

It appears that the parcel of land above described is a part of a larger tract of land which is subject to the lien of two mortgages executed by Allen Renick Cunningham and Helen E. Cunningham under date of April 24, 1935, to The Federal Land Bank of Louisville and to A. S. Coss, Land Bank Commissioner, respectively, securing promissory notes of even date therewith executed by said grantors. Accompanying the deed here in question are releases executed by The Federal Land Bank of Louisville as to the mortgage executed to it, and by A. S. Coss, Land Bank Commissioner, acting through the Federal Land Bank of Louisville, as attorney in fact, as to the mortgage executed to him as Land Bank Commissioner, by which the above described parcel of land is released from the operation of said mortgages. These releases are in proper form and are effective to release this property from the lien of said mortgages.

I am accordingly approving this deed and I am returning the same, together with the mortgage releases above referred to.

Respectfully,

HERBERT S. DUFFY,

Attorney General

317.

CITY COUNCIL—CHARTER CITY—BOARD OF CONTROL—
CLAIMS AGAINST CITY—SETTLEMENT OF CLAIMS
AGAINST EXCESS OF AUTHORITY, VOID, WHEN—RE-
SPONSIBILITY OF MEMBERS.

SYLLABUS:

1. *A city council of a charter city has the right to delegate to the Board of Control of such city the power and authority to adjust, compromise, settle and pay claims against the city in any amount up to \$5,000, without the approval of council. Opinions of the Attorney General, 1928, Vol. III, page 1914, followed.*

2. *When the city council of a charter city provides in effect by ordinance that in no case shall any claim against the city be settled, adjusted or compromised when the payment required therefor by the city exceeds the sum of \$5,000 unless and until such payment is authorized by council the payment by the Board of Control of such city of the sum of \$6,000 in settlement of a claim against the city without the authorization of council first had and obtained is null and void in toto and makes those respons-*

ible for such payment jointly and severally liable for the return of such amount to the city treasury.

COLUMBUS, OHIO, Mach 23, 1937.

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 Examiner in Youngstown, Ohio, and also copy of an ordinance adopted by the Council of that city, entitled: ‘An Ordinance to Provide a Fund in the Finance Department to Provide for the Payment of Claims against the City of Youngstown, and to Authorize Settlement, Compromise and Adjustment of such Claims.’

It is shown by the letter of our Examiner that the Finance Department paid a claim and settled a lawsuit for a cash settlement of \$6,000 on December 31, 1934, and further, that the Director of Law on January 7, 1935, wrote a letter to the Mayor which reads in part as follows:

‘After a full consideration of the case of *Ohio Hotel Operating Company vs. City of Youngstown*, being Case No. 92432, in Common Pleas Court of Mahoning County, Ohio, it is the opinion of the Law Department that there is no responsibility whatsoever upon the part of the city in the said case, and that the same has no merit in our opinion.’

May we request that you examine the enclosed correspondence and ordinance and advise us in answer to the following questions?

QUESTION 1. Does the Council of the City of Youngstown have authority to delegate to the Board of Control or any other board or official, the power to settle claims filed against the city as it purports to do through ordinance No. 32191?

QUESTION 2. If the council does not have that authority, would the Board of Control exceed or abuse its authority in settling the claim described above?

QUESTION 3. In view of either affirmative or negative answers to the foregoing questions, how should a State Examiner treat the payment described above in his report, that is, would there be a basis for a finding for recovery or an illegal payment in connection with said settlement?”

Permit me to quote from the letter of Walter C. Jones, your Examiner, enclosed with and attached to your communication, viz:

"The Council of the City of Youngstown, on May 14, 1928, passed Ordinance No. 32191, a copy of which is enclosed herewith.

This ordinance is patterned after a similar ordinance passed by the Council of the City of Cleveland which was approved as to legality by the Attorney General in Opinion No. 2440, rendered under date of August 15, 1928. The Attorney General bases his opinion largely upon the provision of the Charter of the City of Cleveland, which authorizes the Council to require the Director of Law to perform duties other than those specifically provided by charter, however, the Attorney General also makes a broader statement in the body of the opinion when he says, 'I do not believe it improper, in the absence of a specific charter or constitutional prohibition for the council to delegate a power of this character, which is at best quasi-legislative.'

The charter of the City of Youngstown contains no specific provision for the settlement of claims of non-contractual nature. The sections pertaining to the Director of Law provide only that, 'He shall possess the powers and perform the duties prescribed by the General Code.' The sections pertaining to the Board of Control provide for its establishment 'for the purpose of executing contracts and agreements on behalf of the city.' In enumerating the powers and duties of the Director of Finance (who is a member of the Board of Control) the provisions read: 'and such other duties as may be provided by this charter or by ordinance of Council.'

