

through you as Director of the Department of Public Works.

This lease instrument provides that said lease and the obligation thereunder for the payment of the rentals therein provided for are subject to appropriation made or to be made for this purpose by the legislature. With this provision contained in the lease I find that said lease has been properly executed and that the same is in proper legal form.

The lease is accompanied by contract encumbrance record No. 24 which has been executed in proper form and which shows that there are unencumbered balances in the appropriation account sufficient in amount to pay the monthly rentals under this lease for the months of November and December, 1937. This is a sufficient compliance with the provisions of Section 2288-2, General Code. This lease is accordingly approved by me and the same is herewith returned to you.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1681.

MUNICIPALITY MAY NOT EXPEND PUBLIC FUNDS TO TRAIN RECREATION OFFICIALS IN THEIR DUTIES, WHEN—REIMBURSEMENT OF POLICE OFFICERS WHO ATTEND FEDERAL BUREAU OF INVESTIGATION POLICE SCHOOL, WHEN—DIRECTOR OF PUBLIC WELFARE MAY NOT BE REIMBURSED FOR CONVENTION EXPENSES.

SYLLABUS:

1. *In the absence of express charter provision, a municipality may not expend public funds to engage the services of a recreation association for the purpose of training the employes of the Division of Recreation in their official duties.*

2. *In the absence of express charter provision, a police officer may not be reimbursed from municipal funds, for traveling expenses incurred in attending a training course conducted by the Federal Bureau of Investigation of the Department of Justice, inasmuch as it appears that the police officer was engaged merely in the acquisition of general information and was not pursuing the study of a definite, presently contemplated project of the Division of Police. (1930 Opinions of the Attorney General, Vol. II, p. 1091, approved and followed.)*

3. *A director of public welfare of a municipality cannot be reim-*

bursed from public funds for expense incurred in attending a state convention of like public officials where it does not appear that such officer was engaged in the acquisition of information necessary for the furtherance of a definite, presently contemplated municipal project. (1930 Opinions of the Attorney General, Vol. II, p. 1091, approved and followed.)

COLUMBUS, OHIO, December 27, 1937.

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

GENTLEMEN: This will acknowledge receipt of your recent communication, which reads as follows:

"We are inclosing herewith letter from our City of Dayton Examiner, in which it is shown that a payment of \$250 was made to the National Recreation Association of New York for conducting a playground workers' institute.

Also, that upon recommendation of the City Manager, the City Commission authorized payment to a sergeant-detective as reimbursement for traveling expenses to and from Washington, D. C., and for maintenance during his stay in Washington in attendance at the school conducted by the Federal Bureau of Investigation, in the aggregate sum of \$404.05.

It is also shown by the letter inclosed that the expenses of the Director of Public Welfare of said City were paid from public funds, while attending the Ohio Welfare Conference held during the period October 6 to 9, 1936.

The records do not indicate that the first and third payments above referred to were authorized by the City Commission, and it would seem that payment No. 2 was authorized informally as indicated by the minutes, and not by formal resolution or ordinance.

We are aware that a number of opinions have been rendered by the Attorney General's Department upon the question of various officials attending conventions, etc., but the circumstances under which the former opinions were rendered were somewhat different.

Accordingly, we are asking for your formal opinion under the circumstances indicated in the inclosed letter, concerning the legality of the above mentioned payments."

Your first question involves the right of a city to expend public funds for the employment of an instructor for the training of recreation

employees. It seems immaterial to a settlement of this question that the instruction or services were supplied by an association specializing in such services, or by an individual who was engaged directly by the city.

In Section 51 of the charter of the City of Dayton, Ohio, provision is made for the establishment of a Department of Public Welfare and the general powers and duties of the Director of Public Welfare are enumerated in Section 67 of this charter, which reads in part as follows:

“Subject to the supervision and control of the City Manager in all matters, the Director of Public Welfare shall manage all charitable, correctional and reformatory institutions and agencies belonging to the city; *the use of all recreational facilities of the city, including parks and playgrounds.*” (Italics, the writer’s.)

Looking to the Code of General Ordinances of the City of Dayton, Ohio, I find that Section 80 provides for the establishment of a Division of Recreation under the supervision of the Department of Public Welfare. Subsection (c) of Section 80, *supra*, which is pertinent to our present question, reads as follows:

“That the Division of Recreation shall have charge of all playgrounds and recreation facilities belonging to the City, including the apparatus used thereon, and shall supervise all games and entertainments conducted thereon, the purchase of all supplies, and the direction of all employees, and the enforcement of discipline in such playgrounds. Said division shall be under the direction of a Superintendent of Recreation, who shall be appointed in the manner provided by the Charter of the City of Dayton.”

I feel that the foregoing ordinance is merely the authority for the Director of Public Welfare to employ persons to supervise and direct the activities of the playgrounds and the other recreational facilities of the City of Dayton, Ohio.

