

50.

APPROVAL, BONDS OF GUSTAVUS RURAL SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO—\$1,400.00.

COLUMBUS, OHIO, February 4, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

51.

CITY COUNCIL—NO REFUND TO MUNICIPAL OFFICER FOR EXPENSES INVOLVING ENFORCEMENT OF PROHIBITION LAW—NECESSITY OF DEFINITE TERM AND COMPENSATION.

SYLLABUS:

A city council may not lawfully provide funds to be used for the purpose of reimbursing the mayor or chief of police for amounts advanced by them to other persons for giving information leading to the arrest of violators of the prohibition law. In such employments the terms and compensation must first be fixed by the council.

COLUMBUS, OHIO, February 4, 1929.

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

GENTLEMEN:—Acknowledgment is made of your recent communication which reads:

“The council of the city of ----- makes an annual appropriation for secret service, from which payments are made to the mayor and chief of police from time to time to reimburse them for funds expended in obtaining information of the violation of laws and ordinances prohibiting the sale, etc., of intoxicating liquors. It is the custom to pay five or ten dollars to the persons giving information leading to the arrest of a violator but council has not fixed the amount of such compensation nor has it created the office or position.

Question: In view of the provisions of Sections 4214 and 6212-37, General Code, is this practice permissible?”

Section 4214 of the General Code, to which you refer, provides:

“Except as otherwise provided in this title, council, by ordinance or resolution, shall determine the number of officers, clerks and employes in each department of the city government, and shall fix by ordinance or resolution their respective salaries and compensation, and the amount of bond to be given for each officer, clerk or employe in each department of the government, if

any be required. Such bond shall be made by such officer, clerk or employe, with surety subject to the approval of the mayor."

Section 6212-37 of the General Code provides:

"The council of any city or village may appropriate the necessary funds, for the purpose of hiring attorneys, detectives, or secret service officers to secure the enforcement of the prohibition laws.

The appointment of attorneys, detectives, or secret service officers shall be for a definite term at a definite salary and not on a percentage basis."

The history of this section discloses that when it was first enacted by the 84th General Assembly, 109 O. L. 4, it authorized the hiring of attorneys, detectives and secret service officers for the enforcement of the prohibition laws and did not specifically require the appointment of such officers to be for a definite term and at a definite salary. Said section was known as Section 17 of the so-called Miller Bill. In an opinion of the Attorney General for the year 1922, page 577, it was held, as disclosed by the syllabus, that:

"Section 4219, G. C., should be adhered to by village councils in fixing compensation of employes under Section 17 of the Miller bill (109 O. L. 4)."

The following is quoted from the body of said Attorney General's opinion:

"In the passing of the Miller bill there is nothing to indicate it was the intention of the Legislature that council was to depart from its path as marked out by existing law in fixing compensation for the employes of the village. Section 17 of said Miller bill simply opens to the village a new source of funds, and authorizes the employment of additional officers or employes to be paid from said fund in the event council chooses to take advantage of said law. In the expenditure of public funds it is a well established principle of Ohio law that all doubts in reference to the legality of a certain expenditure must be resolved against such authority."

Prior to the amendment of the section in its present form by the 86th General Assembly, 111 O. L. 83, it is believed difficulties had arisen by reason of the fact that compensation was paid based upon a percentage of the fines collected. In said amendment, it evidently was the purpose of the Legislature to correct the evils that had grown up under the section as originally enacted. It is clear from a perusal of the section as last amended, that the appointment or employment of such officers, as are mentioned therein, is to be made for a definite term and at a definite salary. However, the provision of the amended section in respect to fixing the compensation and terms of officers employed thereunder is merely declaratory of what the law had been held to be by the Attorney General. In other words, there is nothing in said Section 6212-37, as amended, to indicate that Section 4214 is not in full force and effect. The effect of payment of an allowance, such as you mention, to a police officer or a mayor is to permit an employment for a term and compensation or salary that is not fixed. If employments may be made such as you describe, the effect of such action would be to circumvent the provisions of Section 6212-37, supra, of the General Code. Such a practice, in my opinion, would enable municipal officers to accomplish indirectly that which the statute expressly inhibits. It is a general proposition of law in this state that compensation is to be allowed to a public officer only when the

statutes or ordinance clearly authorize the same, and provisions authorizing such payments are construed strictly in favor of the public. See *Richardson vs. State*, 66 O. S. 108. Of course, it will be conceded that a public officer may properly be reimbursed for actual and necessary expenses incurred in connection with the prosecution of the duties of his office.

In an opinion rendered by my predecessor, being No. 2919, issued to Hon. Lynn B. Griffith, Prosecuting Attorney, Warren, Ohio, under date of November 22, 1928, it was pointed out that a deputy sheriff, finding it necessary to use his automobile in the pursuit of a fleeing criminal, may lawfully be reimbursed for cost of repairs to said machine, made necessary by reason of an accident during said pursuit, when there was no fault on the part of the officer. However, it is apparent that the practice which you describe in your communication cannot be said to be an expense necessarily and actually incurred by such officers in the performance of their duties.

In connection with your question it may be pointed out that in an opinion rendered by the Attorney General, found in Opinions of the Attorney General for the year 1925, page 430, it was held as disclosed by the syllabus:

“Under amended Section 6212-37 of the General Code (S. B. 212) the term of ‘attorneys, detectives or secret service officers’ may be fixed at one day or other definite term, and their compensation fixed at an amount per day, week, month or whatever other definite term for which they are employed.”

Apparently the duration of the term in each instance may be left to the discretion of council. However, it appears to be clear that no valid employment can be made until council has first fixed the term of employment and the amount of compensation.

In a case such as you mention the party to whom the money is paid is presumably in the employ of some one, is attempting to render a service to the municipality, and the effect of the payment results in one being employed without his term and compensation being fixed, as required by the statute.

In view of the foregoing, you are specifically advised that a city council may not lawfully provide funds to be used for the purpose of reimbursing the mayor or chief of police for amounts advanced by them to other persons for giving information leading to the arrest of violators of the prohibition law. In such employments the term and compensation must first be fixed by the council.

Respectfully,

GILBERT BETTMAN,
Attorney General.