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## SYLLABUS:

1. Payment of "longevity compensation: and a "uniform allowance" to policemen and firemen by a charter municipal corporation is a valid exercise of the powers of local self-government conferred by Sections 3 and 7, Article XVIII, Constitution of Ohio.

2. The term "salary" as ordinarily used includes payment of "longevity compensation" and such compensation is subject to deductions for contributions to policemen's and firemen's pension funds under rules and regulations requiring members to contribute four per cent of their "annual salary."

3. A "uniform allowance" for policemen and firemen, which is based on actual expenses or a reasonable estimate of expenses, is not "salary" within the meaning of rules and regulations for policemen's and firemen's pension funds which provide for member contributions of four per cent of "annual salary."

Columbus, Ohio, December 17, 1963

Hon. Roger W. Tracy  
Auditor of State  
Bureau of Inspection &  
Supervision of Public Offices  
Columbus, Ohio

Dear Sir:

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

"Sections 741.18 and 741.49 govern the management of local relief and pension funds for firemen and policemen respectively. Each of these statutes exempts from its benefit provisions, those members of the fund who elect to receive pensions and benefits in accordance with rules and regulations of the pension fund trustees, which were in force on April 1, 1947.

"In one municipal corporation, the trustees of both the firemen's pension fund and the police pension fund adopted rules, which were in effect on April 1, 1947, whereby a member of the fund who ultimately retired under the rules would receive a pension amounting to 11/16 of the salary which is thereafter paid for the position from which the member retired. I enclose for your reference page 4 of the *Rules and Bylaws Governing the Board of Trustees of the Police Relief Fund* (amended August 1, 1944) as representative of the provisions, for

benefits from each of these funds, which were in effect on April 1, 1947.

“A number of members of the police and fire departments of this city have subsequently retired, after duly electing to receive benefits in accordance with the rules discussed above.

“Since the effective date of that version of the pension fund statutes which permitted members of the fund to elect to receive benefits under pre-existing rules of the board, the Cuyahoga County Court of Common Pleas specifically found that this ‘sliding scale’ arrangement for determining benefits under the pension fund rules is lawful. This finding is evidenced by a copy of the journal entry of the court in case No. 638406, which is also enclosed with this letter.

“On January 15, 1962, the council of the city in question passed Ordinance No. 4-62 (copy of which is enclosed) which purports to amend a pre-existing ordinance whereby a uniform allowance was provided for each member of the police and fire departments. The amending ordinance changed the amount of the uniform allowance from \$87.50 to \$112.50, payable quarter-annually to each active member in the divisions of fire and police.

“Also enclosed is a copy of ordinance No. 34-63, enacted May 20, 1963, whereby the council authorizes payment to each full time permanent employee of the municipality (including policemen and firemen) of ‘longevity compensation,’ which is based on the number of continuous years of service, determined on the 15th of June and December of each year.

“A state examiner, under the supervision of the Bureau of Inspection and Supervision of Public Offices, has questioned the legality of payments of the uniform allowance, under Ordinance No. 4-62, in view of the additional fact that policemen and firemen, who receive the allowance, are not required to account for the actual expense which they incur in the upkeep and replacement of uniforms. The examiner has pointed out that the total amount (\$450.00 per year) which is paid to each member of these departments as ‘uniform allowance’, under this Ordinance, appears to be in excess of the expense which is actually incurred in the maintenance and replacement of uniform items.

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“In view of the circumstances outlined above, the fol-

lowing questions are presented for your consideration and opinion:

- (1) Does a municipal corporation have authority to provide and pay, to uniformed members of its fire and police departments, an allowance for the purchase and maintenance of required uniforms; which exceeds the amount actually expended by the individual for such purposes?
- (2) Where the uniform allowance, provided in the enclosed Ordinance No. 4-62, is paid to policemen and firemen, without requiring an accounting for uniform expense incurred, does the amount thus paid constitute 'salary' which is subject to deduction for contributions to either of the police or firemen's pension funds under Sections 741.12 and 741.43, Revised Code?
- (3) Does a municipal corporation have authority to provide and pay, to certain of its employees including policemen and firemen, 'longevity compensation', such as that provided in the enclosed Ordinance, No. 34-63?
- (4) If your answer to question number three is affirmative, do the amounts paid to policemen and firemen pursuant to the enclosed Ordinance No. 34-63 constitute 'salary' within the purview of Sections 741.12 or 741.43, Revised Code?
- (5) If your answer to either of questions numbered 2 and 4 are in the affirmative can the amount, to which your affirmative answer refers, constitute salary 'paid, from time to time, for the position from which a member retired' from the police or fire departments, under the rules of the pension fund trustees which were in effect on April 1, 1947?

"Your conclusions, in response to the above questions will be of considerable interest to state examiners, and to officials and employees of municipalities throughout the state. Therefore, your formal opinion is requested."

Your request also indicates that the municipal corporation in question is operating under a charter.

The first and third questions you pose may be quickly disposed of and will be considered together. The answer to both questions is affirmative. A charter municipal corporation, pursuant to appropriate charter authorization, has authority to provide and pay an allowance for the purchase and maintenance of uniforms for

members of its fire and police departments which exceeds the amount actually expended by the individual members of these departments, and has the authority to pay policemen and firemen "longevity compensation." Any doubt as to this conclusion is removed by the seventh branch of the syllabus in the case of *The State, ex rel. Canada v. Phillips*, 168 Ohio St., 191, which provides:

"Where a municipality establishes and operates a police department, it may do so as an exercise of the powers of local self-government conferred upon it by Sections 3 and 7 of Article XVIII of the Constitution; and, if it does, the mere interest or concern of the state, which may justify the state in providing similar police protection, will not justify the state's interference with such exercise by a municipality of its powers of local self-government."

By a parity of reasoning, the establishment and operation of a fire department is also an exercise of the powers of local self-government conferred by Sections 3 and 7 of Article XVIII, Constitution of Ohio. Both of the ordinances under consideration, then, assuming charter authorization, are valid exercises of the power of local self-government.

The remaining questions are more difficult to answer.

Section 22, Rules and Regulations for the Government of the Board of Trustees of the Firemen's Relief and Pension Fund of the city in question provides in material part:

" 'Member of the fund' shall mean any person who is contributing four per cent of his annual salary to the Firemen's Relief and Pension Fund established pursuant to Section 4600 of the General Code of Ohio, or who is receiving a pension or disability benefits as a result of service in the Fire Department."

I am given to understand that a similar provision is contained in the rules applicable to the policemen's relief and pension fund.

Section 12, of these same rules and regulations for the firemen's pension fund, provides:

"Any member of the Fund who, on September 25, 1947, had been contributing two per cent of his annual salary to the Firemen's Relief and Pension Fund; and who, not later than November 25, 1947, filed with the Board of Trustees under the provisions of Section 4614-1 of the General Code, his written election to be bound by the Rules

and Regulations of said Fund which were in force and effect on the first day of April, 1947, shall be entitled to receive a pension or benefits from the Firemen's Relief and Pension Fund under the rules and regulations of the Fund which were in force and effect on the first day of April, 1947. Provided, however, that such member shall be required to contribute to the Fund in the manner and in the amount provided in Section 4609 of the General Code."

Again, I am informed there is a like provision in the rules and regulations for the policemen's relief and pension fund.

This same provision, in substance, is found in Sections 741.18 and 741.49, Revised Code. It should be pointed out here that, because there is no conflict between the rules and regulations in question and Sections 741.18 and 741.49, Revised Code, the question of the effect of the decision in *Cincinnati v. Gamble*, 138 Ohio St. 220 in light of the subsequent holding in *State, ex rel. Canada v. Phillips, supra*, need not be considered in this opinion.

