

applicable to payments theretofore made. We think it clear that the provision of the later Act was intended to clarify the former rather than to change its import and it was with that purpose that it was made retroactive."

Upon the considerations above noted and by way of specific answer to the question presented in your communication, I am of the opinion that real estate or other property purchased by a World War veteran or by his guardian with funds received from the federal government under the acts of Congress hereinabove referred to, is not exempt from taxation.

It is proper to note in this connection that the question presented in your communication has been the subject of consideration in two former opinions of this office. In the first opinion here referred to, which was rendered under date of January 26, 1931, Opinions of the Attorney General, 1931, Vol. I, page 80, it was held that lands purchased with funds paid to the guardian of a veteran under the World War Veterans' Act are not taxable until the termination of such guardianship. In the other opinion here noted, which is under date of February 6, 1933, Opinions of the Attorney General, 1933, Vol. I, page 108, a contrary conclusion was reached on this question. On the considerations above noted and discussed, I am required to overrule the first of the former opinions above noted and to approve the other.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

1936.

CHARTER CITY—ORDINANCE—POWER TO CREATE INDUSTRIAL PEACE BOARD—MAY CONTINUE BOARD—ESTABLISH MUNICIPAL ADVISORY BOARD—PUBLIC PURPOSE—POLICE REGULATION—PAYMENT COMPENSATION AND EXPENSES OF BOARD.

*SYLLABUS:*

1. *A charter city has the power to create by ordinance an Industrial Peace Board for the purpose of promoting industrial harmony and to assist in the maintenance of law and order.*
2. *Such charter city has the further power to provide by ordinance for the continuation of such board and for establishing same as a Municipi-*

*pal Advisory Board, so long as the duties of the new board are to be exercised in carrying out the purposes of the original board.*

3. *In such legislation, the same being dedicated to a public purpose, provision may be properly made for the payment of compensation and expenses of the members of the board.*

COLUMBUS, OHIO, February 17, 1938.

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

GENTLEMEN: I am in receipt of your communication of recent date, as follows:

"We are enclosing herewith a letter from our City of Toledo Examiner together with a portion of the City of Toledo Bulletin descriptive of the Toledo Industrial Peace Board and copy of Ordinance No. 76-36, which ordinance creates the Industrial Peace Board as a city governmental function and fixes various salaries and provides for the payment of such salaries and other expenses of said board from appropriations made from and within the public funds of the City of Toledo.

Since it now becomes the duty of the Examiner to pass upon the legality of the payments from the public funds made pursuant to the said ordinance and the appropriations authorized by the council of the City of Toledo, and inasmuch as it has been repeatedly held by your department that payments from the public funds must be confined to purely public purposes, may we inquire:

QUESTION: Is it a legal expenditure of the public funds of a Charter City to disburse such funds in payment of salaries and other expenses of the Industrial Peace Board, when such board has heretofore been created as a public function by an ordinance of council and the salaries and appropriations have been likewise provided by council ordinance?"

I note the attached letter of your examiner, viz:

"On March 30, 1936, council of the city of Toledo adopted Ordinance No. 76-36 creating or in fact taking over the Toledo Industrial Peace Board as a municipal function, fixing salaries and making appropriation for said board.

I had intended to discuss this with you while in Columbus last week, but did not get to it as it has been a question in my mind as to the power to create and operate a board

of this kind, it being the first body of this nature to be known as a municipal function.

It might appear that such power exists in Section 106 of the city charter and I would be pleased to have you read said section, also a history of the activities of the board, together with a copy of said Ordinance No. 76 attached hereto.

Please advise if we shall take any exceptions to the operation of this board, in my 1936 report."

I likewise note the excerpt from The Toledo City Journal, a periodical alleged to be published by the Commission of Publicity and Efficiency, which excerpt assumes to contain a true copy of Ordinance No. 76-36, of the City of Toledo, which Ordinance provides for the continuation of The Toledo Industrial Peace Board and establishing the same as a Municipal Advisory Board for the purpose of promoting industrial harmony and to assist in the maintenance of law and order. The ordinance was passed as an emergency measure.

