

1019

POLICE SERVICES—CONTRACT BETWEEN VILLAGE AND PARTNERSHIP BUSINESS ENTITY NOT AUTHORIZED BY LAW.

SYLLABUS:

A contract for police services entered into by a village and a partnership business entity is not authorized by law.

Columbus, Ohio, September 11, 1957

Hon. James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading:

"In the examination of villages in Franklin County, it has been disclosed that several of these villages have entered into a contract with an organization known as Franklin County Patrol. Under the contract, the Franklin County Patrol is to render police services to the respective villages, particularly with respect to the control of traffic, for which the Franklin County Patrol is paid on an hourly basis. The "officers" furnished by Franklin County Patrol are Deputy Sheriffs of Franklin County.

"It is my understanding that the Franklin County Patrol is a partnership business entity.

"Your opinion is requested on the following question:

'May a village enter into such a contract for the rendition of police services?'

I invite your attention initially to Article XVIII, Section 2, Ohio Constitution, reading in part:

"General laws shall be passed to provide for the incorporation and *government of cities and villages*; * * * "

(Emphasis added.)

Pursuant to this constitutional provision the General Assembly has passed statutes for the organization of police departments in villages. Section 737.15, Revised Code, provides:

“Each village shall have a marshal, designated chief of police, appointed by the mayor with the advice and consent of the legislative authority of the village, who is an elector thereof, and who shall continue in office until removed therefrom as provided by sections 733.35 to 733.39, inclusive, of the Revised Code.”

Further police personnel is provided for in Section 737.16, Revised Code:

“The mayor shall, when provided for by the legislative authority of a village, and subject to its confirmation, appoint all deputy marshals, policemen, night watchmen, and special policemen. All such officers shall continue in office until removed therefrom for the cause and in the manner provided by section 737.15 of the Revised Code.”

Section 737.17, Revised Code, provides for a probationary period of appointment and a recommendatory procedure before a final appointment may be made.

The only statutory provision for police service contracts is to be found in Section 737.04, Revised Code; however, this section authorizes such a contract between municipal corporations, not between partnerships and municipal corporations.

It is a well settled principle of law that the state has general control of police matters. In this regard I direct your attention to *State, ex rel. Arey v. Sherrill*, 142 O. S. 574, the fourth paragraph of the syllabus reading:

“In general, matters relating to the members of a police department are of state-wide concern and are under the control of state sovereignty. (*City of Cincinnati v. Gamble et al., Ed. of Trustees*, 138 Ohio St., 220, approved and followed.)

Here the court was concerned with a procedure for hearing and dismissal of a policeman. By charter the municipality had provided for the hearing and dismissal before an official different from that official designated by state law. The court granted a writ of prohibition holding the general law relating to the structure of a municipal police department to be controlling over provisions of a municipal charter. In allowing municipal corporations to maintain local police the state has seen fit to adopt certain procedures for the appointment and employment of police personnel in municipal corporations.

Construing the applicable sections the meaning is clear that the police

personnel are to be appointed as individuals. In the contract situation you present the village council may not know what particular individuals are to be assigned by the patrol to their village.

Such a contract as you present appears to be unlawful in two respects. First, the applicable statutes allow of no interpretation by which such a contract may be made. Also, such a delegation of selecting police personnel apparent in such a contract situation is beyond the power of a municipal legislature. Under such a contract the patrol selects the person who is to serve in a given village; such action amounts to the appointment of an individual to the position of policeman, a function of the mayor and council of a municipal corporation acting in concert.

Such a delegation as involved herein was present in *Industrial Commission of Ohio v. Turek*, 129 O. S. 545, paragraphs one and two of the syllabus reading:

“1. When provided for by a village council, and subject to its confirmation, the mayor shall, by virtue of Section 4384, General Code, appoint all deputy marshals, policemen, night watchmen and special policemen.

“2. Such power cannot be delegated to a traffic policeman.”

In this case a traffic patrolman had engaged plaintiff to accompany him on his rounds, providing him with a badge and a gun. During an investigation of a noise near a chicken house, plaintiff was shot by the owner who had mistaken the officer and plaintiff for the thieves. After quoting Section 4384, General Code, Section 737.16, Revised Code, the court, per Weygandt, C.J., said at page 547:

“Thus it is readily apparent that as a matter of law neither the traffic patrolman nor the mayor nor the council had authority to appoint the plaintiff. It is equally plain that this resided in the mayor and council acting in concert, and that the traffic patrolman possessed no appointing power whatsoever.”

Applying this proposition to the situation which you present, a partnership business entity cannot appoint a policeman.

The constitution gives the legislature authority to pass general laws concerning the government of municipal corporations. This authority has been exercised in relation to police matters here pertinent in Sections

737.15 and 737.16, Revised Code. The express terms of these sections negative any implication which might arise to validate such a contract as you present; the controlling effect of these sections over contrary provisions in a village charter is not involved in your request. For the purposes of this opinion I have assumed that the villages in question have not adopted charters.

I do not regard the recent decision in State, *ex rel* Lynch v. City of Cleveland *et al.*, 164 O.S. 437, to have changed any of the propositions involved in this opinion. In this case the court held that the "method of selecting a chief of police is a matter of local self-government within the meaning of the first part of section 3 (Article XVIII, Ohio Constitution) providing that 'municipalities shall have authority to exercise all powers of local self-government'". It is to be conceded that procedure for appointment is very different from the "method of selecting." Further, the statutes involved, Sections 737.15 through 737.17, Revised Code, would be rendered inoperative if the procedure for appointment is to be included in the powers of local self-government, for all municipalities exercise powers of local self-government whether they are cities or villages and whether or not they have adopted a charter. See Opinion No. 4322, Opinions of the Attorney General for 1954, p. 498.

In addition I see no relevance to the fact that the police personnel are also deputy sheriffs of the county. The contract is between a village and a partnership business entity. The payment for services is made to the firm, not the individuals.

Therefore, it is my opinion and you are accordingly advised that a contract for police services entered into by a village and a partnership business entity is not authorized by law.

Respectfully,
WILLIAM SAXBE
Attorney General