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VILLAGE COUNCIL HAS AUTHORITY TO DETERMINE
QUALIFICATIONS FOR OFFICE OF VILLAGE MARSHAL—
§737.15, R.C.

SYLLABUS:

A village council has authority to determine qualifications for the office of village marshal created pursuant to Section 737.15, Revised Code, which are not in conflict with the general law; and where the mayor of a village submits the name of an appointee for such office to the village council and such name is not approved, the mayor is not precluded from again submitting the same name for approval at a later date.

Columbus, Ohio, March 15, 1960

Hon. Bernard T. McCann, Prosecuting Attorney
Jefferson County, Steubenville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Mingo Junction is a non-chartered village located in Jefferson County, Ohio, and a vacancy exists in the office of chief of police.

“There is to be an appointment under the provisions of Section R. C. 737.15 which appointment is to be made by the mayor with the advice and consent of the legislative authority of the village.

“The village council is considering passing an ordinance setting up certain standards for this office such as a required length of service of the police force of fifteen years. This requirement is not contained in Section R. C. 737.15, as the only requirement set out is that the appointee be an elector of the village.

“It will be appreciated if you will give me an opinion as to whether or not the village council has the authority to set up a standard or standards for this office, and in addition thereto whether or not an appointee's name can be re-submitted in the event that council fail to approve the name when first submitted by the mayor.”

The following statement is found in 37 American Jurisprudence, Municipal Corporations, Section 83, at page 695:

“* * * The legislature may undoubtedly determine the qualifications for holding municipal office, such as age, experience, fit-

ness, etc., provided the test imposed has some reasonable relation to ability to perform the duties of the office. A test or qualification having no such relation is unconstitutional as creating a privileged class.* * *

A former attorney general has ruled that the civil service law of this state does not apply to village offices. Opinion No. 1772, Opinions of the Attorney General for 1916, Volume II, page 1186. Therefore, the only qualification determined by the legislature for the office of village marshal is that he be an elector of the village, Section 735.15, Revised Code, reading as follows:

“Each village shall have a marshal, designated chief of police, appointed by the mayor 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.”

The question then is, where the state legislature has determined the qualifications for the office of village marshal, may the legislative authority (council) of the village specify additional qualifications for the same office?

Section 731.09, Revised Code, provides as follows:

“The legislative power of each village shall be vested in, and exercised by, a legislative authority, composed of six members, who shall be elected by the electors of the village at large, for terms of four years. At the municipal election held in the year 1961 two members shall be elected for terms of two years and four members shall be elected for terms of four years.

“At the municipal election in 1965 and quadrennially thereafter, two members shall be elected for terms of four years.

“At the municipal election in 1956 and quadrennially thereafter, four members shall be elected for terms of four years.

“Beginning with the year 1964, all members of village council shall hold office for a term of four years.”

Article XVIII, Section 3, Ohio Constitution, provides as follows:

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”

It has been held that Section 3, Article XVIII of the Constitution applies to every city and village regardless of whether it has adopted a charter form of government. *The State, ex rel. Arey v. Sherrill*, 142 Ohio St., 574.

At one time it was doubtful whether any municipality could legislate on matters relating to members of a police force, *The State, ex rel. Arey v. Sherrill, supra*; *City of Cincinnati v. Gamble, et al., Bd. of Trustees*, 138 Ohio St., 220, however, in *The State, ex rel. Canada v. Phillips*, 168 Ohio St., 191, the first and fourth paragraphs of the syllabus provide 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 as used in Sections 3 and 7 of Article XVIII of the Ohio Constitution.

“* * *

“4. The words, ‘as are not in conflict with general laws’ found in Section 3 of Article XVIII of the Constitution, modify the words ‘local police, sanitary and other similar regulations’ but do not modify the words ‘powers of local self-government.’”

Because the *Canada v. Phillips* case, *supra*, involved a charter city, there was still doubt whether a non-charter municipality could legislate on matters relating to members of a police force. Since the court’s decision in *The State, ex rel. Petit, et al. v. Wagner, et al., Civil Service Commission*, 170 Ohio St., 297, however, it is now clear that a non-charter municipality may under the provisions of Section 3, Article XVIII, Ohio Constitution, prescribe by ordinance a method for the selection of a chief of police, provided that the provisions of such ordinance are not in conflict with the general law.

It is apparent from the foregoing authorities that the legislative authority of a non-chartered village may specify qualifications for the office of village marshal, provided such qualifications are not in conflict with general law.

I can find no law which would prevent a mayor from resubmitting the name of an appointee for the office of village marshal in the event council fails to approve such name when first submitted. It is interesting to note in this regard the provisions of Section 737.17, Revised Code, which require the mayor to re-submit the name of such appointee to the council for final approval at the end of the initial probationary period of six months.

Accordingly, it is my opinion and you are advised that a village council has authority to determine qualifications for the office of village marshal created pursuant to Section 737.15, Revised Code, which are not in conflict with the general law; and where the mayor of a village submits the name of an appointee for such office to the village council and such name is not approved, the mayor is not precluded from again submitting the same name for approval at a later date.

Respectfully,

MARK McELROY

Attorney General