, resort may be had to the courts.”

Judge Jones, in his opinion, said at page 273:

“It is now generally held that quasi-judicial duties and administrative functions may be imposed upon administrative officers for the purpose of ascertaining the conditions under which the law or ordinance becomes effective.”

Specifically answering your inquiries, it is my opinion that:

1. The phrase “schools of instruction designed to promote the efficiency of firemen” as used in Section 4390, General Code, includes not only regularly established institutions of learning, but may also include

institutions conducting conferences or conventions of an educational nature in the art or science of fire fighting if the instruction therein given is of the nature contemplated of promoting the efficiency of firemen.

2. The legislative authority of a municipality or township has the power to authorize the attendance of its officers or other designated members of the fire department at a conference or convention when it has determined that such conference or convention is a school and that such attendance will be conducive to the greater efficiency of its fire department.

3. The council may either grant such authority specifically in each case or by general ordinance establish the terms and conditions under which its Director of Public Safety may authorize such attendance.

Respectfully,

THOMAS J. HERBERT

Attorney General