

in 11 Ohio Circuit Court Reports N. S. 195. The court in passing upon the question as to when the director of schools of the Toledo school district was required to secure bids held that the director of schools, where one is chosen, is not required to advertise for bids for supplies since the law as to supplies and equipment (codified as 7695 G. C.), did not provide when or how he should advertise for bids. The court further said:

"2. A broad discretion is reposed in boards of education regarding the purchase of necessary supplies for schools * * * * and where it appears that the board has complied with the requirement that it act in good faith for the best good of the schools according to the right and understanding of its members, acceptance of other than the cheapest coal will not be enjoined.

3. A director of schools is not required, * * * * to go to the expense of advertising for bids for every trivial thing in the way of supplies which may have been ordered by the board to be purchased."

It will be noted that Section 7623 G. C. speaks of the furnishing of a school-house or the improvement or repair of the same and no mention is made in that section of "supplies and equipment" referred to in Section 7695 G. C.

In reply to your first question you are advised that, based upon the decision of the Circuit Court in the Gosline vs. Toledo Board of Education case cited, it is the opinion of this department that in any school district where a director of schools has been chosen public bidding is required for those things set forth in Section 7623 G. C., but not for the supplies and equipment referred to in Section 7695 G. C.

This answer to your first question renders unnecessary any answer to your second question.

Respectfully,

JOHN G. PRICE,

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3844.

MUNICIPAL CORPORATIONS—WHERE COUNCIL DETERMINES NUMBER AND COMPENSATION OF OFFICERS AND EMPLOYES OF CITY—MAY PROVIDE EIGHT HOURS A DAY STANDARD FOR DAY'S WORK—WHEN OFFICERS AND EMPLOYES OF POLICE DEPARTMENT MAY RECEIVE EXTRA COMPENSATION FOR OVERTIME SERVICES.

1. *Under the provisions of section 4214 of the General Code, council is authorized to determine the number and fix the compensation of officers and employes of the city government, and may in the fixing of the salary or compensation of such employes provide that eight hours a day be deemed a standard for a day's work.*

2. *Officers and employes of a police department of a municipality,, who are paid a definite and certain salary per month, fixed by ordinance of council may not receive extra compensation in addition to said salary for overtime services per-*

formed, in the absence of lawful provision made therefor by ordinance or resolution of council.

COLUMBUS, OHIO, December 30, 1922.

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

GENTLEMEN:—Receipt is acknowledged of your recent request for opinion as follows:

“In Opinion No. 1256 of November 24, 1914, Annual Report for that year, Volume 2, page 1461, the Attorney General held that:

‘Regular patrolmen who have worked the number of hours stipulated by the director of safety may receive extra compensation for overtime, when council in fixing the compensation of such officers specifies that they shall be paid at the rate of so much per diem. Such overtime should be paid proportionately to the number of hours’ work as compared with the number of hours designated by the director of safety as a full day’s work. Council should, however, by ordinance definitely and specifically fix the number of hours which shall constitute a day’s work for such patrolmen.’

In Opinion No. 65 of February 24, 1919, Opinions for that year, Volume 1, page 83, your department held that:

‘Under the laws of Ohio now in force, the power to make rules regarding the days off to be allowed members of the police department is vested in the director of public safety; and the power to make similar rules governing members of the fire department is vested in the council.’

It would seem that if the director of public safety has sole power to make rules regarding days-off to be allowed members of the police department that he would also have sole authority to designate the hours of service that should be rendered by a patrolman for compensation fixed by council. This view, however, conflicts with the opinion of 1914 as quoted above.

Question 1. Has council or the director of public safety authority to fix the number of hours that shall constitute a day’s service for a patrolman?

In Opinion No. 367 of July 8, 1913, Annual Report for that year, page 292, the Attorney General held that:

‘The annual compensation fixed by council for policemen and firemen, unless otherwise provided by ordinance, is to cover all their services as such policemen or firemen, and they cannot draw pay for overtime. If any have been paid overtime, such payments are illegal and may be recovered.’

The City of Hamilton passed Ordinance No. 1979, copy of which is enclosed herewith, fixing the salary in Section 1 of said Ordinance of all

members of the police department at a stipulated amount per month. In section 2 of said Ordinance council provided that :

'Eight hours shall constitute a day's work in the said police department upon which compensation of the members of the department as herein constituted shall be based.'

