OPINION NO. 74-048

Syllabus:

A municipality, whether charter or statutory, may use public funds to pay a reward for information leading to the apprehension and conviction of suspected felons if its legislative authority determines that such payments serve a public municipal purpose. (Opinion No. 1464, Opinions of the Attorney General for 1937, page 2439, overruled)

To: Joseph T. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, June 5, 1974

I have before me your request for my opinion, which reads in part as follows:

> "It has come to my attention that a number of municipalities have established funds similar to that authorized for counties by Section 307.49 of the Revised Code. These funds are used in part to pay for informers' tips and to obtain other forms of evidence in the criminal investigation process.
>
> "Similarly, one municipality recently offered a reward in the hope of apprehending a person who had threatened certain members of the community. In that case, the danger was clear. One shooting incident had already occurred, and the terrorist vowed to continue his activities unless the victim moved out of the city."

Your request poses the following questions:

> "1. Can a charter municipality lawfully allow the payment of rewards with public funds in order to gain assistance in the interest of public safety?
>
> "2. Can a statutory municipality lawfully provide by ordinance for the payment of such rewards?
>
> "3. Can a municipality, by charter or otherwise lawfully spend public money for the same purposes as those set forth in Section 307.49 of the Revised Code?"

Your questions concern the power of a municipality, either charter or non-charter, to use public funds to pay a reward for information leading to the apprehension and conviction of criminal suspects in the community. Article XVIII, Sections 3 and 7, Ohio Constitution, which confer home rule power upon municipalities, provide as follows:

> "Section 3. Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.
>
> "Section 7. Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government."

The Ohio Supreme Court addressed itself to the powers of a charter municipality in Bazell v. Cincinnati, 13 Ohio St 2d 63 (1968), and held as follows:

> "By reason of Sections 3 and 7 of Article XVIII of the Ohio Constitution, a charter city

> has all powers of local self-government except to the extent that those powers are taken from it or limited by other provisions of the Constitution or by statutory limitations on the powers of the municipality which the Constitution has authorized the General Assembly to impose."

See also State, ex rel. Canada v. Phillips, 168 Ohio St. 191 (1958), and Opinion No. 69-130, Opinions of the Attorney General for 1969.

Non-charter cities may exercise the same powers of local self-government as charter cities, so long as the exercise of such powers is not inconsistent with the general laws of the state. Leavers v. Canton, 1 Ohio St. 2d 33 (1964); State, ex rel. Petit v. Wagner, 170 Ohio St. 297 (1960); Opinion No. 73-113, Opinions of the Attorney General for 1973. Since the payment of rewards by a municipality is not at variance with any statute, charter and non-charter municipalities may be similarly treated for purposes of your question.

Thus a municipality, whether charter or non-charter, has the authority to exercise all powers of local self-government. The Ohio Supreme Court has frequently held that this power extends to all matters which are local and municipal in character and do not infringe upon that which is of general and statewide concern. Beachwood v. Board of Elections, 167 Ohio St. 369, 371 (1958); Perrysburg v. Ridgeway, 108 Ohio St. 245, 250-259 (1923); Leavers v. Canton, supra; State, ex rel. Canada v. Phillips, supra. The payment of rewards for information leading to the arrest and conviction of suspected felons in a municipality clearly concerns a purely local matter and thus falls within the powers of local self-government which may be exercised by a municipality Cf. State ex rel. Morgan v. Rusk, 37 Ohio App. 109 (1930), which held that the City of Cleveland had the power to pay a reward for heroic life-saving actions taken by a person at the request of municipal authorities. The fact that boards of county commissioners have express statutory authority to offer such rewards indicates that the General Assembly considers such rewards a proper matter of local concern. R.C. 307.49. The lack of such express authority for cities does not indicate a legislative intent to deny them such authority, because the powers of a municipality are not limited to those granted by statute.

The final criterion to be examined is the purpose for which the funds are to be spent, because the legislative authority of a municipality is limited in spending municipal funds to projects and proposals which serve a public municipal purpose. See Bazell v. Cincinnati, supra; State, ex rel. McElroy v. Baron, 169 Ohio St. 439 (1959); State, ex rel. Leaverton v. Kerns, 104 Ohio St. 550 (1922). Although such a limitation has been imposed upon municipalities, it is the legislative authority of a municipality which usually makes the determination of what constitutes a municipal purpose. In State, ex rel. Gordon v. Rhodes, 156 Ohio St. 81 (1951), the court held in the syllabus as follows:

> "The determination of what constitutes a public municipal purpose is primarily a function of the legislative body of the municipality, subject to review by the courts, and such determination by the legislative body will not be overruled by the courts except in instances where that

determination is manifestly arbitrary or unreasonable."

Thus a municipality may use public funds to pay a reward for information leading to the apprehension and conviction of suspected felons in the community if its legislative authority determines that such payments serve a public municipal purpose. The fact that the General Assembly has authorized boards of county commissioners to offer rewards for the apprehension of felons, upon conviction (R.C. 307.49), indicates that such rewards serve a public purpose.

One of my predecessors, in Opinion No. 1464, Opinions of the Attorney General for 1937, page 2439, concluded that a village council is not authorized to pass an ordinance providing a reward for information leading to the apprehension and conviction of a felon. He based his conclusion on the lack of any express statutory authority to pay such a reward, but he failed even to mention the powers of local self-government conferred upon municipalities by Article XVIII, Sections 3 and 7, Ohio Constitution, which I feel are controlling in this situation. His conclusion was based on a California case which turned on the statutes of that state, which are quite different from Ohio's. Therefore I must overrule the holding of my predecessor in Opinion No. 1464, supra.

Your third question is whether a municipality may spend public funds for the purposes set forth in R.C. 307.49, which authorizes a board of county commissioners to make reward payments. I feel that this question has been answered by the above discussion.

In specific answer to your question, it is my opinion and you are so advised that a municipality, whether charter or statutory, may use public funds to pay a reward for information leading to the apprehension and conviction of suspected felons if its legislative authority determines that such payments serve a public municipal purpose. (Opinion No. 1464, Opinions of the Attorney General for 1937, page 2439, overruled)