I will not incorporate this ordinance in my opinion as it is altogether too voluminous, but shall refer to and quote from it when the occasion demands. The ordinance establishing The Toledo Industrial Peace Board does not accompany your request, but the periodical above mentioned contains an alleged history and synopsis of such ordinance.

In the absence of certified copies of these ordinances, I must necessarily take it that the said excerpt imports absolute verity.

While it is necessary to travel a long way in order to reach the question involved, it is very simple when reached, namely, had the City of Toledo, a charter city, the power and authority to pass these ordinances?

I do not deem it necessary to discuss the constitutional provisions relative to charter cities further than to quote Section 3, Article XVIII, of the Constitution of Ohio, viz:

"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."

To take advantage of this provision the City of Toledo did adopt a charter and the people of the city approved it.

These ordinances are police regulations if they are anything, and the question becomes narrowed the more, namely, in the pass-

age of these ordinances did the city council run counter to the Federal or State Constitution, the general laws of Ohio or the city charter?

If the city council has successfully run this gauntlet, these ordinances are good—otherwise, they are bad.

Numerous exceptions might be taken to this legislation: that it is an unwarranted expenditure of public funds; that it deals with a special subject rather than a general public purpose; that in its nature it is aesthetic and ephemeral, rather than substantial and permanent.

I note that the Peace Board expended \$5,625.00 in 1936 and, while \$7,250.00 was appropriated for its use in 1937, it only expended \$6,950.00 of such amount.

The excerpt from *The Toledo City Journal*, published by the Commission of Publicity and Efficiency of the City of Toledo, authorized by its charter, contains a resume of the Peace Board's activities from July 5, 1935, to the end, as I take it, of the year 1937. From this resume, one must necessarily reach the conclusion, not only that the Peace Board was active, but that its activities brought about the peaceable settlement of quite a number of disputes between employers and employees.

Arbitration and settlement of labor disputes as a subject of legislation, opens a new field. The field is not so vast now, but it may become so.

Until within the past few years the relation of employer and employee was regarded as the result of private contract concerning which the general public was little concerned, but the organization of employers and employees and the subsequent lock-outs, walk-outs, strikes and boycotts, without doubt did affect the general public. Violent labor disputes at times did endanger the life, limb and property of persons other than those directly concerned therein and legislators with an eye single to the public welfare began legislating relative thereto and their enactments have been upheld in the main, on the theory that they were police measures.

The Federal Government, a number of years ago created the Department of Labor and the Secretary of such Department is a member of the President's Cabinet. It went much further than that.

On July 5, 1935, Congress passed the National Labor Relations Act, U. S. C. A., Title 29, Sections 151 et seq. In the declarative section of the Act (Section 151) it is stated in substance, that because employers had refused to recognize collective bargaining on the part of employees and as a result of such refusal, strikes and other forms of industrial unrest had been created and the free flow of commerce interfered with, some legislation was necessary to correct the evil and

by Section 153 of the Act, The National Labor Relations Board was created and invested with power to investigate industrial disputes affecting commerce and make findings relative thereto, securing to the parties interested the right of review by the courts. When the word "commerce" is used in this Act, lawyer and layman know that "interstate commerce" is meant.

In the year 1936 the constitutionality of the Act was attacked by The Jones & Laughlin Steel Corporation. The attack was made from every angle. The case reached the United States Supreme Court in February, 1937, and on April 12, 1937, the case which had taken the style of *The National Labor Relations Board vs. Jones & Laughlin Steel Corporation*, was determined and decided by that court, in a five to four opinion, and the constitutionality of the Act was upheld. See *The National Labor Relations Board vs. Jones & Laughlin Steel Corporation*, The Supreme Court Reporter, Volume 37, pages 615 et seq., and which will be reported in 301 U. S. Reports. Of course Congress had to remain within its jurisdiction. Unless the subject of the legislation was of national or rather federal import, Congress would be invading state rights, hence it may be readily observed why the Act was "hooked up" with interstate commerce, over which the Federal Government has original and exclusive jurisdiction. It might be well to add here that the members of this Board are paid a salary of ten thousand dollars per annum and expenses, from the current funds of the United States. But behind it all, it is a police regulation. Unless the Act is conducive to the public welfare, there is no excuse for it even though it has to do with interstate commerce.

