

1403.

APPROVAL, BONDS OF MORGAN TOWNSHIP RURAL SCHOOL DISTRICT, BUTLER COUNTY—\$25,000.00.

COLUMBUS, OHIO, December 19, 1927.

*Retirement Board, State Teachers' Retirement System, Columbus, Ohio.*

1404.

OFFICERS—MAYOR OF CLEVELAND IS OFFICER WHOSE SALARY CANNOT BE DIMINISHED OR INCREASED DURING TERM OF OFFICE.

SYLLABUS:

*A mayor of the city of Cleveland, being in the unclassified civil service and having been appointed for a definite term, is, under the provisions of Section 173 of said city's charter, an officer whose salary cannot be increased or diminished during the term for which he was appointed.*

COLUMBUS, OHIO, December 19, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your communication as follows:

“Section 10 of the Cleveland charter as amended November 8, 1921, reads:

‘At its first meeting in January following a regular municipal election the council shall choose one of its members as president who shall have the title of mayor. The mayor shall preside at meetings of the council and perform such other duties consistent with his office as may be imposed by the council. He shall be recognized as the official head of the city for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the governor for military purposes. In time of public danger or emergency he may, with the consent of the council take command of the police, maintain order and enforce the law. If a vacancy occur in the office of mayor, or in case of his absence or disability, the council shall choose another of its members to act as mayor for the unexpired term or during the continuance of the absence or disability.’

Section 173 of the charter reads:

‘The salary or compensation of officers and employes in the classified service of the city shall be established by ordinance as provided by Section

102 of this charter. The salary or compensation of the city manager, directors of departments and of members of boards or commissions in the unclassified service of the city shall be fixed by ordinance. The salary or compensation of all other officers and employes in the unclassified service of the city shall be fixed by ordinance, or as may be provided by ordinance. Except as otherwise provided in this charter, the number of officers and employes in the classified service of the city shall be determined by the city manager. The salary of any officer, employe, or member of a board or commission, in the unclassified service of the city, appointed for a definite term, shall not be increased or diminished during the term for which he was appointed. All fees pertaining to any office shall be paid into the city treasury.

Council has fixed a salary for the office of mayor which is paid in addition to such mayor's salary as a member of council.

Question: Does Section 10 of the charter fix a term for the mayor during which period the salary may not be increased as provided in Section 173 of said charter?"

Sections 3, 11 and 90 of the charter of the city of Cleveland read in part as follows:

"Section 3. The legislative and executive powers of the city, except the legislative powers reserved to the people by this charter, shall be vested in a council and shall be exercised as hereinafter provided. The term of members of the council shall be for two years and shall begin on the first Monday in January next following their election. \* \* \*"

"Section 11. The council shall choose a clerk and such other officers and employes of its own body as are necessary. The clerk shall keep the records of the council and perform such other duties as may be required by this charter or by the council. All officers and employes chosen by the council shall serve during the pleasure thereof."

"Section 90. The civil service of the city is hereby divided into the unclassified and the classified service.

(1) The unclassified service shall include:

- (a) All officers elected by the people.
- (b) The city manager and all directors of departments.
- (c) The members of all boards or commissions appointed by the council and advisory boards appointed by the director of a department.

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(2) The classified service shall comprise all positions not specifically included by this charter in the unclassified service. There shall be in the classified service two classes, to be known as the competitive class and the non-competitive class.

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Although the pertinent provisions of Section 90, supra, are to the effect that all boards or commissions appointed by the council are to be included within the unclassified civil service, thus not specifically including the president of council, and

further provides that "The classified service shall comprise all positions not specifically included by this charter in the unclassified service" yet I am of the opinion that the president of council is not within the classified civil service. Although not clearly stated, it is apparent that the mayor, having been elected a member of council by the people, comes within that class of officers provided for in paragraph (a) of Section 90, supra, and must therefore be included in the unclassified service.

It will be observed that the mayor becomes such by reason of his having been chosen as president of council. Such choice is a prerequisite to his having the title of mayor. "Mayor" is a mere title. His real position is "President of Council." Additional compensation however, has been provided for him by way of salary by reason of the imposition upon him of certain duties which he must perform because he bears the title of "mayor." It therefore remains to determine whether or not such president of council is chosen for a definite term and for that reason becomes amenable to the following provision of Section 173 of the charter of the city of Cleveland:

"\* \* \* The salary of any officer, employe, or member of a board or commission, in the unclassified service of the city, appointed for a definite term, shall not be increased or diminished during the *term* for which he was appointed. \* \* \*"  
(Italics the writer's.)

The word "term," as applied to the tenure of a public officer, is defined by Throop in his work on public officers, Section 303, as follows:

"The word 'term' is uniformly used to designate a fixed and definite period of time."

In Section 304 of the same work, it is said:

"Where an office is filled by appointment and a definite term of office is not fixed by a constitutional or statutory provision the office is held at the pleasure of the appointing power and the incumbent may be removed at any time."

In Cushing's Law and Practice of Legislative Assemblies, Section 299, wherein is discussed the tenure of presiding officers of legislative assemblies, it is said:

"The presiding officer, being freely elected by the members, by reason of the confidence which they have in him, is removable by them, at their pleasure, in the same manner, whenever he becomes permanently unable, by reason of sickness, or otherwise, to discharge the duties of his place, and does not resign his office; or, whenever he has, in any manner, or for any cause, forfeited or lost the confidence upon the strength of which he was elected."

In Jefferson's Manual, Section 9, with reference to the Speaker of the National House of Representatives, it is said:

"A Speaker may be removed at the will of the House and a Speaker pro tem appointed."

From the foregoing authorities, and the fact that the Cleveland charter does not fix a definite time during which the president of council shall serve, it seems clear

that he serves merely at the will of council, and may be removed by council at its pleasure.

However, the fact that no definite time is fixed in the charter for the term of office of president of council is not in my opinion necessarily determinative of the question of whether or not he has a term of office; nor is the fact that said president of council may be removed at the will of council determinative of this question.

All public offices are held subject to the possibility of the incumbent being removed, whether it be for cause or otherwise. The President of the United States may be impeached for cause, and any public officer may be removed if he be guilty of an abuse of power. It cannot be said for that reason that they do not have a term of office.

It is the universal custom that when legislative assemblies select a presiding officer, such officer continues in that position without successive election from day to day during the life of the assembly over which he has been chosen to preside, unless the assembly chooses to exercise its right to remove him and choose another. The term of the life of the assembly may be said to be the term of office of its presiding officer, and it is my opinion that the term of the mayor of the city of Cleveland is coincidental with the term of the members of said city's council, namely, two years.

Moreover, this view is strengthened by the express language of Section 10, of said charter, wherein it is said:

“\* \* \* If a vacancy occurs in the office of mayor or in case of his absence or disability the council shall choose another of its members to act as mayor for the unexpired *term* or during the continuance of the absence or disability.” (Italics the writer's.)

Inasmuch as the said mayor has a definite term and is in the unclassified service of the city, his salary cannot be increased or diminished during the term for which he was chosen.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1405.

APPROVAL, BONDS OF THE VILLAGE OF HUBBARD, TRUMBULL COUNTY—\$11,866.59.

COLUMBUS, OHIO, December 20, 1927.

*Retirement Board, State Teachers' Retirement System, Columbus, Ohio.*

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1406.

APPROVAL, BONDS OF THE VILLAGE OF FAIRVIEW, CUYAHOGA COUNTY, OHIO—\$74,000.00.

COLUMBUS, OHIO, December 20, 1927.

*Retirement Board, State Teachers' Retirement System, Columbus, Ohio.*