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1. CITY THROUGH "HOME RULE" POWERS MAY ESTABLISH BOARD OF PARK TRUSTEES — NOT IN ACCORDANCE WITH PROVISIONS, SECTIONS 755.20, 755.21 RC.

2. CHARTER ADOPTED BY CITY—PROVISION "TO CREATE, ESTABLISH, ABOLISH AND ORGANIZE OFFICES"—STIPULATION UNDER CERTAIN CONDITIONS FOR COUNCIL TO ACT BY ORDINANCE OR RESOLUTION—CITY COUNCIL BY ORDINANCE MAY ESTABLISH BOARD OF PARK TRUSTEES AND PRESCRIBE THEIR DUTIES.

3. STATUS WHERE CHARTER STIPULATES PROCEDURE AS TO DUTIES OF MAYOR, VETO, AND AUTHORITY OF COUNCIL.

4. ADOPTION BY CITY COUNCIL OF MOTION DECLARING VETO OF MAYOR TO BE ILLEGAL—DOES NOT CONSTITUTE PASSAGE OF ORDINANCE OVER VETO OF MAYOR.

SYLLABUS:

1. A city, by virtue of its "home rule" powers, may establish a board of park trustees not in accordance with the provisions of Sections 755.20 and 755.21, Revised Code, providing for such a board.

2. Where a city has adopted a charter which empowers it "to create, establish, abolish and organize offices" and which provides that all powers granted to municipalities by the Constitution of Ohio, "Shall be exercised and enforced in the manner prescribed in this charter, or when not prescribed herein, in such manner as shall be provided by ordinance or resolution of the council," the city council, by ordinance, may establish a board of park trustees consisting of such number of members and having such duties as prescribed by such ordinance.

3. Where a city charter provides that if the mayor does not approve an ordinance "he shall return it to the council with his objections within ten (10) days, or if the council be not then in session, at the next regular meeting thereof," such ordinance, after veto by the mayor, was properly returned to council within the meaning of such charter when, nine days after passage the ordinance with the veto message was delivered both to the clerk of council and to the presiding officer of the council and the next regular meeting of council occurred five days thereafter.

4. The adoption by a city council of a motion declaring the veto of the mayor to be illegal does not constitute the passage of an ordinance over the veto of the mayor.

Columbus, Ohio, May 18, 1954

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

"* * * It appears that in the City of Shelby, there has been in existence since 1926, a Board of Park Trustees, consisting of four members, resident electors of the City of Shelby, appointed and continued under authority of Ordinance No. 113-1926, giving all of the powers and duties set forth in Section 4066 and 4082-3 General Code. This board was apparently appointed under authority granted by Section 4068 G. C.

"The City Council, on February 15, 1954, by Ordinance No. 6-54, has repealed the old Ordinance No. 113-1926 and has attempted to provide for a Board of Park Trustees to consist of one resident elector from each ward of the City of Shelby and one member at large, *a total of five members,* to be appointed by the mayor and confirmed by Council.

"Section three of this ordinance attempts to place the entire management and control of all parks, parkways, etc., in the City under this board of *five* members, and also provides that this board of five members shall have charge of the management and control of all moneys coming into the city treasury for park purposes, 'under the direction of the Mayor and/or City Council'. All moneys shall be disbursed by the Director of Finance and Public Record of the City, only upon order drawn by said Board of Park Trustees, and approved by the 'Mayor and/or the City Council'.

"The ordinance No. 6-54 was vetoed by the Mayor on February 24, 1954, as indicated by notation on the ordinance under that date, signed by the Mayor. This vetoed ordinance was returned to the Assistant Director of Finance on the same date, and also to the Vice-President of Council on the same date.

"In Shelby, the Director of Finance also acts as Clerk of Council. He was out of the city on February 24, 1954, so the vetoed ordinance was filed with his assistant.

"The questions asked by the Finance Director and the Director of Law are these:

"(1) Was the veto of the Mayor, noted at the end of Ordinance No. 6-54, and delivered to the Assistant Director of Finance

and the Vice-President of Council on February 24, 1954, effective?

"It will be noted that the Council minutes dated March 15, 1954, the council voted to consider the procedure of veto used by the mayor to be illegal, because the veto was not presented to the clerk of council at a regular session of council, therefore they attempt to declare Ordinance No. 6-54 is effective without the Mayor's signature.

"(2) Can the City Council in a charter city legally provide by ordinance for a Board of Park Trustees of *five members*, whereas Section 755.21 Revised Code (4068 G.C.) as amended in 1053, provides for a board of park trustees of *four members*.

"(3) Can the city council, by ordinance creating such board of park trustees require that all expenditures from park funds be subject to the approval of the 'Mayor and/or City Council?'

"(4) Can the fiscal officer of the City, (the Finance Director in this instance) legally expend the park funds of the City of Shelby upon the approval of the board of park trustees consisting of more than four members 'or regulated by authority other than provided by statute?'

"It appears that it is the contention of certain councilmen that under the home rule powers of the City, they can establish such board of park trustees of as many members as they desire and can give this board such authority in park matters as the council may provide by ordinance.