If the Federal Government has constitutional authority to create a National Labor Relations Board with the powers hereinbefore enumerated, and provide for compensation and expenses from the current funds of the government, what is there in the Federal Constitution or the Constitution of Ohio to prohibit the General Assembly of the State of Ohio from establishing a like board in matters of intrastate commerce? Or, if you please, rub out the intrastate commerce phrase entirely, and wherein do we find any constitutional inhibition against the enactment of such a measure as a police regulation? Ohio entered this field June 19, 1913, when it passed the Act creating the Industrial Commission of Ohio, (103 Ohio Laws, pages 95 et seq.) Section 22 of the Act was devoted to the enumeration of powers, and in sub-section 8 of Section 22 (103 Ohio Laws, page 102), the following authority was delegated:

"To do all in its power to promote the voluntary arbitration, mediation and conciliation of disputes between employ-

ers and employes and to avoid the necessity of resorting to lock-outs, boycotts, black-lists, discrimination and legal proceedings in matters of employment. In pursuance of this duty it may appoint temporary boards of arbitration, provide the necessary expenses of such boards, order reasonable compensation not exceeding five dollars per day for each member engaged in such arbitration, prescribe rules of procedure for such arbitration boards, conduct investigations and hearings, publish reports and advertisements, and may do all other things convenient and necessary to accomplish the purposes directed in this act. The commission shall designate a deputy to be known as chief mediator and may detail other deputies from time to time to act as assistants for the purpose of executing these provisions. The deputies may act on temporary boards without extra compensation."

This Act was given General Code number 871-22, and said section was repealed in 1915 (106 O. L. 509) and sub-section was reenacted in the same words and the section retains the original section number at the present time, to wit, 871-22.

This law has been on the statute books for twenty-five years, but from what I am able to learn, the Industrial Commission never did at any time exercise this authority.

While it might be said that Ohio has entered the field of industrial disputes, it did not preempt the field.

For the purposes of the discussion, we may admit that "commerce" is a relative term, its magnitude being determined largely by its locus. Thus, we have foreign commerce, domestic commerce, which in the United States is but another name for interstate commerce and intrastate commerce. A city has its commerce just the same as any other political entity. Anything that impedes its free flow is subversive of the public welfare and the power to regulate may be invoked to remove the impediment, but does a charter city in Ohio have to have its commerce disturbed in order to enact a police regulation such as is herein involved?

Toledo is a charter city. It has all the power of local self-government. Its legislative department may enact any police regulation not prohibited by the city charter or in conflict with the general laws of Ohio, provided of course, it does not run counter to constitutional law.

The resume hereinbefore referred to makes it manifest that Toledo's Peace Board, now its Municipal Advisory Board has done things. It has a mediator in numerous matters and satisfactory

results have been reached. Industrial disputes are not conducive to a city's security. Toledo's right and authority to legislate within the scope of its police power does not come from the General Assembly, but from the Constitution of Ohio. The fact that the state has not entered this realm of legislation, is no argument that it might not do so if it saw fit, and surely does not operate as a denial to a charter city of the right so to do, even though it might be characterized as a pioneering expedition. Toledo has full power to enact police measures so long as she does not run counter to the general laws of the State. While the general laws of the State do not expressly delegate power to municipalities to legislate along the line of industrial disputes, neither do they prohibit the exercise of such power.

The Federal Constitution, (Tenth Amendment); provides that powers not delegated to the United States by the Constitution nor prohibited by it to the states, belong to the states respectively or to the people.

The last section of the Ohio Bill of Rights, Section 20, Article I, of the Constitution of Ohio, provides:

"This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people."

This section was construed in the case of *Merick vs. Ginis*, 79 O. S. 178. It was held in substance in this case that the General Assembly could not, in the exercise of the police power of state, invade or take away personal rights.