In view of Opinion No. 65 of February 24, 1919, it would seem that council exceeded its authority in providing that eight hours shall constitute a day's work in the police department. It would seem further that in section 1 of said ordinance that in fixing the salary to be paid each patrolman at so much per month that council had fixed a maximum salary for each such officer in any one month. We find that the construction placed upon section 2 of said ordinance by officers of the City of Hamilton is that a patrolman shall be paid at the rate specified in section 1 for eight hours service and at the same rate for all hours in excess of eight worked on the same day.

Question 2. Under the conditions above described and the provisions of the ordinance submitted and in view of the opinions referred to, could the members of the police department of the City of Hamilton legally be paid overtime or more in any one month than the salaries fixed in said section 1 of the ordinance?"

Pertinent to your first question, consideration may be directed to the two opinions of the attorney general quoted in your inquiry which you mention as being in conflict.

It is to be noted that the question directly considered in Opinion No. 1256, Opinions of the Attorney General 1914, Vol. 11, p. 1461, is that of the fixing of a patrolman's compensation, wherein computation is made upon the basis of a "per diem" remuneration, and in this opinion it is held that "regular patrolmen who have worked the number of hours stipulated by the director of safety may receive extra compensation for overtime, when council in fixing the compensation of such officers specifies that they shall be paid at the *rate of so much per diem.*" This opinion is thought to consider in chief the question of an officer's compensation, when computed upon a basis of the number of days he actually works or devotes to the position of his employment, rather than a consideration of the number of days he "lays off" or absents himself from the same. That is to say Opinion No. 65, Opinions of the Attorney General 1919, Vol 1, p. 83, in concluding that "it is within the power of the director of public safety to make the rules regarding the police department, and that the power to make the rules regarding the fire department is conferred upon the city council" is considering the question of rules and regulations in their ordinary sense and not upon the assumption that such rule or regulation is a basis or limitation essential to the fixing of the compensation. Hence, it is believed that these opinions may be said to be in harmony upon questions pertinent to your inquiry.

Returning then to your first question, as to whether council or the director of public safety is authorized to fix the number of hours which shall constitute a day's service for patrolmen, it would seem that answer in the affirmative is permissible in both instances; that is to say, when the regulation of the number of hours of the daily service is an essential factor in limiting, supplementing, or determining

the compensation or salary of a municipal officer, it would seem that authority alone in such matters is vested in council, since section 4214, of the General Code, provides that council shall determine the number of officers, clerks and employes in each department of the city government, and shall fix by ordinance or resolution their respective salaries and compensation. On the other hand it equally follows, that the director of public safety under authority of section 4368, and and 4382 of the General Code is authorized to make rules and regulations relative to the police department, and the conclusion would seem obvious that rules and regulations upon the subject of the hours of service constituting a day's work, when not amounting to an element of compensation fixing, or which are not otherwise controlled by law, properly are such as may be determined and formulated by the director of public safety.

Considering your second question in view of ordinance No. 1979, passed by the council of the city of Hamilton, February 1, 1922, which you have submitted, it would seem that this instrument provides for a straight salary for the members of the police department, and while the entire ordinance may not be quoted for reasons of length, paragraph 5 of Section 1 provides that thirty-one patrolmen shall constitute the patrol force "*who shall be paid in the sum of \$110.00 per month*, and shall give a surety bond to be paid for by the city of Hamilton in the sum of \$1000.00. Other officers and employes are similarly provided for and their salary is fixed by the same language as is used in the above quoted paragraph. It would seem then, as previously stated, that the ordinance in question provides for a monthly salary to be paid the members of the police department of the city of Hamilton. No provision is made by the terms of this instrument for any extra compensation other than said salary or any reference made to a per diem allowance upon which the same could be based. It is true that Section II of said ordinance provides that eight hours shall constitute a day's work in the said police department; however, such provision is not thought to authorize extra compensation, but on the contrary is believed to be a condition rather of such employment; that is to say, that to earn the monthly salary provided, the employe is required in the course of his particular employment to devote eight hours in the discharge of his duty in each day, no more and no less is required of him to fulfill his contract.

It is an elementary principle of the law that public officials may be paid only such compensation as is provided them by law. It is true the authority for such disbursements of public funds may be express or implied, however in both instances the direction must be clear and unambiguous, doubtful claims being resolved in favor of the public. Upon such considerations therefore I am inclined to the opinion that the provisions of the submitted ordinance provides for a monthly salary for the members of the police force of the city of Hamilton, and in the absence of provisional legislation upon the subject, members of the police department of said city may not lawfully be paid overtime, or more in any one month than the salaries fixed in Section 1 of said ordinance.

Respectfully,
JOHN G. PRICE,
Attorney-General.