

2266.

JUDGE—MUNICIPAL COURT OF ALLIANCE—COUNCIL MAY APPROPRIATE MONEY TO PAY SUBSTITUTE UNDER SECTION 1579-226, GENERAL CODE.

SYLLABUS:

Under the provisions of that part of Section 1579-226, General Code, to the effect that the "council shall provide for such other ordinary or extraordinary expense as it may deem advisable or necessary for the proper operation or administration" of the Municipal Court of Alliance, the council of said city may make provision and appropriate money for compensating a substitute judge for said court, appointed under the provisions of Section 1579-229, General Code.

COLUMBUS, OHIO, June 22, 1928.

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

GENTLEMEN :—This is to acknowledge receipt of your recent communication which reads as follows :

"Under date of May 1, 1928, the Bureau was advised in Opinion No. 2042 that the council of the City of Newark for want of statutory authority so to do has no power to fix the compensation of the acting judge of the Municipal Court, or appropriate money to pay the same.

The act creating the Municipal Court of Alliance, Ohio, provides, G. C., Section 1579-229:

'In case said judge shall be incapacitated from sitting in any case, or by reason of absence or inability be unable to attend sessions of said court the mayor of the City of Alliance may appoint some attorney having the qualifications required by this act, to attend in his stead until said judge is able to resume his said position.'

No direct provision for payment of salary of the acting judge of the Alliance Municipal Court is made. There is a provision however, Section 1579-226, G. C., that :

'Council shall provide for such other ordinary or extraordinary expense as it may deem advisable or necessary for the proper operation and administration of said court.'

On January 20, 1922, the council of the City of Alliance provided by ordinance that the salary of the sub judge of the Municipal Court shall be \$200.00 per month payable semi-monthly. The council has also appropriated about \$150.00 each year to pay the salary of a substitute judge.

QUESTION: Are the payments of salary to a substitute judge from the city treasury of the City of Alliance legal?"

The statutory provisions referred to and quoted in your communication are parts of an act originally passed by the Legislature in March, 1917 (107 v. 660), providing for the establishment of a court of record for the City of Alliance and the townships of Lexington and Washington in Stark County, Ohio, to be styled "the Municipal Court of Alliance, Ohio." The sections of the act establishing said court have been carried into the General Code as Sections 1579-195 to 1579-232, inclusive.

In the former opinion of this department to which you refer in your communication, it was held that assuming the constitutionality of Section 1579-371, General Code, providing for the appointment of an acting judge of the Municipal Court of Newark, Ohio, by the mayor of said city, the council of the City of Newark, for want of statutory authority so to do, has no power to fix the compensation of such acting judge or appropriate money to pay the same. So in the matter here presented, assuming the constitutionality of Section 1579-229, General Code, providing for the appointment of a substitute judge for the Municipal Court of Alliance by the mayor of the city, the only question to be determined in this opinion is whether there is any statutory authority for the action of the council of the city of Alliance in fixing the salary of such substitute judge, and appropriating money out of the treasury of said city to pay the same.

Looking to the provisions of the act providing for the establishment of said court, it will be noted that Section 1579-196, General Code, provides that said Municipal Court shall be presided over by one judge to be designated as a "municipal judge," which office is thereby created, and whose term of office shall be for a period of four years. Said section makes provision for the annual compensation of such municipal judge, the same to be met by payments out of the treasuries of Stark County, the City of Alliance, and of Lexington and Washington Townships, respectively.

The provisions of Section 1579-226, General Code, quoted in your communication are but a part of said section, which reads in full as follows:

"The council of the City of Alliance shall provide suitable accommodations for the Municipal Court and its officers, including a private room for said judge and sufficient jury room. The council shall also provide for the use of the court complete sets of the reports of the supreme and inferior courts of Ohio and such other authorities as it shall be deemed necessary and shall provide for the court room the latest edition of the General Code of Ohio and necessary supplies, including telephone, stationery, furniture, heat and janitor services; *and council shall provide for such other ordinary or extraordinary expense as it may deem advisable or necessary for the proper operation or administration of said court.*" (Italics the writer's.)

Reading the provisions of that part of Section 1579-226, General Code, which you quote in connection with the other provisions of said section, while there is some doubt whether the term "other ordinary or extraordinary expense" should not be limited to expenses of like nature to those specifically mentioned in said section, I am inclined to the view that these words are broad enough to include the expenses necessary to pay the compensation of a substitute judge.

There are many cases in which the compensation of persons for services rendered may be included within the meaning of the term "expenses" as used in some particular statute authorizing the payment of the same. Thus, in the case of *State ex rel Vail vs. Craig*, 21 O. C. C. 180, it was held that the compensation of a necessary assistant to the board of supervisors of elections could be paid under a statute which provided that "all proper necessary expenses in the performance of the duties of such deputy supervisors shall be paid out of the county treasury as other county expenses, and the county commissioners shall make the necessary levy to meet the same."

I do not believe, however, that much help is to be derived from other court decisions interpreting the term "expenses" as used in other statutory provisions. The question is, what did the Legislature intend with respect to the question here submitted in the enactment of the provisions of Section 1579-226, General Code?