"It is the thought of the Law Director that in the absence of any funds requiring investment or change of investment of the principal of such funds, the need for such board of park trustees is questionable. He seems to think that what they need is a Recreation Board established under Section 755.12 et seq.

"A board of park commissioners, as provided by Section 755.01 has apparently never been authorized by a vote of the people."

Your second, third and fourth questions all pertain to the basic powers of a municipal corporation under the "home-rule" amendments of 1912. In my discussion of this problem I am concerned only with a question of *power* and cannot concern myself with such questions of policy as whether "the need for such board of park trustees is questionable."

The applicable provisions of the Revised Code, are as follows:

"Section 755.20: When a deed of gift, devise, or bequest of property or funds to a municipal corporation for park purposes requires the investment or change of investment of the principal of such property or funds, or any part thereof, to be made upon

the approval of an advisory committee appointed by a court or judge, or by an advisory committee appointed by a civic organization of the municipal corporation, or by the legislative authority of such municipal corporation, then such property or funds, and any park for the improvement of which in whole or in part such fund is to be used, or any property for the care or management of which, in whole or in part such fund is used, shall be managed, controlled, and administered by a board of park trustees."

"Section 755.21: The board of park trustees mentioned in section 755.20 of the Revised Code, shall consist of four resident electors of the municipal corporation, who shall be appointed by the mayor, and shall serve without compensation for the term of four years. * * *"

Must *all* municipal corporations, regardless of charter provision, which receive gifts, devises or bequests of property or funds for park purposes which require the investment of such property or funds proceed to appoint a board of park trustees as provided in Sections 755.20 and 755.21, Revised Code? Stated this way, I believe that the obvious answer is in the negative.

The words "powers of local self-government," as contemplated by the Constitution, have been held to denote such powers as are local in the sense that they relate to the municipal affairs of each particular municipality and in which the people of the state have no legal interest. Schultz v. Upper Arlington, 88 Ohio App., 281. Thus an ordinance fixing the salaries of councilmen was held to be within the powers of local self-government. Mansfield v. Endly, 38 Ohio App., 528. Likewise, the manner of electing councilmen or other municipal officers was treated as a matter of home rule and governed by charter provisions. State ex rel. Hackley v. Edmonds, 150 Ohio St., 203; State ex rel. Sherrill v. Brown, 155 Ohio St., 607.

The power of a municipal corporation to thus exercise its powers of home-rule being well established, the question remains as to the power of the *city council* to provide by ordinance for a board of park trustees different from that provided by Section 755.21, Revised Code. While all municipal corporations as such have the same basic home-rule powers, regardless of charter, it does not follow that the *officers* of all municipal corporations have the same powers. Perrysburg v. Ridgeway, 108 Ohio St., 245. In the absence of a charter, we must look to the state statutes

as to the powers of the municipal officers, but where a charter has been adopted and the powers and duties of the municipal officers defined by that instrument, such charter is controlling as to matters relating solely to local self-government. It is possible, of course, for a charter to incorporate by reference and thus adopt as a part of the charter itself certain state laws. Such a charter provision would not mean that the *municipal corporation,* as a political entity, had any less powers of local self-government than any other municipal corporation. It would mean, however, that the *officers* of such municipal corporation, including in some cases the *legislative body,* would not have as broad powers as might be possessed by the officers of another municipal corporation whose charter contained no such provisions.

We find therefore that the power and authority of the *city council* of Shelby to enact an ordinance providing for a board of park trustees differing from that provided by Section 755.21, Revised Code, must be determined by an examination of the *charter* of such city. An examination of this instrument not only reveals no language which would limit the power of the council in this respect, but reveals an express grant of authority to the council.

The charter of the City of Shelby confers upon it the power "to create, establish, abolish and organize offices and fix the salaries and compensation of all officers and employees." It further provides that the city shall have "all powers that are now, or hereafter may be granted to municipalities by the Constitution or laws of Ohio; and all such powers, whether express or implied, 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.*"

The power "to create and organize offices" conferred by the charter is a general grant of power in all matters purely local and municipal, and there can be no question that a board of park trustees is an "office" within the meaning of the charter provision. The word "office" has been held to include boards of a similar nature, such as a Board of Health: Smith v. Lynch, 29 Ohio St., 261; Board of Revision: Barker v. State, 69 Ohio St., 68; Board of Public Works: Dole v. State, 45 Ohio St., 445; Board of Workhouse Directors: State ex rel. Rupp v. Rust, 2 O.C.D., 577; Rapid Transit Commission: Cincinnati v. Deckenbach, 5 O.L.A., 571.

Similarly, in Opinion No. 2265, Opinions of the Attorney General for 1950, page 606, an ordinance of the City of Cleveland creating the

office of commissioner of relief was held a valid exercise of municipal legislative authority under a charter provision that "such other departments and offices may be established by ordinance," and that the establishment of such office for the administration of poor relief was purely a matter of local concern. The opinion followed the Supreme Court decision in State ex rel. Hackley v. Edmonds, 150 Ohio St., 203, that the wisdom and desirability of charter provisions so far as they are strictly of a local nature was not a subject of judicial inquiry.

