

absent voter has a right to make application for an absent voter's ballot and cast the same in the manner provided by law, during the period of thirty days prior to the day of the election.

3. Under the provisions of section 5080-1 G. C., a board of education should allow at least forty days to lapse between the time of calling such election and election day itself, where a question is to be submitted to a vote of the electors and the resolution calling the election must be furnished to the board of deputy state supervisors of elections in sufficient time, prior to such election day, that the board of deputy state supervisors of elections may have such ballots available for absent voters thirty days before the election itself. The notice of any such special school election shall be posted or published at least ten days prior to the date of such election, as provided in section 4839 G. C.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

1788.

MUNICIPAL CORPORATIONS—MAY LEGALLY ENACT ORDINANCES TO PROVIDE FOR UNLAWFUL TRAFFICKING IN INTOXICATING LIQUORS—STATE MAY INSTITUTE PROSECUTION FOR SAME OFFENSE UNDER CRABBE ACT—HOW MONEYS FROM CITY ORDINANCES CASES DISTRIBUTED.

1. *Within the limits of their powers, municipalities may legally enact ordinances providing punishment for those unlawfully trafficking in intoxicating liquors.*
2. *Under such circumstances the right of the state to institute a prosecution for the same offense under the Crabbe Act is not abrogated.*
3. *Moneys arising from prosecutions under city ordinances in such cases will be distributed in the manner provided for ordinance cases and not in accordance with the provisions of the Crabbe Act.*

COLUMBUS, OHIO, January 14, 1921.

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

GENTLEMEN:—Your communication of recent date is as follows:

“We are respectfully calling your attention to House Bill No. 620, Laws of Ohio 108, page 1182, generally known as the Crabbe Act, and we beg to advise you that quite a number of cities and villages of the state of Ohio (for illustration, we will mention the city of Warren and the village of Willard) have enacted ordinances fixing penalties for trafficking in intoxicating liquors similar to the Crabbe Act; some of them with the same penalties, others even with greater penalties, and such municipalities are trying cases upon arrest under these ordinances and covering the fines and forfeitures into the municipal treasuries, thereby circumventing section 6212-19 G. C., as follows:

‘Money arising from fines and forfeited bonds shall be paid one-half into the state treasury credited to the general revenue fund, one-half to the treasury of the township, municipality or county where the prosecution is held, according as to whether the officer hearing the case is a township, municipal or county officer.’

We are respectfully calling your attention to Opinions of the Attorney-General, 1916 reports, page 1839; and 1919 reports, page 1539, and are requesting your written opinion upon the following question:

May municipalities of Ohio legally enact ordinances covering offenses which are covered in the Crabbe Act, try such offenses under these ordinances and cover the fines and forfeitures in total into the municipal treasuries?"

In an opinion of this department found in Opinions of Attorney-General, 1916, Vol. II, p. 1839, to which you refer, the question was:

"In cases in which the state laws provide fines and penalties for violation of state laws, and further provide, either specifically or by general statute, that such fines when assessed in municipal courts, police courts, mayors' courts, or other courts, shall be paid into the treasury of the county, may the council of a municipality legally pass ordinances covering the same points, try such cases under said ordinances, and thereby divert the fines into the treasury of the municipality?"

The answer, as disclosed by the syllabus, was:

"A municipality, within the limits of the powers granted to it, may enact ordinances to punish the same acts as are punished by state laws, try cases under said ordinances and cover the fines collected thereunder into the treasury of the municipality."

The following is quoted from an opinion to which you refer found in Opinions of Attorney-General, 1919, Vol. II, p. 1539, in which the authority of municipalities to enact ordinances regulating the carrying of concealed weapons was considered:

"Section 3628 G. C., which relates to the powers of municipalities, provides as follows:

'To make the violation of ordinances a misdemeanor, and to provide for the punishment thereof by fine or imprisonment, or both, but such fine shall not exceed five hundred dollars and such imprisonment shall not exceed six months.'

Article XVIII, section 3 of the amended constitution of Ohio provides 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 supreme court of Ohio, in the case of city of Fremont vs. Keating, 96 O. S. 468, clearly holds that under said constitutional provision municipalities may 'adopt, and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws.' Said opinion makes no distinction as to the application of such rule as between chartered and non-chartered municipalities.

Therefore, in view of the foregoing, I am of the opinion that non-chartered as well as chartered municipalities may enact proper ordinances regulating the carrying of concealed weapons.

