

From the foregoing, it appears clear that the Legislature has expressed a very definite intention that no person shall be employed in connection with the work of administering tuberculin in Ohio unless he is a graduate of a properly recognized veterinarian college, has received a certificate from the Ohio State Board of Veterinary Examiners entitling him to engage in such practice, and has also been approved by the State Bureau of Live Stock Industry of Ohio, and the United States Bureau of Animal Industry, in other respects.

Specifically answering your question, you are advised that the person mentioned in your letter, under the circumstances set forth therein, is not qualified to administer tuberculin in the State of Ohio.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3076.

VILLAGE COUNCIL—AUTHORITY TO PROVIDE BY ORDINANCE
SALARY OF STREET COMMISSIONER—CAN NOT LEGALLY BE
SUCH SUM PER HOUR AS COUNCIL MAY FROM TIME TO TIME
DIRECT—SALARY OF VILLAGE CLERK.

SYLLABUS:

1. *An ordinance, fixing the salary of the village clerk, which provides that it will allow additional undesignated sums for "extra services in connection with street improvements, etc." not therein specified, is insufficient to authorize additional compensation without further action of council more definitely specifying the services to be performed and fixing the compensation therefor.*

2. *The council of a village may not provide by ordinance that the compensation to be paid the street commission shall be such sum per hour, as council may from time to time fix for services rendered.*

COLUMBUS, OHIO, December 29, 1928.

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

GENTLEMEN:—I am in receipt of your recent communication requesting my opinion, which reads as follows:

"Section 4219, G. C., provides that the Council of a village shall fix the compensation of all officers, employes, etc.

Question No. 1: May Council fix the salary of a village clerk at a specified amount per year and provide in the ordinance that council will allow additional sums for extra services in connection with street improvements, etc.?

Question No. 2: May the Council of a village provide, by ordinance, that the compensation to be paid the Street Commission shall be such sum per hour, as council may from time to time fix for services rendered?"

Question No. 1. It appears from the statement of this question in your letter that the proposed ordinance does not specify the amount of the "additional sums", or a proposed rate of compensation for extra services. Neither does it appear that

the nature or extent of the extra services are specified in the proposed ordinance. For the purpose of this opinion I will therefor assume that the proposed ordinance is indefinite in these two respects.

By Section 4248, General Code, the Legislature has provided for the office of clerk in villages in the following language:

"The executive power and authority of villages shall be vested in a mayor, clerk, treasurer, marshal, street commissioner, and such other officers and departments thereof as are created by law."

Section 4279, General Code, provides that each office shall be elective and the term thereof shall be for two years.

Sections 4280 and 4281, General Code, prescribe the powers and duties of clerks in villages as follows:

Sec. 4280. "The clerk shall attend all meetings of council, and keep a record of its proceedings and of all rules, by-laws, resolutions and ordinances passed or adopted, which shall be subject to the inspection of all persons interested. In case of the absence of the clerk, the council shall appoint one of its members to perform his duties for the time."

Sec. 4281. "The clerk shall keep the books of the village, exhibit accurate statements of all moneys received and expended and of all property owned by the village and the income derived therefrom and of all taxes and assessments."

You will note that this latter section imposes the duty upon the clerk to "keep the books" and "exhibit accurate statements of * * * all taxes and assessments." This language imposes upon the clerk certain duties with respect to street improvement, which could not properly be designated as "extra services". Section 4219, General Code, provides for the compensation of officers in villages, including the office of clerk, and reads as follows:

"Council shall fix the compensation and bonds of all officers, clerks and employes in the village government, except as otherwise provided by law. All bonds shall be made with sureties subject to the approval of the mayor. The compensation so fixed shall not be increased or diminished during the term for which any officer, clerk or employe may have been elected or appointed. Members of council may receive as compensation the sum of two dollars for each meeting, not to exceed twenty-four meetings in any one year."

The provision therein that the compensation so fixed shall not be increased or diminished during the term of office is in harmony with the general policy of government in Ohio and like provisions are in effect pertaining to the officers of the state and the officers of cities.

Section 20 of Article II of the State Constitution provides as follows:

"The General Assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

Section 4213, General Code, pertaining to cities, is as follows:

"The salary of any officer, clerk or employe shall not be increased or diminished during the term for which he was elected or appointed, and, except as otherwise provided in this title, all fees pertaining to any office shall be paid into the city treasury."

It is to be noted that in both of the last two provisions quoted the term "salaries" is used instead of the word "compensation" which appears in Section 4219, General Code, pertaining to village officers.

In a former opinion of the Attorney General (Opinions, Attorney General, 1917, Vol. II, page 1614) a distinction between these two terms was pointed out in the following language:

"From the earliest times in this state it has been uniformly held that the word 'salary', as used in this section, is designedly employed in contradiction to the term 'compensation' as used in the same section; that a change of compensation other than salary, to take effect during the existing term of an officer, is not prohibited, and that a salary is compensation dependent upon the lapse of time only, and in nowise dependent upon the amount of official services performed."

In the case of *State ex rel. vs. Board of Education*, 12 O. C. D. 333, the Circuit Court for Hamilton County held that the above quoted Section 20 of Article II of the Ohio Constitution does not apply to the compensation of officers of a municipal corporation in the following language: on page 334 of its opinion:

"We are of the opinion that this section (Section 20, Article II of the Constitution) does not apply to cases like his; that the office and officers spoken of therein do not refer to * * * the officers of a municipal corporation, for instance, mayor, marshal, clerk, treasurer, etc., but to those created by the general assembly, and whose salary is to be fixed by that body. That this is the true meaning of this section and the legislative construction placed upon it, we think is shown by Secs. 1716 and 1717, Rev. Stats., which provide that the councils of municipal corporations shall prescribe what fees or compensation officers of municipal corporations shall receive for their services, which shall in no case be increased or diminished during the term for which the officer was elected or appointed. If such officers came within the provisions of Sec. 20, Art. 2, such legislation would be unnecessary."