In the absence of express charter provision, it seems that a municipality is without authority to expend public funds on the general education of its employees. This question, in substantially the same form, was considered in an opinion of the Attorney General, appearing in Opinions of the Attorney General for 1930, Volume II, page 1091, in which the first branch of the syllabus held as follows:

“The payment from city funds, of the traveling expenses of a recreation director employed by a city recreation board when

attending a convention of recreation officials for mere purposes of general education or the acquiring of general ideas pertaining to the duties of his position is unauthorized. If, however, the attendance upon such convention is authorized by resolution of the city recreation board which in the exercise of a sound discretion finds it necessary to send its recreation director on a trip in furtherance of a definite, presently contemplated undertaking for the benefit of the municipality the city may lawfully pay the necessary traveling expenses of such recreation director. Fourth branch of syllabus of Opinion No. 1327, dated December 3, 1929, modified in conformity herewith."

The 1930 opinion, *supra*, was grounded upon an opinion of the Attorney General found in the Annual Report of the Attorney General for 1910 and 1911, at page 942, in which it was held :

"To say that the municipality is justified in expending its money for the purpose of permitting its employes and officers to acquire information of this sort, is to say that the public money may be expended for the education of public servants. This, it seems to me, is fallacious and the power to make such an expenditure must be denied. Putting it in another way, the possible good that might result to the department and to the municipality from the acquisition of such general information, is too remote and indefinite upon which to found a public expenditure; * * * From still another viewpoint, officers are required to qualify and to continue to be qualified, and employes, likewise are presumed to be cognizant of the matters within the scope of their employment."

I realize, of course, that the 1930 opinion, *supra*, was concerned with the payment of the traveling expenses of a recreation director in attending a convention of recreation officials while the present question involves the direct instruction of recreation employes. However, both matters are substantially the same inasmuch as they have to do with the general education of public servants.

It does not appear that the employes under consideration were engaged in the study of a definite, presently contemplated recreational undertaking, but were merely acquiring information in relation to their general work as recreation employes. I am of the opinion, therefore, that, in the absence of express charter provision, a municipality may not expend public funds for the education of recreation employes in their official duties.

As regards the authority of a municipality to reimburse a police officer for expenses incurred in attending a training course offered by the Federal Bureau of Investigation of the Department of Justice, I find that Section 51 of the charter of the City of Dayton, Ohio, provides for the establishment of a Department of Public Safety, and Section 69 of the same charter designates the Director of Public Safety as the executive head of the Division of Police, subject to the control and supervision of the city manager. Section 70 of the city charter, *supra*, provides, among other things, that the police force shall be composed of a chief of police and such officers, patrolmen and other employes as the city manager may determine.

Again, in the absence of express charter provision, it appears that a self-governing municipality has no authority to expend its own funds on the training or education of its employes. In this instance an officer of the Division of Police of a charter city, pursuant to the resolution of the city commission, was reimbursed from public funds for expenses incurred in attending the training course offered by the Federal Bureau of Investigation of the Department of Justice. Just as in the case of the recreation employes, it appears that this officer was engaged in the acquisition of general information in connection with modern law enforcement and crime detection methods, and was not pursuing any definite, presently contemplated project of the Division of Police with a view to its adoption by that law enforcing agency.

This precise question was considered in the 1930 opinion, *supra*, in which it was held in the second branch of the syllabus:

“The traveling expenses of a salaried police officer, incurred in investigating finger print systems, may or may not lawfully be paid from city funds, depending on whether or not such investigation is merely for the purpose of acquiring general information with respect to finger print systems, or whether it is for the purpose of determining the actual working of a system, with a view to its installation in the city department which the police officer serves.”

Inasmuch as the facts given in your communication indicate that the police officer in question was only engaged in acquiring general information, I am constrained to follow the 1930 opinion, *supra*.

It is my opinion, therefore, that a police officer may not be reimbursed for expenses incurred in attending a training course offered by the Federal Bureau of Investigation of the Department of Justice.

The right of municipal officers to be reimbursed from public funds for expenses incurred in attending a conference or convention of like

officers was considered in the 1930 opinion of the Attorney General, *supra*. The third branch of the syllabus reads as follows:

“The traveling expenses of municipal officers or employes, incurred in attending conventions of like municipal officers and employes cannot be legally paid from public funds, even though authorized by the taxing authority of a municipal corporation, unless the attendance upon such convention is for the purpose of acquiring information relative to and necessary for the furtherance of a definite, presently contemplated undertaking for the benefit of the municipality in the performance of a duty enjoined by law.”

In the present case it does not appear that the Director of Public Welfare attended the conference for the purpose of acquiring information necessary for the furtherance of a definite, presently contemplated municipal undertaking. I do not deprecate the general educational value of attending a conference of public officials. However, it seems self-evident that the benefit of such conference redounds primarily to the individual and only incidentally to the general public.

In view of the opinion of the Attorney General for 1930, *supra*, and the fact that the Director of Public Welfare was not acting in the performance of any duty enjoined by law, I am of the opinion that the Director of Public Welfare of a city may not be reimbursed from public funds for expenses incurred in attending a state conference of welfare officers.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1682.

AUTHORITY TO LICENSE PRIVATE EMPLOYMENT OFFICES
—OHIO STATE EMPLOYMENT SERVICE—ADMINISTRATION
AND SUPERVISION OF OHIO STATE EMPLOYMENT
SERVICE DIVISION.

SYLLABUS:

1. *By express provisions of Section 1345-15, General Code, the authority to license and supervise private employment offices is given to the unemployment compensation commission, effective January 1, 1938.*