

Number	Name
1421	E. O. Russell
1422	Ella Gardner
1423	William C. Dilworth
1424	R. O. Adams

By the above grants there are conveyed to the State of Ohio, certain lands described therein, for the sole purpose of using said lands for public fishing grounds, and to that end to improve the waters or water courses passing through and over said lands.

Upon examination of the above instruments, I find that the same have been executed and acknowledged by the respective grantors in the manner provided by law, and am accordingly approving the same as to legality and form, as is evidenced by my approval endorsed thereon, all of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2225.

BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES—UNDER ARTICLE XVIII, SECTION 13, CONSTITUTION—PLENARY POWER TO EXAMINE VOUCHERS, BOOKS AND ACTS OF MUNICIPALITIES—CHARTER CITIES—FINDINGS—DEPARTMENTAL HEAD OF CITY LIABLE FOR DEFALCATION OF SUBORDINATE.

SYLLABUS:

1. *The Bureau of Inspection and Supervision of Public Offices has plenary power under Section 13 of Article XVIII of the Constitution of Ohio, to examine the vouchers, books and accounts of all municipal authorities, including charter cities, and the power to examine carries with it the power to make findings against all officials who fail to account for city funds.*

2. *Under such provisions, a departmental head of such city is liable for the defalcation of a subordinate in his department.*

COLUMBUS, OHIO, April 2, 1938.

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

GENTLEMEN :

I am in receipt of your communication of recent date, viz :

"Question. Shall a state examiner of the Bureau of Inspection and Supervision of Public Offices join a director of the City of Cleveland—a charter city— in a finding for recovery of unaccounted-for receipts of the City which were collected by a subordinate officer or employe of his department?"

I also note the letter of your examiner with copies of Sections 78 and 79 of the Charter of the City of Cleveland, Ohio, attached thereto, as follows:

"Directors. Section 78. A director for each department shall be appointed by the mayor and shall serve until removed by the mayor or until his successor is appointed and has qualified. The director of each department shall have the supervision and control of the department. He shall have power to prescribe rules and regulations, not inconsistent with this charter, for the conduct of the officers and employes of his department; for the distribution and performance of its business; and for the custody and preservation of the books, records, papers and property under its control.

"Departmental Divisions. Section 79. The work of the several departments shall be distributed among such divisions thereof as are established by this charter or as may be established by the council by ordinance, with the concurrence of the board of control. There shall be a commissioner or chief in charge of each division who shall be appointed, and may be removed, by the director of the department in conformity with the civil service provisions of this charter. Each commissioner shall, with the approval of the director of his department, appoint all officers and employes in his division and have supervision and control of its affairs."

If I confined myself to the sections of the charter you submit, I would be obliged to find that a departmental head of the City of Cleveland would not be liable for the shortcomings of a subordinate in his department, but I assume that you are desirous of knowing whether or not such liability exists under the provisions of such charter as a whole, and I am so treating your question.

Cleveland is a charter city and as such is authorized to exercise all powers of local self-government, and it may adopt and enforce within its limits such local police, sanitary and other similar regulations as are not in conflict with general laws.

Section 3, Article XVIII, Constitution of Ohio.

It is not worthwhile to cite authorities to the effect that the City of Cleveland gets its power to legislate from the Constitution of Ohio and not from the General Assembly. If a charter city sees fit to impose liability upon its officials, it can do so. It can go so far as to make a departmental head liable for the defalcation of his subordinates. It can adopt as a part of its charter, the general laws of the state.

In matters of private contract, no person is liable for the debt, default or miscarriage of another except upon a contract in writing signed by the party to be charged. A person may bind himself to secondary liability in a public as well as private contract, and in my opinion that is just what the department heads in the City of Cleveland have done.

When an individual becomes a candidate for public office, it is assumed that the individual is conversant with the law governing that particular office. He is bound to know that if he is elected he will be required to qualify in manner and form as provided by the laws of the sovereignty which he is to serve. If he accepts an appointive office, the rule is the same. A public official, elective or appointive, can not enjoy the emoluments of his office and dodge its responsibilities. It would seem that the City of Cleveland has taken good care of herself by the provisions of her city charter.