The Ohio Supreme Court in the case of *Gobrecht vs. Cincinnati*, 50 O. S. 68, also distinguished between the term "salary" and "compensation" in holding that the per diem for attendance at sessions of the board of legislation was not "salary" within the meaning of the above quoted section of the Constitution. As appears from the above quotation of Section 4219, General Code, the statute has been amended since Section 1716, Revised Statutes, to exclude the word "fees", but the term "compensation" is still used as distinguished from the word "salary" appearing in the provision above quoted applying to cities and the constitutional section applying to state officers. There is a well defined distinction between the office of clerk in a city and the office of clerk in a village. A city clerk is not designated as an executive officer by statute, nor is the office elective. It was perhaps contemplated by the Legislature that the duties of a clerk in a village would be more or less intermittent, making it feasible to prescribe compensation on the basis of the amount of official service performed, rather than the duration. However, if

Section 4219, General Code, supra, is to have any operative effect whatever, the rate of compensation for the services performed may not be increased or decreased during the term of office. This is for the protection of the officer who is elected as well as the electors of the village who elected him.

In the case of *State vs. Carter*, 67 O. S. 422, the Ohio Supreme Court held that the council of a municipality may by ordinance require street assessments to be paid to the clerk and that collection of assessments by him pursuant thereto is in the discharge of his duties within the terms of his official bond. In the case of *City of Norwalk vs. Christian*, 28 O. C. D. 142, Judge Kinkade, now a member of the Ohio Supreme Court, sustained the judgment of the trial court in refusing recovery by the village of extra compensation paid the clerk of the city for serving notices of street improvements, holding that in the absence of allegation or evidence that no authority for such compensation had been given, a presumption would be entertained that the council had proceeded regularly in making such authorization.

The language of the proposed ordinance, respecting additional compensation, on account of its indefiniteness merely constitutes a statement of policy, or perhaps a general promise, which is not sufficient to authorize the performance of any specific extra services, in addition to those required by the sections of the statute, above quoted, or to provide for compensation therefor.

It is my opinion, therefore, that the proposed ordinance will not be effective to provide additional compensation for the clerk without further action of the council specifying the extra services to be performed and the compensation to be provided therefor.

Question No. 2. Section 4248, quoted in full under the discussion of your first question, likewise constitutes the street commissioner of a village an executive officer thereof.

Section 4363, General Code, provides for the appointment of a street commissioner by the mayor of a village, as follows:

“The street commissioner shall be appointed by the mayor and confirmed by council for a term of one year, and shall serve until his successor is appointed and qualified. He shall be an elector of the corporation. Vacancies in the office of street commissioner shall be filled by the mayor for the unexpired term. In any village the marshal shall be eligible to appointment as street commissioner.”

Section 4364, General Code, specifies the duties of a village street commissioner as follows:

“Under the direction of council, the street commissioner, or an engineer, when one is so provided by council, shall supervise the improvement and repair of streets, avenues, alleys, lands, lanes, squares, wards, landings, market houses, bridges, viaducts, sidewalks, sewers, drains, ditches, culverts, ship channels, streams, and water courses. Such commissioner or engineer shall also supervise the lighting, sprinkling and cleaning of all public places, and shall perform such other duties consistent with the nature of his office as council may require.”

Section 4365, General Code, provides that such street commissioner shall have such assistants as council may provide, who shall be employed by the street commissioner and serve for such time and for such compensation as is fixed by council.

Section 4219, General Code, set forth in the discussion of your first question,

includes the power of village councils to fix the compensation of the street commissioner, and the provision that the compensation so fixed shall not be increased or diminished during the term of office, consequently likewise applies. The ordinance proposed in your second question does not provide for any rate of compensation. It merely provides that the rate shall be on an hourly basis. The effect of such an ordinance, if the same were valid, would be to reserve to the council the power to increase or diminish any rate originally established at the discretion of council throughout the term for which the street commissioner was appointed. Such an ordinance is so clearly in violation of the provisions of Section 4219, General Code, as to require no further discussion.

In specific answer to your two questions, it is my opinion that:

1. That part of a village ordinance, fixing the salary of the village clerk, which provides that it will allow additional undesignated sums for "extra services in connection with street improvements, etc.," not therein specified, is insufficient to authorize additional compensation without further action of council more definitely specifying the services to be performed and fixing the compensation therefor.

2. The council of a village may not provide by ordinance that the compensation to be paid the street commissioner shall be such sum per hour, as council may from time to time fix for services rendered.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3077.

INDIGENT PERSONS—AUTHORITY OF TOWNSHIPS AND MUNICIPALITIES TO EXTEND RELIEF—MEDICAL AND SURGICAL RELIEF INCLUDES USE OF HOSPITAL FOR OPERATION.

SYLLABUS:

1. *The terms "medical services" and "medical attendance" as used in Section 3480, General Code, providing for the furnishing of such to the indigent poor by townships and municipal corporations, include surgical services.*

2. *Where circumstances are such that a municipality is authorized by law to extend public relief to an indigent poor person, the municipality may lawfully pay for a necessary surgical operation required by such person.*

3. *Where circumstances are such that a municipality is authorized by law to extend public relief to an indigent poor person, the municipality may lawfully pay the necessary charges for the use of a hospital needed by such person, whether or not the municipality had previously contracted with said hospital for its use for the inhabitants of the municipality.*

COLUMBUS, OHIO, December 29, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion in answer to the following questions:

"Question 1. When an indigent person is in need of an operation, is a city liable for the fees of the surgeon who performs such operation?"