

question has on several occasions been the subject of consideration by the State Department, and in each case it was held that citizenship cannot be conferred upon an alien child by adoption.

On February 26, 1870, Secretary Fish held that the only mode of adoption by which a private person can confer citizenship upon an alien is that of marrying a female of foreign birth. Under the present law, however, citizenship cannot be thus conferred by marriage.

Again, in 1872, Secretary Fish held that a citizen of the United States cannot by adopting a child of foreign nativity confer on such child the privileges of citizenship in the United States.

Secretary Frelinghuysen in 1884 expressed the view that a child born of foreign parents is not by an act of adoption under a state law brought within any of the provisions of the laws of the United States prescribing United States citizenship. In this case the act of adoption took place in America.

Secretary Bayard in 1886 declined to grant a passport to a Chinese woman who had been adopted in China by an American citizen and who desired to go to Japan as a medical missionary in the service of an American missionary society. See Moore's Digest of International Law, Vol. 3, pages 484 and 485.

I am therefore of the opinion that an alien minor adopted abroad by a citizen of the United States would not be recognized in Ohio as an American citizen.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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2553.

APPROVAL, BONDS OF THE VILLAGE OF RICHMOND, LAKE COUNTY,  
OHIO—\$21,000.00.

COLUMBUS, OHIO, September 7, 1928.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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2554.

MAYOR—ASSUMING VILLAGE OFFICE AFTER JULY 25, 1927—COUNCIL  
CANNOT INCREASE COMPENSATION DURING TERM.

**SYLLABUS:**

*A village council is without authority to enact an ordinance attempting to provide for an increase of compensation for a mayor who assumed office subsequent to July 25, 1927, the effective date of House Bill No. 99, which ordinance purports to provide compensation, in the way of a fixed sum and not dependent on conviction, for the trial of each ordinance case and such compensation to be paid in addition to the salary fixed by such council for such office. Such a mayor is without lawful authority to receive such compensation so provided.*

COLUMBUS, OHIO, September 7, 1928.

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

GENTLEMEN :—This will acknowledge your letter of August 24, 1928, which reads as follows :

“The syllabus of Opinion No. 1645, dated February 1, 1928, reads :

“1. Section 4270, General Code, as amended by the 87th General Assembly, requires the mayor of a municipality, whether a city or village, to pay all fees collected by him in ordinance cases and due him as such mayor, or to a marshal, chief of police or other officer of the municipality, into the treasury of the municipality on the first Monday of each month.

2. Where the council of a village had, previous to the effective date of House Bill No. 99, passed by the 87th General Assembly, provided by ordinance that the mayor and marshal might retain as a part of their compensation the fees collected in ordinance cases, such council may enact legislation providing means of compensation for such mayor and marshal to take the place of the compensation by way of fees, which was caused to fail by reason of the amendment of Section 4270, General Code, as passed by the 87th General Assembly, and the benefit of such legislation may inure to the benefit of a mayor and marshal then in office, for the remaining portion of their terms.

3. Legislation providing for compensation for village mayors and marshals may lawfully take the form of providing a fixed fee for the trial of each case involving the violation of an ordinance, the said fee to be in no wise dependent on the outcome of the trial or the collection of the costs thereof.”

Section 4219, G. C., provides, in part, that an official's compensation shall not be increased or diminished during the term for which he was elected, or appointed.

We find that councils in many villages, which had authorized the mayor to retain fees in ordinance cases in addition to salary, had no knowledge of the effect of the amendment of Section 4270, G. C., until recently.

*QUESTION:* When council provides by ordinance at this time for an increase in the compensation, of the mayor, in the way of a fixed sum, and not dependent on a conviction, for the trial of each ordinance case to be paid in addition to salary, and said sum to be in lieu of fees which the mayor was authorized by ordinance to retain, may a mayor, who was elected in 1927, and took office on January 1, 1928, legally draw such sums in addition to the fixed salary?”

Previous to the enactment of House Bill No. 99 by the 87th General Assembly, Section 4270, General Code, read as follows :

“All fines and forfeitures in ordinance cases and all fees collected by the mayor, or which in any manner comes into the hands, due such mayor or to a marshal, chief of police or other officer of the municipality and any other fees and expenses which have been advanced out of the municipal treasury, and all moneys received by such mayor for the use of the municipality, shall be by him paid into the treasury of the municipality on the first Monday of

each month, *provided that the council of a village may, by ordinance, authorize the mayor and marshal to retain their legal fees in addition to their salaries, but in such event a marshal shall not be entitled to his expenses.* At the first regular meeting of council in each and every month, he shall submit a full statement of all moneys received, from whom and for what purposes received and when paid into the treasury. Except as otherwise provided by law, all fines and forfeitures collected by him in state cases together with all fees and expenses collected, which have been advanced out of the county treasury, shall be by him paid over to the county treasury on the first business day of each month." (Italics the writer's.)