On December 12, 1934, a suit was filed in the Common Pleas Court of Mahoning County, by the Ohio Hotel Operating Company against the City of Youngstown, for the recovery of the sum of \$25,000 an account of damages alleged to have been suffered by the plaintiff because of the flooding of the basement of the Tod House by water, sewage, debris, etc., resulting from the stoppage of a sewer to which the said Tod House is connected.

The Mayor and the Director of Finance, constituting a majority of the Board of Control, without the knowledge of the Director of Law, who is the third member of this board, made a settlement with the Ohio Hotel Operating Company under color of the ordinance herein referred to for damages to said premises in the amount of \$5,000 and for expenses incurred to avert a further repetition of said damages in the amount of \$1,000. Payment of the sum of

\$6,000 was made pursuant to this settlement on December 31, 1934.

The Director of Law, on January 7, 1935, wrote a letter to the Mayor, which reads in part as follows:

'After a full consideration of the case of *Ohio Hotel Operating Company vs. City of Youngstown*, being Case No. 92432, in Common Pleas Court of Mahoning County, Ohio, it is the opinion of the Law Department that there is no responsibility whatsoever upon the part of the City in the said case and that the same has no merit in our opinion.'

A copy of Ordinance No. 32191, of the City of Youngstown is likewise enclosed and attached to your communication. This ordinance is too voluminous to be set out at large herein and I will content myself with a synopsis thereof which I deem sufficient for the purpose of this opinion. Under this ordinance the Director of Finance is authorized to establish a fund out of which claims against the city may be paid. Council shall, as a part of the city's budget, make the necessary appropriation therefor. The Director of Finance is authorized to pay money out of the fund in settlement, compromise or arbitration of claims, whether liquidated or unliquidated. No such claim against the city shall be paid unless it be evidenced by a voucher approved by the Board of Control, or a majority thereof and such Board is authorized to settle, compromise or adjust, any and all claims of and against the city, either liquidated or unliquidated, before suit is brought, while suit is pending or any other time. Such board is further authorized to settle, adjust or compromise any and all claims in favor of the City after the same has been reduced to judgment, when adjustment, compromise or settlement is advisable, expedient or proper, but in no case shall any claim of the City or against the City, either liquidated or unliquidated, be settled, adjusted or compromised where the amount of such settlement, adjustment or compromise exceeds the sum of \$5,000. Whenever the sum of such settlement, adjustment or compromise is in excess of \$5,000, such settlement, adjustment or compromise shall not be legal until first authorized by council. It is further provided that the Board of Control may provide for the payment of such claims at one time in one sum of money or in installments at different times as shall seem to it expedient and proper under all the circumstances.

Youngstown is a charter city. It gets its power and authority from the fountain head, the Constitution of Ohio. Section 3 of Article XVIII of the Constitution of Ohio provides, viz:

"Municipalities shall have authority to exercise all the power 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.”

Section 7 of Article XVIII of the Constitution of Ohio provides, viz :

“Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of Section 3 of this article, exercise thereunder all powers of local self-government.”

As to the power of the city council to delegate to the Board of Control authority to adjust, settle, compromise and pay claims against the city, I cite you Opinions of the Attorney General, 1928, Vol. III, page 1914, in which I concur. The first branch of the syllabus is as follows :

“The Council of the City of Cleveland may legally delegate to the Director of Law authority to compromise and settle claims for damages against the city, and make a lump sum appropriation from which such claims may be paid.”

This holding is dispositive of your Questions Nos. 1 and 2, but it in no wise answers your Question No. 3.

All delegated powers involving the expenditure of public moneys are strictly construed. The Board of Control under the ordinance had just so much power as would be absolutely necessary to make the express powers effective.

The Board of Control has no express authority to make any sort of settlement of a claim in excess of \$5,000 without the consent of council. Such board had no more jurisdiction to entertain a claim for \$6,000 than a justice of the peace would have to entertain an action for such amount. The claimant might have remitted the excess over \$5,000 and such board would have had full power to make settlement, but this was not done. Having no jurisdiction to make payment of the full amount in the first instance, and no remittitur having been made before payment, such payment was null and void in toto as a matter of law, and those responsible for such payment are liable jointly and severally for the return of such money to the city treasury.

The letter written by the Director of Law of the city on January 7, 1935, is inconsequential inasmuch as the payment of the money was made on December 31, 1934.

Respectfully,

HERBERT S. DUFFY,

Attorney General