In answer to your second, third and fourth questions, therefore, it is my opinion that the city council of Shelby has the power to enact an ordinance establishing a board of park trustees in such manner as it sees fit and is not required to follow the provisions of Sections 755.20 and 755.21, Revised Code,

The sole remaining question involved in your request is whether the veto of the mayor, delivered to the Assistant Director of Finance and the Vice President of Council on February 24, 1954 was a valid veto. It should be pointed out that under Section 10 of the charter, the Director of Finance is the Clerk of the Council, and under Section 9 the Vice President is the presiding officer in the absence of the mayor.

Section 12 of the charter, which sets up the procedure for vetoing ordinances and the steps to be taken for overriding the veto, provides:

> "Any ordinance or resolution passed by the council shall be signed by the vice president and presented to the mayor by the clerk. If the mayor approves such ordinance or resolution he shall sign it within ten (10) days after its passage or adoption by the council; *but if he does not approve it, he shall return it to the council with his objections within said ten (10) days, or if the council be not then in session, at the next regular meeting thereof,* which objections the council shall cause to be entered in full on its journal. If the mayor does not sign or veto an ordinance or resolution after its passage or adoption within the time specified, it shall take effect in the same manner as if he had signed it. The mayor may approve or disapprove the whole or any item or part of any ordinance or resolution appropriating money. When the mayor refuses to sign an ordinance or resolution or part thereof and returns it to the council with his objections, the council shall, not later than the next regular meeting, proceed to reconsider it, and, if upon such consideration, the resolution or ordinance or part or item thereof disapproved by the mayor is approved by the vote of two-thirds of all the members elected to the council it shall then take effect as if it had received

> the signature of the mayor. In all such cases the votes shall be taken by 'yeas' and 'nays' and entered upon the journal."
>
> (Emphasis added.)

The charter thus gives the mayor two alternatives: he may return the ordinance with his veto within ten days after its passage, or he may deliver it to council at its next regular meeting when that body is not in session. It is my opinion that the delivery to the assistant director of finance, in the absence of the director, was delivery to the director. The director, being the clerk, it thus would appear that delivery of the ordinance with the veto was made to the clerk of council within ten days. Even if we assume that such delivery did not comply with the charter requirement that it be returned to "council" within ten days, and I am inclined to doubt this assumption, nevertheless, I believe it clear that this action constituted a complete compliance with the charter provision that if council be not then in session, it be delivered "at the next regular meeting thereof." It appears from the attached correspondence that the next regular meeting was held on March 1, 1954. Presumably the director of finance (clerk) or the vice-president of council brought the matter to the attention of council at that time. But whether they did or did not would not change the inescapable conclusion that the mayor fully complied with the provisions of the charter as to returning the ordinance to council with his objections.

Council, instead of taking the required parliamentary steps to override the mayor's veto, proceeded to declare the mayor's veto illegal by the following procedure, as shown by the transcript submitted with your request.

> "Moved by Eckert that procedure of veto be considered illegal and cannot be legally entered into records because veto was presented to clerk out of regular session of council, therefore, declare that ordinance No. 6-54 is in effect; seconded by Herlihy. Motion carried. (Councilmen Herlihy, Greenslade, Eckert and Hogue voted yea; Bell voted nay)."

The steps thus taken by council were not a reconsideration of the ordinance in the light of the mayor's objections, but rather the determination of a legal question wholly beyond its powers, as to the validity of the veto. Furthermore, this action was taken on March 15, 1954 and not "at the next regular meeting," as required by Section 12 of the charter. The ordinance, not again passed to overcome the mayor's veto, never

became operative and is of no legal effect. It has been said that a "bill becomes a law, notwithstanding the executive veto, if, *after reconsideration* it is again passed *in the mode prescribed.*" 50 American Jurisprudence, page 110, Section 111. (Emphasis added.) Here, we had no such reconsideration as provided by Section 12 of the charter.

In conclusion it is my opinion:

1. A city, by virtue of its "home rule" powers, may establish a board of park trustees not in accordance with the provisions of Sections 755.20 and 755.21, Revised Code, providing for such a board.

2. Where a city has adopted a charter which empowers it "to create, establish, abolish and organize offices" and which provides that all powers granted to municipalities by the Constitution of Ohio "shall be exercised and enforced in the manner prescribed in this charter, or when not prescribed herein, in such manner as shall be provided by ordinance or resolution of the council," the city council, by ordinance, may establish a board of park trustees consisting of such number of members and having such duties as prescribed by such ordinance.

3. Where a city charter provides that if the mayor does not approve an ordinance "he shall return it to the council with his objections within ten (10) days, or if the council be not then in session, at the next regular meeting thereof," such ordinance, after veto by the mayor, was properly returned to council within the meaning of such charter when, nine days after passage the ordinance with the veto message was delivered both to the clerk of council and to the presiding officer of the council and the next regular meeting of council occurred five days thereafter.

4. The adoption by a city council of a motion declaring the veto of the mayor to be illegal does not constitute the passage of an ordinance over the veto of the mayor.

Respectfully,
C. WILLIAM O'NEILL
Attorney General