By the terms of House Bill No. 99 (112 v. 141), Section 4270, supra, was amended by the deletion of the clause italicized in the above quotation. This act became effective July 25, 1927.

Constitutional provision has been made and laws have been enacted in the furtherance of public policy prohibiting any change in the compensation of public officers during their term of office. Article II, Section 20 of the Constitution of Ohio reads as follows:

"The General Assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

Section 4219, General Code, relating to villages, reads as follows:

"Council shall fix the compensation and bonds of all officers, clerks and employes in the village government, except as otherwise provided by law. All bonds shall be made with sureties subject to the approval of the mayor. The compensation so fixed shall not be increased or diminished during the term for which any officer, clerk or employe may have been elected or appointed. Members of council may receive as compensation the sum of two dollars for each meeting, not to exceed twenty-four meetings in any one year."

It will be noted that language of like import with that of the constitutional provision above quoted is not incorporated in Section 4219, General Code, the former providing that no change in compensation shall affect the salary of an officer during his existing term, while the latter provides that the compensation of all officers, clerks and employes in a village government shall not be increased or diminished during the term for which such officer, clerk or employe may have been elected or appointed.

Opinion No. 1645, the syllabus of which you quote, applies only to such mayors as were elected to office prior to July 25, 1927, the effective date of House Bill No. 99, supra. With regard to such mayors the second paragraph of the syllabus of the opinion provides:

"2. Where the council of a village had, previous to the effective date of House Bill No. 99, passed by the 87th General Assembly, provided by ordinance that the mayor and marshal might retain as a part of their compensation the fees collected in ordinance cases, such council may enact legislation providing means of compensation for such mayor and marshal to take the place of the compensation by way of fees, which was caused to fail by reason of the amendment of Section 4270, General Code, as passed by the 87th

General Assembly, and the benefit of such legislation may inure to the benefit of a mayor and marshal then in office, for the remaining portion of their terms.”

However, as regards mayors who have assumed office since the effective date of House Bill No. 99, a different conclusion must necessarily be reached. The compensation of such mayors upon assuming office is fixed by council, which council is presumed to enact its legislation with full knowledge of the then existing law. By the terms of Section 4219, supra, the compensation fixed by council at the time such mayor assumed office may not lawfully be increased or diminished during the term for which such mayor has been elected or appointed. An ordinance such as presented by your inquiry would in no wise be legislation providing means of compensation for such mayor to take the place of compensation by way of fees, which was caused to fail by reason of the amendment of the law so as to come within the ruling made in Opinion 1645, supra. Such an ordinance would constitute an increase in the compensation theretofore fixed by council for such office and would clearly be illegal.

In view of the foregoing and by way of specific answer to your inquiry, it is my opinion that a village council is without authority to enact an ordinance attempting to provide for an increase of compensation for a mayor who assumed office subsequent to July 25, 1927, the effective date of House Bill No. 99, which ordinance purports to provide compensation, in the way of a fixed sum and not dependent on conviction, for the trial of each ordinance case and such compensation to be paid in addition to the salary fixed by such council for such office. Such a mayor is without lawful authority to receive such compensation so provided.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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2555.

DISAPPROVAL, BONDS OF THE VILLAGE OF WADSWORTH, MEDINA COUNTY, OHIO—\$18,500.00.

COLUMBUS, OHIO, September 7, 1928.

Re: Bonds of the Village of Wadsworth, Medina County, Ohio, \$18,500.00.

*Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Upon an examination of the transcript relative to the above bond issue, which is, in fact, two issues, one in the sum of \$8,500.00 in anticipation of the collection of special assessments to pay the property owners' portion of the cost of improving East Walnut Street, and the other in the sum of \$10,000.00 to pay the cost of improving and extending the waterworks plant and lines.

In connection with the \$8,500.00 issue, I note that said bonds were advertised for sale on the basis of bearing interest at the rate of 5½% per annum. No provision was made in the advertisement for submitting bids based on a rate of interest other than that specified in the advertisement, as provided in Section 2293-28, General Code. However, it appears from the transcript that the bonds were awarded to the highest