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POLICE DEPARTMENT—ORGANIZATION OF BY NON-
CHARTER VILLAGE—PROHIBITION OF OFFICERS HOLDING
POLITICAL OFFICE—§§143.41, 737.15-.16 R.C.

SYLLABUS:

1. In organizing a police department pursuant to Section 715.05, Revised Code, the legislative authority of a noncharter village may pass an ordinance or resolution pursuant to Sections 715.03 and 731.17, Revised Code, prohibiting members of the village police department, including the chief of police, from holding any elective or appointive political office, because such an ordinance or resolution would not be at variance with the provisions of Sections 737.15 and 737.16, Revised Code, providing for the selection of the chief of police and the members of the police department.

2. A village marshal appointed pursuant to Section 737.15, Revised Code, accepts the office of chief of police on the basis of the law in effect at the time of his appointment, and any ordinance or resolution passed by the legislative authority of the village after the marshal's appointment purporting to prohibit him from holding any elective or appointive political office would not apply to said marshal.

3. Since Section 143.41, Revised Code, does not apply to the chief or members of a village police department, and Sections 737.15 and 737.16, Revised Code, do not prohibit the chief or such members from taking part in politics, then, in the absence of a valid ordinance or resolution by the legislative authority of the village prohibiting the chief or such members from taking part in politics, the chief or any such member may hold an elective or appointive political office at the same time he is serving in the police department, assuming he is physically able to do so.

Columbus, Ohio, January 4, 1963

Honorable James H. DeWeese, Prosecuting Attorney
Miami County, Troy, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“One of the villages in our county recently adopted rules for the regulation of the village police department. These include one rule which precludes any member of the police department from holding any elective or appointive political office. At the time of the adoption of these rules, the chief of the police department of this village was vice chairman of the county central committee of one of the political parties. He held this office at the time he was appointed chief and had held it continuously during his term of service.

“Your opinion is requested as to the following:

“1. Does a village council have authority to adopt a rule prohibiting all members of the village police department, including the chief of police from holding *any* elective or appointive political office?

“2. Assuming that a village council does have such authority, would such a rule apply to a chief or member who already held a political office at the time of his appointment to the village police department and prior to the promulgation of the rule by the village council?

“3. In the absence of such a rule, would a chief of police of a village police department be prohibited by law from holding the office of vice chairman of the county central committee of a political party at the same time as he is serving as chief of police?”

Before proceeding to answer your specific questions, a general observation should be made concerning the authority of village councils to “adopt and promulgate rules.” Ordinarily, administrative bodies adopt and promulgate rules, whereas legislative bodies enact legislation. A village council may adopt rules for the conduct of its own sessions (Section 731.45, Revised Code), but in all other matters, it acts by ordinance or resolution (Sections 715.03 and 731.17, Revised Code). In answering your specific questions, therefore, I shall refer to the authority of a village council to pass ordinances or resolutions (rather than rules) prohibiting members of the village police department from holding political office.

Regarding your first question, Section 715.05, Revised Code, provides as follows :

“All municipal corporations may organize and maintain police and fire departments, erect the necessary buildings, and purchase and hold all implements and apparatus required therefor.”
(Emphasis added)

In regard to organizing a police department, paragraph one of the syllabus in *The State ex rel Canada v. Phillips*, 168 Ohio St., 191 (1958) provides as follows :

“1. The appointment of officers in the police force of a city represents the exercise of a power of local self-government within the meaning of those words used in Sections 3 and 7 of Article XVIII of the Ohio Constitution.”

The authority of a noncharter municipal corporation to appoint officers in its police force, however, is not as broad as the authority of a charter municipality. In this regard, the syllabus in *The State ex rel Petit v. Wagner*, 170 Ohio St., 297 (1960), provides as follows :

“A noncharter municipality is without authority under the provisions of Section 3, Article XVIII, Constitution, to prescribe by ordinance a method for the selection of a chief of police which is at variance with the provisions of Section 143.34, Revised Code.”

Although the civil service laws, of which Section 143.34, *supra*, is a part, do not apply to villages (Opinion No. 1772, Opinions of the Attorney General for 1916, Volume II, page 1186), the rationale of the *Wagner* case, *supra*, would apply, in my opinion, to any statute providing for the selection of a chief of police of a village, if the village were a noncharter municipality.

Section 737.15, Revised Code, which is a statute providing for the selection of a chief of police of a village, provides as follows :

“Each village shall have a marshal, designated chief of police, appointed by the major 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. In case of the removal of a marshal or chief of police of a village, an appeal may be had from the decision of the legislative authority to the court of common pleas to determine the sufficiency of the

cause of removal. Such appeal shall be taken within ten days from the finding of such legislative authority.”

