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1. MUNICIPAL WATERWORKS—CHIEF ADMINISTRATOR, CITY OF AKRON—AUTHORITY TO EXPEND FUNDS TO STUDY WAYS AND MEANS TO IMPROVE WATERWORKS SERVICE—EDUCATIONAL FEATURES— TO INDUCE EMPLOYEES TO ATTEND MEETINGS AFTER WORKING HOURS, ADMINISTRATOR MAY PROVIDE REFRESHMENTS AND PAY FOR THEM OUT OF WATERWORKS FUNDS.
2. A CITY EMPLOYEE COULD ATTEND A SCHOOL OF EDUCATION FOR A DEFINITE, PRESENTLY CONTEMPLATED PROJECT—SALARY AND EXPENSES MAY BE PAID.

SYLLABUS:

1. The chief administrator of the city of Akron, in the absence of charter or legislative prohibition, by virtue of his authority to make rules and regulations for the operation of a municipal waterworks, may expend funds for the purpose of studying ways and means of improving the waterworks service through educational features; and, as an inducement to employes to attend meetings after working hours relative to improving said service, may provide refreshments and pay for the same out of waterworks funds.

2. An employe of a city could have his salary and expenses paid during his attendance at a school if the purpose of the education was for a definite, presently contemplated project.

Columbus, Ohio, October 1, 1949

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I am in receipt of your communication in which you request my opinion on the following questions:

“1. When officials in charge of a municipal waterworks, electric light utility, or other municipal department, determine that it is necessary to hold an evening meeting of all employes of said department for the purpose of studying ways and means of improving public service, can the expense incurred in providing such educational features be lawfully paid from public funds?

“2. When it is deemed necessary to serve refreshments at such meetings, for the purpose of promoting better attendance of em-

ployes, can the cost of such refreshments legally be paid from public funds?

“3. When it is deemed necessary by the head of a city department in charge of the program for ‘rodent control’ to send an employe to (Akron) University for a course of technical training in matters pertaining to the furtherance of a program for rodent control in that city, can the salary and expense of such employe lawfully be paid from public funds during the time he is in attendance at the University?”

Upon reading the enclosed copy of letter received from your state examiner located in Akron, I find that questions 1 and 2 concern the Bureau of Water Supply. Therefore, the opinion given on said questions will be limited to that particular department, viz., the municipal waterworks. It is well established that municipal waterworks are public utilities and that municipalities may own and operate them.

Pursuant to the Constitution of Ohio, the people of the City of Akron established a charter, and under said charter the city is now operating. The terms of the charter provide for a mayor, who shall be the chief administrator, with certain powers and duties. Section 59, at page 18 of the charter of the City of Akron, published in the year 1927, provides that:

“The following administrative departments are hereby established: * * *

(2) Department of Public Service: * * *”

It is further provided under Section 60, at page 18 of said charter,

“At the head of each department there shall be a director. * * * He shall conduct the affairs of his department in accordance with the rules and regulations made by chief administrator, * * *”

Section 65, at page 18 of the charter, provides:

“Subject to the supervision and control of the chief administrator in all matters, the director of public service shall manage and * * * control the water supply system and maintenance and operation of same; * * * and all public utilities of the city. * * *”

By virtue of the above charter sections, it is apparent that the director of public service manages and controls the waterworks subject to the rules and regulations made by the mayor, who is the chief administrator.

It should be noted here that the municipality acts in a proprietary capacity when operating a municipal waterworks. In the case of City of

Barberton v. Miksch, 128 O. S. p. 169, the second branch of the syllabus reads:

“In the construction and maintenance of a system for supplying water to its inhabitants, a municipality acts in a proprietary capacity.”

In the case of Travelers Insurance Company of Hartford, Conn. v. Village of Wadsworth, 109 O. S. 440, at page 447, the court said:

“With regard to the exercise of proprietary powers the rule is that when exercising those powers the municipality may act as would an individual or private corporation. This is the general rule upon the subject.”

The court in supra case, at page 449, cited the case of Fretz v. City of Edmond, 66 Okla. 262, 168 Pac. 800, L.R.A. 1918C, 405, the second branch of the syllabus of which reads:

“Municipal corporations in operating a water plant exercise business and administrative functions, rather than those strictly governmental in their nature, and in the exercise of such functions are governed, largely by the same rules applicable to individuals or private corporations engaged in the same business.”

In Opinion No. 5580, Opinions of the Attorney General for 1942, a situation similar to your question arose. There a municipally owned transit system published and distributed a monthly magazine among its employees. The magazine was held to be essential to the efficient operation of the utility and the cost was considered as a legitimate part of the operating expenses. This opinion emphasized the fact that the municipality acted in a proprietary capacity when operating a transit system. It should be noted that the municipality does not have such wide powers when acting in a governmental capacity such as the operation of a police force. In *State ex rel. White, v. Cleveland*, 125 O. S. 230, the court held:

“A municipality, in so far as it acts in a proprietary capacity, possesses the same rights and powers and is subject to the same restrictions and regulations as other like proprietors.”

From the above, it can be seen that the municipality is acting in a proprietary capacity in operating a waterworks. In this capacity, the city may exercise the same business and administrative functions that an individual or private corporation may exercise.

Would a private business man, in furtherance of his business, provide educational features? Such educational features are usually provided for, and in so providing it is generally considered to be the act of a prudent business man. Would a private business man, in order to induce his employes to attend meetings after working hours, for the purpose of better acquainting said employes with the educational features of their department, serve refreshments at his expense? The ordinary prudent man of today is constantly expending money in order to promote better efficiency among his employes. Therefore, I believe that public funds may be used by the Department of Waterworks for the purpose of studying ways and means of improving the waterworks service through educational features. I also believe that refreshments may be provided as an inducement to employes to attend such educational features.

The answer to your third question will depend upon the purpose for which the employe is sent to school. We can assume that such an employe is a member of the Department of Health. A careful examination of the city charter reveals that the Director of Public Health has full administrative and executive powers subject only to the Director and Control of the Health Commission.

In Opinion No. 2082, Opinions of the Attorney General for 1930, at page 1091, the second branch of the syllabus reads as follows:

“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.”

The syllabus of Opinion No. 3098, Opinions of the Attorney General for 1940, reads as follows:

“The governing body of a city may, by ordinance or resolution, provide for a local course of training for the police department of the city and pursuant to such purpose the salary and expenses of a police officer may be paid while in attendance at a Federal Bureau of Investigation school to enable the officer to conduct such local course of training.”

Thus, if the purpose of the education was for a “definite, presently contemplated project,” the Director of Public Health could pay the salary and expenses of such an employe from public funds.

In conclusion, therefore, it is my opinion that the chief administrator of the city of Akron, in the absence of charter or legislative prohibition, by virtue of his authority to make rules and regulations for the operation of a municipal waterworks, may expend funds for the purpose of studying ways and means of improving the waterworks service through educational features; and, as an inducement to employes to attend meetings after working hours relative to improving said service, may provide refreshments and pay for the same out of waterworks funds.

I further believe that an employe of a city could have his salary and expenses paid during his attendance at a school if the purpose of the education was for a definite, presently contemplated project.

Respectfully,

HERBERT S. DUFFY,
Attorney General.