As originally enacted in April, 1917 (107 v. 660, 669), Sections 1579-226 and 1579-229 read as follows:

Sec. 1579-226. "The council of the City of Alliance shall provide suitable accommodations for the Municipal Court and its officers, including a private room for said judge and sufficient jury room. The council shall also provide for the use of the court complete sets of the reports of the supreme and inferior courts of Ohio and such other authorities as it shall be deemed necessary and shall provide for the court room the latest edition of the General Code of Ohio and necessary supplies, including telephone, stationery, furniture, heat and janitor services."

Sec. 1579-229. "Whenever the incumbent of any office created by this act, excepting the municipal judge shall be temporarily absent or incapacitated from acting, the judge shall appoint a substitute who shall have all the qualifications required of the incumbent of the office. Such appointee shall serve until the return of the regular incumbent, or until his incapacity ceases. In case said judge shall be incapacitated from sitting in any case, or by reason of absence or inability be unable to attend sessions of said court, the mayor of the City of Alliance may appoint some attorney having the qualifications required by this act, to act in his stead until said judge is able to resume his said position. Such appointments shall be certified by the court or mayor as the case may be and entered upon the record."

On March 26, 1919, these two sections were amended to read as they now read (108 v. Part I, 153, 157), Section 1579-226 reading as above quoted and Section 1579-229 reading as follows:

"Whenever the incumbent of any office created by this act, excepting the municipal judge shall die, resign, be temporarily absent or incapacitated from acting, the judge shall appoint a substitute who shall have all the qualifications required of the incumbent of the office. Such appointee shall serve until the return of the regular incumbent, or until his incapacity ceases, or in case of death or resignation until a successor is elected or appointed and qualified. In case said judge shall be incapacitated from sitting in any case, or by reason of absence or inability be unable to attend sessions of said court, the mayor of the city of Alliance may appoint some attorney having the qualifications required by this act, to act in his stead until said judge is able to resume his said position. Such appointments shall be certified by the court or mayor as the case may be and entered upon the record, provided, however, that in the event an attorney at law receives the appointment, nothing contained in this act nor in other laws of Ohio, shall prevent the acting municipal judge from practicing as an attorney and counsellor at law, in any other court in said state, in any and all matters of business not originated or pending in said Municipal Court."

Nowhere in any of the sections relating to the Municipal Court here involved is there any language making provision in express terms for compensation for a substitute judge, although such provisions are contained in many of the acts providing for the creation and establishment of other Municipal Courts. Notwithstanding the absence of specific language providing for such compensation, however, I am of the opinion that the sections under consideration are sufficiently comprehensive to authorize the council of the City of Alliance to provide therefore. As above pointed out, Sections 1579-226 and 1579-229 were amended at the same time and in the same act. I believe it not unreasonable to say, therefore, that, since the Legislature authorized the appointment of a substitute judge in certain cases and at the same time pro-

vided that "council shall provide for such other ordinary or extraordinary expense as it may deem advisable or necessary for the proper operation or administration," the Legislature intended that such an expense as the one here being considered should be paid by the city council of Alliance, if council deemed it advisable or necessary. While this part of the section must be read with that which precedes it, yet the words "*ordinary or extraordinary*" seem to me to indicate an intention to vest the council with a wide discretion in determining what expenses it may deem advisable or necessary. Having authorized the payment of the ordinary or extraordinary expenses, which to council seems advisable or necessary for the proper operation or administration of the Municipal Court, and having at the same time made provision for the appointment of a substitute judge, which in the ordinary course of events would entail certain expenses, I believe it reasonable to conclude that such expenses were intended to be embraced in the language of Section 1579-226, supra.

As you point out, it was held in Opinion No. 2042, rendered to your Bureau under date of May 1, 1928, that the council of the City of Newark, for want of statutory authority so to do, has no power to fix the compensation of the acting judge of the Municipal Court or to appropriate money to pay the same. The act creating and relating to the Municipal Court of the City of Newark, however, contains no such provision as that above quoted from Section 1579-226.

In view of the foregoing and in specific answer to your question, it is my opinion that upon the facts stated in your letter payment of compensation to a substitute judge from the city treasury of the City of Alliance is legal.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2267.

ROAD IMPROVEMENT—ZANESVILLE—DISCUSSION OF PROCEDURE—
OPINION NO. 1334, DISCUSSED.

SYLLABUS:

Further consideration of procedure incident to improvement discussed in Opinion No. 1334, rendered December 6, 1927.

COLUMBUS, OHIO, June 22, 1928.

HON. CLARENCE J. CROSSLAND, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your communication, as follows:

"Referring to your Opinion No. 1334, and with particular reference to the situation detailed in my communication and drawing which said opinion answered, I wish to ask you your opinion further respecting the following general procedure in the improvement, repair and maintenance of the said Monroe Street bridge.

1. May the council of Zanesville and the commissioners of Muskingum County co-operate in establishing a continuation of a county road into said city and over the west approach of said bridge to a point where the corporation line of Zanesville runs through the middle portion of said bridge?