Assuming that the village in question is a noncharter municipality, then in my opinion said village would be without authority to prescribe by ordinance a method of selection of a chief of police which is a variance with the provisions of Section 737.15, *supra*. The question, therefore, is whether the council of a noncharter village has authority to pass an ordinance or resolution prohibiting all members of the village police department, including the chief of police, from holding any elective or appointive political office. In other words, would such an ordinance or resolution be at variance with the provisions of Section 737.15, *supra*?

Since there is no provision in Section 737.15, *supra*, regarding the chief of police holding any elective or appointive political office, it is my opinion that an ordinance or resolution prohibiting him from holding such an office would not be at variance with the provisions of Section 737.15, *supra*. The council of a noncharter municipality, therefore, may pass such an ordinance or resolution.

I note in passing that Herbert, J., in an opinion in the case of *In re Removal of Walker, Village Marshal and Chief of Police*, 171 Ohio St., 177 (1960), commented on the political activity of a village marshal as sufficient cause for his removal. The *Walker* case, however, is not in point because it involved an administrative rule promulgated by the mayor, rather than an ordinance or resolution of council, and the comments of Judge Herbert in this regard do not appear in the syllabus of that case.

Regarding your second question, the headnotes in the case of *Village of Newcomerstown v. The State, ex rel Blatt*, 36 Ohio App., 434 (Tuscarawas Co.—1930), read as follows:

“1. Any elective or appointive officer, properly qualified and serving, is such officer until removed or office becomes vacant by operation of law.

“2. Where no written charges were filed against village marshal, neither council nor mayor had power to suspend marshal (Sections 4236 and 4265, General Code).

“3. Suspensions of village marshal when there were no charges or proceedings pending with council held illegal and void (Sections 4236 and 4265, General Code.)

“4. Where no action was taken by village to suspend marshal after filing charges, marshal was entitled to salary until date of resignation (Section 4263 and 4265, General Code).

"5. Officer's candidacy for appointment or election, commission, oath, law under which he served, and emoluments of office constitute contract between officer and public.

"6. Officer accepts office on basis of law at time of election or appointment (Sections 3213 and 4219, General Code).

"7. Ordinance reducing village marshal's salary below amount paid under ordinance in effect when marshal was appointed held invalid (Section 4219, General Code).

"8. Ordinance diminishing salary of village marshal, though termed emergency ordinance, could not be emergency ordinance contemplated by law (Section 4227-3, General Code).

"9. Where village marshal's salary was illegally reduced, mandamus to compel issuance of warrant for payment of salary fixed and determined was proper remedy.

"10. One within classified service wrongfully deprived of employment by void and illegal ouster from which there is no appeal may be restored to employment and emoluments thereof by mandamus."

Under the rule in the *Newcomerstown* case, *supra*, a village marshal accepts the office of chief of police on the basis of the law in effect at the time of his appointment. Thus, an ordinance or resolution passed after the marshal's appointment purporting to prohibit him from holding any elective or appointive political office would not apply to said marshal.

In regard to your third question, the chief of police of a city is prohibited from taking part in politics under the civil service laws (Section 143.41, Revised Code). Such is not the case, however, in regard to the chief of police of a village. Opinion No. 1772, *supra*; *In re Removal of Walker, supra*. On the contrary, it was held in Opinion No. 4664, Opinions of the Attorney General for 1941, page 1079, that the office of village marshal was not incompatible with the elective office of township trustee.

Thus, in the absence of a valid ordinance or resolution prohibiting the village marshal from engaging in politics (or perhaps a valid administrative rule, (see *Walker* case, *supra*), then, in my opinion, the marshal could hold an elective or appointive political office at the same time he is serving as chief of police (assuming he is physically able to do so).

Accordingly, it is my opinion and you are advised:

1. In organizing a police department pursuant to Section 715.05, Revised Code, the legislative authority of a noncharter village may pass an

ordinance or resolution pursuant to Sections 715.03 and 731.17, Revised Code, prohibiting members of the village police department, including the chief of police, from holding any elective or appointive political office, because such an ordinance or resolution would not be a variance with the provisions of Sections 737.15 and 737.16, Revised Code, providing for the selection of the chief of police and the members of the police department.

2. A village marshal appointed pursuant to Section 737.15, Revised Code, accepts the office of chief of police on the basis of the law in effect at the time of his appointment, and any ordinance or resolution passed by the legislative authority of the village after the marshal's appointment purporting to prohibit him from holding any elective or appointive political office would not apply to said marshal.

3. Since Section 143.41, Revised Code, does not apply to the chief or members of a village police department, and Sections 737.15 and 737.16, Revised Code, do not prohibit the chief or such members from taking part in politics, then, in the absence of a valid ordinance or resolution by the legislative authority of the village prohibiting the chief or such members from taking part in politics, the chief or any such member may hold an elective or appointive political office at the same time he is serving in the police department, assuming he is physically able to do so.

Respectfully,

MARK McELROY
Attorney General