4506

MEMBERSHIP DUES OR FEES IN ASSOCIATION OR CONFERENCE OF MUNICIPALITIES — IN ABSENCE OF EXPRESS ENABLING CHARTER PROVISIONS, MUNICIPALITY LACKS AUTHORITY TO ADOPT ORDINANCE TO PAY FROM PUBLIC FUNDS SUCH DUES.

SYLLABUS:

Without considering the possible validity of express enabling charter provisions, a municipality, which claims no such charter power, lacks authority to adopt an ordinance which would legally permit it to pay from public funds membership dues or fees in an association or conference of municipalities.

Columbus, Ohio, December 4, 1941.

Bureau of Inspection and Supervision of Public Offices,

Columbus, Ohio.

Gentlemen:

Your request for my opinion reads as follows:

"We are inclosing herewith a letter from our City of Dayton Examiner, to which are attached copies of ordinances of the Cities of Columbus and Toledo, concerning the employment of Mr. Paul V. Betters, Executive Director of the United States Conference of Mayors at Washington, D. C.

Our City of Dayton Examiner, in his report for the fiscal year 1939, held the payment of $249.96 to said Paul V. Betters, illegal, and quoted from Attorney General's Opinions Nos. 4446 of July 22, 1935 and 2615 of August 3, 1940, in support of said finding. In this connection the Examiner observes, on page 67 of the said Dayton report—

'We understand that the annual membership dues in the United States Conference of Mayors for a city approximately the size of Dayton, is $250, and that a membership entitles the holder to the identical services of the organization as those covered by the agreement entered into by and between the City of Dayton and Paul V. Betters, Executive Director of said Conference.'

Said Examiner did not use such additional decisions and rulings in support of his findings as the case of The State ex rel Thomas v. Semple, 112 O.S., 559, or Attorney General's Opinion No. 197 of April 15, 1919, and many others having more or less bearing upon the matter of payment of dues in organizations of municipal officials, employment of tax consultants or the employment of lobbyists to promote the special interests of cities before certain boards and commissions.

It would now appear that a number of our larger cities are subscribing to the service afforded by the said Paul V. Betters

of Washington, D. C., and expending public funds as contributions to his personal compensation or that of the United States Conference of Mayors, or both.

Accordingly, may we request that you examine the inclosed correspondence and data and give us your opinion in answer to the following questions:

Question 1. Is it legal for the City of Dayton to continue to pay Paul V. Betters the sum of $20.83 per month through enactment of an ordinance such as suggested by Mr. Betters in his letter of April 25, 1941, to the City Manager of Dayton, Ohio?

Question 2. If the answer to the first question should be in the negative, are the ordinances adopted by the Cities of Toledo and Columbus, and by the Board of Control of Cleveland, sufficient to legalize payments from the public funds of those cities in support of Mr. Betters or the United States Conference of Mayors?"

As suggested in your inquiry, your questions appear to have been answered in the opinions you have cited. The first opinion, found in Opinions of the Attorney General for 1935, No. 4446, Volume II, page 858, holds, as shown by the syllabus:

"A municipal corporation is without authority to expend public funds for membership dues or fees in an association of municipalities or to appropriate funds to pay for services rendered, or information furnished on municipal affairs by such association."

My Opinion No. 2615, reorted in Opinions of the Attorney General for 1940, Volume I, page 730, is to the same effect, the syllabus reading:

"Officials and employes of a municipal corporation are presumably elected and appointed to their positions because of their fitness by experience and education to discharge their respective duties and in the absence of an express charter provision a municipality is without authority to employ an expert tax consultant whose duties are advising and educating such officials and employes in respect to their duties. The municipality is also without authority to employ a lobbyist to appear on its behalf before the county budget commission and before the Governor and committees of the General Assembly. The employment of such lobbyist and expert tax consultant in such capacities being beyond the powers of the municipality, any compensation which has been paid to them has been illegally paid and should be included in the report of the Bureau of Inspection and Supervision of Public Offices."

An opposite conclusion appears to have been reached by the executive director of the United States Conference of Mayors, however, for attached to your inquiry are copies of a letter and enclosures from the executive director to the city manager of Dayton, wherein the executive director recommends the passage of an ordinance similar to either of two enclosed sample ordinances. He implies that upon passage of such ordinance, the city of Dayton may thereafter lawfully pay dues to the Conference.

