

Note from the Attorney General's Office:

1970 Op. Att'y Gen. No. 70-081 was overruled in part by
2008 Op. Att'y Gen. No. 2008-032.

OPINION NO. 70-081

Syllabus:

1. Where a city has adopted a charter pursuant to the Constitution, and such charter does not impose a duty on the city solicitor or law director to provide services for the city board of education, a fee arrangement between the law department and the city board of education which provides for reasonable compensation for legal services to the board is permissible.

2. It is permissible for a city board of education to contract with private law firms to provide specific legal services to assist or supplement the services provided to the school district by the city solicitor or law director.

To: Martin Essex, Supt. of Public Instruction, Columbus, Ohio
By: Paul W. Brown, Attorney General, July 14, 1970

I have your letter requesting my opinion as to whether a fee arrangement with the Cleveland Law Department is permissible; and secondly, whether it is permissible for the Cleveland City Board of Education to contract with independent law firms to provide specific legal services.

Section 3313.35, Revised Code, provides, in part:

"In city school districts, the city solicitor shall be the legal adviser and attorney for the board thereof * * *."

And Section 93, Chapter 15, Charter of the City of Cleveland, page 16, provides:

"In addition to the duties imposed upon the director of law by this charter or required of him by ordinance, he shall perform the duties which are imposed upon city solicitors by the general law of the state, beyond the competence of this charter to alter or require."

But, Opinion No. 2478, Opinions of the Attorney General for 1934, page 435, stated:

"1. In a municipality which has adopted a charter, which charter does not provide that the solicitor or law director of said municipality shall act as adviser to and attorney for the board of education of the school district of said city and does not contain a provision expressly imposing upon the said solicitor or law director the duties imposed by the general laws of the state, it is not the duty of the said solicitor or law director to act as ad-

viser to and attorney for the said board of education without compensation."

Furthermore, the 1934 Opinion was cited and followed in Opinion No. 3644, Opinions of the Attorney General for 1954, page 135:

"1. The provisions of Section 3313.35, Revised Code, requiring the city solicitor of a city which is partly or wholly within the boundaries of a city school district to act as legal adviser and attorney for the board of education of such district, is applicable to all cities which have not framed or adopted a charter pursuant to the provisions of Section 7, of Article XVIII, of the Constitution.

"2. In case a city has adopted a charter pursuant to Section 7 of Article XVIII of the Constitution, which does not either directly or indirectly impose on its legal officer the duty to act as the legal adviser and attorney of the board of education, Section 3313.35, Revised Code, will not operate to impose such duty. Opinion No. 2478, Opinions of the Attorney General for 1934, page 435, approved and followed."

The City of Cleveland has adopted a charter pursuant to the provisions of Section 7, Article XVIII of the Constitution. The Cleveland Charter defines the duties of the Director of Law in Section 83, Chapter 15, Charter of the City of Cleveland:

"* * *He shall be the legal adviser of and attorney and counsel for the city, and for all officers and departments thereof in matters relating to their official duties. He shall prosecute or defend all suits for and in behalf of the city, and shall prepare all contracts, bonds and other instruments in writing in which the city is concerned and shall endorse on each his approval of the form and correctness thereof. No such bond, contract or instrument shall become effective without such endorsement by the director of law thereon."

It is clear that the Charter of the City of Cleveland does not impose on its legal officer a duty to act as legal adviser for the city board of education. Since the Charter does not impose such a duty, and since Cleveland is a city chartered under Section 7, Article XVIII of the Constitution, Section 3313.35, supra, will not operate to impose such a duty.

In regard to the question of whether the legal officer of a charter city may be compensated for his services to the city board of education, Opinion No. 2478, supra, at page 435, is directly in point:

"2. Under such circumstances the said board of education may lawfully employ the said solicitor or law director as its adviser and attorney and may lawfully pay him reasonable compensation for his services as such."

It is evident that a fee arrangement between the Board of

Education and the City Department of Law is permissible if the compensation is reasonable. The determination of reasonable compensation must be made by the school board involved, based on the information available to it.

Regarding your second request as to whether it is permissible for the Cleveland City Board of Education to contract with independent law firms to provide specific legal services, Opinion No. 3644, supra, at page 135, is also directly in point:

"3. A board of education of a city school district may lawfully employ, and pay from the funds of the school board, legal counsel to assist or supplement the services provided to the school district by the city solicitor.* * *"

It is clear that it is permissible for a city school board to contract with independent law firms to provide specific legal services.

In conclusion, it is my opinion and you are advised:

1. Where a city has adopted a charter pursuant to the Constitution, and such charter does not impose a duty on the city solicitor or law director to provide services for the city board of education, a fee arrangement between the law department and the city board of education which provides for reasonable compensation for legal services to the board is permissible.

2. It is permissible for a city board of education to contract with private law firms to provide specific legal services to assist or supplement the services provided to the school district by the city solicitor or law director.