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I am further of the opinion that a prosecution under such an or-

dinance does not prevent a prosecution under section 12819 G. C., as in the case of Koch vs. State, 53 O. S. 433, the syllabus reads:

'A former conviction before a mayor for the violation of an ordinance is not a bar to the prosecution of an information charging the same act as a violation of the statute.'

The rule in Ohio seems to be that municipalities, within the limits of the power granted to them, may pass ordinances regulating the same acts as state statutes have regulated so long as the said ordinance prescribes a punishment which limits the offense to a misdemeanor. If a city ordinance should prescribe such a punishment as would result in placing the accused in jeopardy when being prosecuted under said ordinance, this would defeat the operation of the state statute providing an offense for the same act and render said ordinance invalid."

Section 3661 G. C., which relates to the enumerated powers of a municipality, provides:

"To regulate ale, beer, porter houses and shops, and the sale of intoxicating liquors as a beverage. But nothing in this chapter shall be construed to amend, repeal or in any way affect the provisions of law relating to the sale of intoxicating liquors on Sunday or local option as to sale of liquors in municipalities."

Inasmuch as the repealing section of the Crabbe Act, among other things, provides: "All provisions of law inconsistent with this act are repealed only to the extent of such inconsistency," it follows that anything in said section inconsistent with the provisions of the Crabbe Act is repealed; that is to say, a municipality cannot now pass an ordinance permitting the sale of intoxicating liquors. However, it is believed that said section still enables the municipality to provide ordinances prohibiting such sales. In any event, section 3661, above referred to, clearly discloses that the regulation of the sale of intoxicating liquors is within the scope of the powers granted to municipalities under the enumerated powers of the statute. This provision, coupled with the supreme court's interpretation of Article XVIII, section 3 of the amended constitution of Ohio in the case of Fremont vs. Keating, referred to in the opinion heretofore quoted from, seems conclusive as to the power of municipalities to enact ordinances regulating or prohibiting the sale of intoxicating liquors.

Section 3628 G. C., which relates to the enumerated powers of municipalities and which is again quoted herein for the purpose of convenience, provides:

"To make the violation of ordinances a misdemeanor, and to provide for the punishment thereof by fine or imprisonment, or both, but such fine shall not exceed five hundred dollars and such imprisonment shall not exceed six months."

Undoubtedly, as heretofore emphasized in the opinions quoted from, the punishment provided for in such ordinances must be within the limits of the powers granted, that is, the offense provided must be a misdemeanor, the maximum fine must not exceed five hundred dollars, and the maximum jail sentence must not exceed six months. It follows that money arising from prosecutions made under such ordinances will be distributed in the manner provided by law for such cases, and not under the provisions of the Crabbe Act.

While, as suggested in your letter, this may seem to be a method of circumventing the provisions of the Crabbe Act relative to the disposition of the fines,

it must be kept in mind that such prosecutions are not instituted under the Crabbe Act; neither is the right to prosecute under the said law abrogated. It further must be kept in view that the Crabbe Act is a police regulation, the object of which is to protect society from the evils of the unlawful traffic of intoxicating liquors, and is not intended as a revenue producing measure for the benefit of the state.

Therefore, in the event that a municipality under the powers granted to it by the constitution and the statutes, by ordinance accomplishes the results intended by the Crabbe Act relative to preventing the illegal traffic of intoxicating liquors, the state cannot complain relative to the disposition of the fines in such cases, notwithstanding under such circumstances the fines and penalties are diverted from the channels into which they would go if prosecutions were made by the state under the Crabbe Act.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

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1789.

APPROVAL, BONDS OF CITY OF DELPHOS IN AMOUNT OF \$30,500  
 FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, January 14, 1921.

*The Industrial Commission of Ohio, Columbus, Ohio.*

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1790.

APPROVAL, BONDS OF VILLAGE OF CANAL WINCHESTER IN  
 AMOUNT OF \$9,500 FOR STREET IMPROVEMENT.

COLUMBUS, OHIO, January 14, 1921.

*The Industrial Commission of Ohio, Columbus, Ohio.*

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1791.

APPROVAL, BONDS OF VILLAGE OF BEXLEY, OHIO, IN AMOUNT OF  
 \$25,000 FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, January 14, 1921.

*The Industrial Commission of Ohio, Columbus, Ohio.*