The executive director's views and observations can hardly be reconciled with the per curiam opinion of the Supreme Court in the case of State, ex rel. Thomas, v. Semple, 112 O.S., 559. In the Semple case a peremptory writ of mandamus was sought to compel the director of finance of the city of Cleveland to honor a voucher issued pursuant to an ordinance providing for the payment of dues by the city of Cleveland to an organization known as Conference of Ohio Municipalities. The objects of the organization were, in part at least, to maintain a bureau of information through which members were to be advised of pending litigation, "as well as legislation and other matters affecting their interests, and to publish a periodical." In its opinion the court said:

> "It does not follow, from the broad powers of local self-government conferred by Article XVIII of the Constitution of the state, that a municipal council may expend public funds indiscriminately and for any purpose it may desire. The misapplication or misuse of public funds may still be enjoined, and certainly a proposed expenditure, which would amount to such misapplication or misuse, even though directed by a resolution of council, would not be required by a writ of mandamus. Without considering the validity of such a provision, it must be conceded that there is no express provision of the charter of the city of Cleveland relative to the contribution from the treasury of the city to a fund made up of contributions of various municipalities for the purposes enumerated in the constitution of the 'Conference of Ohio Municipalities,' and no general provision from which authority may be inferred to expend the funds of the city to assist in creating and maintaining an organization with offices and officers entirely separate from those of the city, selected by representatives of various municipalities of the state, with salaries and expenses also fixed by them."

Since no charter provisions have been mentioned in your letter, I assume no attempt has been made by the city of Dayton to adopt any such enabling provisions and it appears unnecessary to discuss the effect, if any, of charter provisions.

Questions almost identical with those submitted in your inquiry were presented to one of my predecessors. In the first of such opinions reported in Opinions of the Attorney General for 1929, No. 109, Volume I, page 157, my predecessor considered the rights of a municipality which had not adopted a charter and held, as shown by the syllabus:

> "In view of the holding in the case of State ex rel. vs. Semple, 112 O.S. 559, a charter city may not legally expend its funds for services and periodicals of an association known as 'Conference of Ohio Municipalities' in the absence of specific charter provisions; whether or not such a charter provision could authorize such an expenditure is not decided."

In the second opinion reported in Opinions of the Attorney General for 1930, No. 1453, Volume I, page 172, the same question was considered with respect to charter cities, resulting in a similar conclusion, as the syllabus shows:

> "In view of the decision of the Supreme Court in the case of State ex rel. vs. Semple, 112 O.S. 559, the council of a charter city may not authorize legally the payment from the public funds of the city of a subscription fee to the Bureau of Public Personnel Administration, Washington, D. C., or a fee for membership in the Civil Service Assembly of the United States and Canada, or sustaining membership dues in the National Municipal League of New York City unless the charter of the city expressly authorizes such expenditures or contains a general provision from which authority may be inferred to expend the funds of the city for the purposes mentioned."

In addition to the authorities already discussed herein, your attention is also directed to the following cases and Attorney General's Opinions, all of which consider related questions and arrive at similar conclusions; Richardson v. State, ex rel. Prosecuting Attorney, 66 O.S., 108; State, ex rel. A Bentley and Sons Company, v. Pierce, Auditor, 96 O.S., 144; State, ex rel. Smith, v. Maharry, 97 O.S., 272; Phillips v. Hume, 122 O.S., 11, 14; Crawford v. Madigan, 13 O.D., 494; State, ex rel. Marani, v. Wright, Auditor, 17 O.C.C.(N.S.), 396; City of Cleveland v. Artl, 62 O.App., 210; 1910-1911 Annual Reports of the Attorney General, page 942; 1912 Annual Reports of the Attorney General, page 432; 1919 Opinions of the Attorney General, page 143; 1924 Opinions of the Attorney General, page 652; 1935 Opinions of the Attorney General, page 677; 1937 Opinions of the Attorney General, page 1188; 1937 Opinions of the Attorney General, page 1584; 1937 Opinions of the Attorney General, page 1652; 1937 Opinions of the Attorney General, page 2133; 1938

Opinions of the Attorney General, page 1783; 1938 Opinions of the Attorney General, page 2495; 1940 Opinions of the Attorney General, page 885.

In your second question you ask if the ordinances adopted in the cities of Cleveland, Toledo and Columbus are sufficient to legalize payments from the public funds of those cities for membership in the United States Conference of Mayors. As the Semple case and the opinions already discussed herein have indicated, in the absence of charter provisions expressly authorizing such expenditures or from which implied authority may be unquestionably inferred, charter cities are not permitted to spend public funds for fees or dues in associations or conferences such as the United States Conference of Mayors. Not having before me the charters of Cleveland, Toledo and Columbus, it is impossible to analyze the efforts, if any, that have been made by these cities to legalize expenditures of the type here under consideration.

In specific answer to your inquiry it is my opinion that without considering the possible validity of express enabling charter provisions, a municipality, which claims no such charter power, lacks authority to adopt an ordinance which would legally permit it to pay from public funds membership dues or fees in an association or conference of municipalities.

Respectfully,

THOMAS J. HERBERT,

Attorney General.