

OPINION NO. 1007**Syllabus:**

The provisions of Section 143.34, Revised Code, are not applicable to the ordinance of a charter municipal corporation which provides for extra compensation for policemen who work a shift other than a day shift.

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To: Paul R. Young, Montgomery County Pros. Atty., Dayton, Ohio

By: William B. Saxbe, Attorney General, April 29, 1964

I have before me your request for my opinion concerning a provision of a proposed personnel ordinance of a charter city in Montgomery County, which provision reads as follows:

"Employees in pay grades below eleven shall receive extra compensation equal to three percent of their base rate of pay whenever they are required as part of a regular schedule, exclusive of overtime periods, to work a shift other than a day shift, provided such compensation shall not be paid for more than one shift per twenty-four hour period."

Your specific questions are as follows:

- "1. Does the provision of the proposed ordinance above stated constitute an increase in salary or other compensation of anyone holding a position in the Police Department beyond that fixed for the rank in which such position is classified, pursuant to Section 143.34, Revised Code?
- "2. If the answer to the first question is in the affirmative, does such increase constitute a promotion, thereby requiring that a competitive promotional examination be held to determine which police sergeants and police patrolmen are eligible to work a shift other than a day shift?"

Section 143.34, Revised Code, concerns the method of promotion of members of police departments, and primarily concerns

itself with the filling of vacancies above the rank of patrolman. The seventh sentence of the section is as follows:

"For the purpose of this section, an increase in the salary or other compensation of anyone holding a position in a police department beyond that fixed for the rank in which such position is classified, shall be deemed a promotion."

Your questions imply that Section 143.34, Revised Code, supra, governs or at least in some respect controls the validity of the proposed ordinance. With this I cannot agree.

Article XVIII, Section 3 of the Constitution of Ohio is as follows:

"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."

The words "as are not in conflict with general laws" found in this section modify the words "local police, sanitary and other similar regulations" but do not modify the words "powers of local self-government." State ex rel., Canada v. Phillips, 168 Ohio St., 191. The fifth branch of the syllabus of the same case states:

"The mere fact that the exercise of a power of local self-government may happen to relate to the police department does not make it a police regulation within the meaning of the words 'police-regulations' found in Section 3 of Article XVIII of the Constitution."

In Harsney v. Allen, Jr., 160 Ohio St., 36, at page 41, it is said:

"The organization and regulation of its police force, as well as its civil service functions, are within a municipality's powers of local self-government. * * *"

In Morris v. Roseman, 162 Ohio St., 447, at page 450, Judge Zimmerman, in the majority opinion, said:

"* * * If a municipality adopts a charter it thereby and thereunder has the power to enact and enforce ordinances relating to local affairs, but, if it does not, its organization and operation are regulated by the statutory provisions covering the subject."

Since the establishment by a charter municipality of rates of compensation for its police officers is obviously within the "organization and regulation of its police force," the power to do so is within its power of self-government, exercised under Article XVIII, Section 3 of the Constitution, and such power

is not controlled or regulated by the statutory provisions concerned.

I am therefore of the opinion and you are so advised that the proposed personnel ordinance of the charter city in question is not governed by or in any way controlled by Section 143.34, Revised Code, inasmuch as charter cities are not governed in the exercise of such a power of local self-government by general law of Ohio but rather by the charter and the ordinance of the city passed thereunder.