Section 79 of the Charter provides in part as follows:

“Official bonds shall be required to cover officers and employes who are required by the law and ordinances of the city to handle money and/or other property of the City of Cleveland, and/or who are required to direct the payment of city funds, to safekeep and/or transfer city property * * *.”

This section further provides that such bonds shall be surety bonds and the premiums on all such bonds shall be paid by the city.

Section 79-3 of the Charter provides the form of such bond, and I quote a part thereof, viz:

“Now if each of said officers and employes filling the respective positions named in said schedule, (the schedule is referred to in the preceding provisions of this section and set out fully in subsequent sections), shall faithfully, honestly and impartially perform and discharge the duties of the respective offices and/or positions to which they have been elected or appointed, in accordance with the laws of the State of Ohio and the charter and ordinances of the City of Cleveland, and shall faithfully account for and pay over and deliver in the manner provided by law and such charter and/or ordinances, all moneys or

other things of value that shall come into the possession of such officers or employes for the account of said city or any officer or department thereof, then this obligation shall be void, otherwise to remain in full force and virtue in law."

It will be noted that this bond brings the official or employe under the provisions of the laws of the State of Ohio. This the city may do by ordinance. When the official or employe signs such a bond, he subjects himself, not only to the provisions of the city charter, but to the statutory law of Ohio as well.

Sections 79-4 to 79-35, inclusive, of the City Charter, make up the schedule of officers and employes hereinbefore referred to.

Section 194 of the Charter requires *every officer* of the city, before entering upon the duties of his office, to take an oath or affirmation to be filed and kept in the office of the clerk of council, that he will in all respects faithfully discharge the duties of his office.

It always has been the law of Ohio that officials handling finances were responsible for all monies coming into the hands of their deputies or other subordinates, by whatever name. The general policy of the law of Ohio along this line is announced in Section 9, General Code, as follows:

"A deputy, when duly qualified, may perform all and singular the duties of his principal. A deputy or clerk, appointed in pursuance of law, shall hold the appointment only during the pleasure of the officer appointing him. The principal may take from his deputy or clerk, a bond, with sureties conditioned for the faithful performance of the duties of the appointment. In all cases the principal shall be answerable for the neglect of his deputy or clerk."

In the instant case the Charter adopts the law of Ohio along this line. It would certainly be a farcical city charter that would attempt to restrict its treasurer's liability to moneys that actually came into his hands over the counter or passed out of his hands in like manner. Your bureau has plenary power to examine the vouchers, books and accounts of charter cities under virtue of Section 13, Article XVIII of the Constitution of Ohio, viz:

"Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may

provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities."

This section of the Constitution was adopted on the same day as Section 3, Article XVIII, giving to municipalities the authority to exercise all powers of local self-government, and so forth. These sections are not antagonistic and well may pursue their legal existence, hand in hand.

Answering your questions specifically, I am of the opinion that your bureau may join in a finding, a director of a department of the City of Cleveland, a charter city, having to do with the handling of the city's funds, with his subordinate who failed to account for receipts of the city collected by such subordinate.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2226.

STATUS, ABSTRACT OR TITLE AND OTHER INSTRUMENTS,
STATE OF OHIO, THROUGH DIRECTOR OF HIGHWAYS,
WITH I. KOCH, DESCRIBED LAND, VILLAGE OF LEETONIA,
COLUMBIANA COUNTY, OHIO, PURCHASE PRICE,
\$7,500.00.

COLUMBUS, OHIO, April 4, 1938.

HON. JOHN J. JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: Some time ago you submitted for my examination and approval an abstract of title, warranty deed, contract encumbrance record No. 1605 and other files relating to the proposed purchase of certain tracts of real property which are owned of record by one I. Koch in the village of Leetonia, Columbiana County, Ohio, and which are more particularly described by metes and bounds in a corrected deed this day submitted to me, as follows:

TRACT NO. 1. Known as being part of the Village of Leetonia, Salem Township, Columbiana County, Ohio. Bounded and described as follows: Known as being all of Lots Nos. 555 and 556 in Toomey's Addition to the Village of Leetonia