It eventually became an axiomatic truth at common law that even in a constitutional monarchy, as a matter of government that all powers not surrendered by the people to the state for the purposes of government, remained with the people.

I fail to find wherein the people of Ohio, through its original law, have delegated exclusive power to the state to legislate relative to industrial disputes.

Powers not delegated belong to the people and the people of a charter city may adopt any and all police measures they see fit so long as such measures do not violate general laws.

While the charter of the City of Toledo makes no provision for an Industrial Peace Board or a Municipal Advisory Board, it contains no inhibition relative thereto.

Section 26 of the Charter of The City of Toledo provides in part, as follows:

“Except as reserved to the people by this charter, the legislative power of the city shall be vested in a council of nine members.”

Section 8 of such Charter provides:

“The inhabitants of the City of Toledo, as its limits at the time of the adoption of this charter are, or hereafter may be defined, shall be a body politic and corporate by name of the City of Toledo, and as such shall have perpetual succession and the following rights and powers:

\* \* \* \* \*

(m) To pass such ordinances as are expedient for maintaining and promoting the peace, good government and welfare of the city, and the morals and happiness of its citizens, and for the performance of all municipal functions, including provision for the care and civic instructions of emigrants.

\* \* \* \* \*

(r) To make and enforce local police, sanitary and other regulations.”

Among others, the city is given these powers by the people through their charter and the city may exercise all these delegated powers through its council, *except such as are reserved to the people by this charter.* (Italics the writer's.) That is not all. It is provided as follows by Section 10 of the charter:

“The enumeration of particular powers by this charter, shall not be held or deemed to be exclusive; but in addition to the powers enumerated or implied therein or appropriate to the exercise thereof, the City of Toledo shall have and may exercise all other powers which under the Constitution and laws of Ohio, now are, or hereafter may be granted to cities. Powers proper to be exercised and not specially enumerated herein, shall be exercised and enforced in the manner prescribed by this charter; or when not prescribed herein, *in such manner as shall be provided by ordinance or resolution of the council, or by statute.*” (Italics the writer's.)

Thus it is seen that powers not enumerated in the charter, if they are powers that can be exercised by the city under any circumstance, *they may be exercised and enforced by ordinance or resolution of council.*



I have examined the City Charter carefully and find that the people have reserved to themselves the right of initiative and referendum and all other powers of whatsoever kind or character have been delegated to the city by its people.

True, the charter has made provision for specific city departments and it would seem that the doctrine of *expressio unius est exclusio alterius* might be urged with some degree of force, but when we consider the broad grant of power given under the charter, it does not apply.

A charter city is sovereign within itself. The Supreme Court of Ohio has said as much. I quote from the case of *Perrysburg vs. Ridgeway*, 108 O. S., 245:

"To the sovereign people of Ohio the municipalities appealed in the Constitution of 1912, and the Eighteenth Amendment known as the 'Home Rule' Amendment, was for the first time adopted as a part of the Constitution of Ohio, wherein the sovereign people of the state expressly delegated to the sovereign people of the municipalities of the state full and complete political powers in all matters of 'local self-government'."

A number of other cases could be cited to like effect.

It is not for me to say whether the ordinances herein involved are wise or unwise. The policy of the law is determined by the legislative body that enacts it and even our courts of last resort are without jurisdiction to impugn it.

It would seem that in the enactment of the ordinances herein involved, the City of Toledo is simply keeping step to the music of the times. Doubtless employers, employees and the public generally do not relish industrial disputes. They do, in some instances, produce unrest and uncertainty in communities and embarrass local activities, social and industrial. Whether the fault lies at the door of the employer or the employee, the result is the same, and if a city creates an inexpensive instrumentality that does in fact bring about comparative industrial peace, it most certainly has taken a stride in the right direction.

Answering your question specifically, I am of the opinion that the City of Toledo had power and authority to enact the ordinances concerning which you inquire, which power carries with it the right to make provision for the payment of salaries and expenses of its Industrial Peace Board, now Municipal Advisory Board from the current public funds of the city.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*