The Rules and Regulations in effect on the first day of April, 1947, provided in pertinent part:

"Any active member who has served or shall have served on the Lakewood Fire Department for a period of twenty-five (25) consecutive years or longer shall, upon his written application to the Board of Trustees and his voluntary retirement from the Department, be placed on the rolls of the Firemen's Relief and Pension Fund at a rate of pension equal to eleven-sixteenths (11/16) of the annual salary fixed from time to time for the rank held by such member at the time of his retirement. Said pension shall become effective on the day following said member's retirement from the Fire Department, and shall be paid to him, annually, during his lifetime, in twelve (12) monthly installments."

The answer to the three remaining questions depends upon whether longevity payments and a uniform allowance, under the circumstances you set forth in your request, constitute "salary" within the meaning of the rules and regulations quoted heretofore. The term is not defined in the rules and regulations and, accordingly, consideration must be given to its commonly understood meaning.

The word "salary" is defined in Webster's Third New International Dictionary as "fixed compensation paid regularly (as by

the year, quarter, or week) for services.”

In *Thompson v. Phillips*, 12 Ohio St. 617, it was concluded that the term “salary” as used in Section 20, Article II, Constitution of Ohio, is not used in a general sense encompassing any compensation fixed for an officer but in the limited sense of an annual or periodical payment for services dependent on the time, not the amount, of service rendered. See also *Gobrecht v. Cincinnati*, 51 Ohio St. 68. The same, or a similar definition, may be found in cases decided under various statutory and constitutional provisions pertaining to salary in other jurisdictions. 43 American Jurisprudence, 147.

Generally speaking, salary is to be distinguished from fees and commission and compensation on the basis of a per diem allowance and allowances for expenses incurred in carrying out the duties of an office or employment.

In the absence of specific definition I am compelled to conclude that the word “salary” as used in the rules and regulations here under consideration is used in the sense of a periodical payment for services, dependent upon time. Applying this definition first to the payment of “longevity compensation” I am of the opinion that this type of remuneration is salary which is subject to deduction for contributions to the firemen’s and policemen’s pension fund created in this particular municipal corporation. I am also of the opinion that it is a part of “annual salary fixed from time to time for the rank held by such member at the time of his retirement” within the meaning of the rules and regulations of these pension funds in effect April 1, 1947, which are made applicable by present rules and regulations.

I would have no hesitancy in concluding that a uniform allowance is not “salary” within the meaning of these rules if based on actual expenses incurred or on a reasonable expectation of purchase and maintenance costs of uniforms. This was the conclusion reached in Opinion No. 3501, Opinions of the Attorney General for 1948, as disclosed by the syllabus, which provides:

“The annual allowances to reimburse members of the police and fire departments of the city of Columbus for the expense of their required uniforms, as provided by Ordinance Nos. 499-48 and 500-48, are not to be consid-

ered as additional salary earned by such firemen and policemen and are not to be included in the 4% deduction from their salary, as provided in Section 4609 and 4625, General Code, relating to the police and firemen's pension laws."

Here the facts suggest, however, that there is no real relationship between the expenses of purchasing and maintaining a uniform and the allowance made therefor. To the extent that such allowance is not founded on actual expenses or a reasonable estimate of expenses, I am of the opinion that it is salary within the meaning of the rules and regulations for the firemen's and policemen's pension funds of the city in question. *State, ex rel. v. Raine*, 49 Ohio St. 580.

The question of whether an allowance for expenses is reasonably related to actual expenses is one of fact which can not be decided in this opinion. It must be determined in a separate, appropriate, proceeding.

In specific answer to your questions, I am of the opinion that:

1. Payment of "longevity compensation" and a "uniform allowance" to policemen and firemen by a charter municipal corporation is a valid exercise of the powers of local self-government conferred by Sections 3 and 7, Article XVIII, Constitution of Ohio.

2. The term "salary" as ordinarily used includes payment of "longevity compensation" and such compensation is subject to deductions for contributions to policemen's and firemen's pension funds under rules and regulations requiring members to contribute four per cent of their "annual salary."

3. A "uniform allowance" for policemen and firemen, which is based on actual expenses or a reasonable estimate of expenses, is not "salary" within the meaning of rules and regulations for policemen's and firemen's pension funds which provide for member contributions of four per cent of "annual salary."

Respectfully,

WILLIAM B. SAXBE

Attorney General