

disinfectants, bed, clothing, washing and nursing when required, and other necessaries as the court in its rules shall designate."

Then as now the law imposed upon the sheriff the duty of "keeping and feeding prisoners" and in addition thereto "to furnish, at the expense of the county" other necessaries including the articles and services therein enumerated.

In view of the foregoing and answering your question specifically it is my opinion that the limitation of Section 2850, supra, viz., "but at a rate not to exceed seventy-five cents per day of three meals each" applies only to the *feeding* of prisoners and other persons confined in the jail and that the further provision of said section, viz., "the sheriff shall furnish at the expense of the county, to all prisoners or other persons confined in the jail, fuel, soap, disinfectants, bed, clothing, washing and nursing when required, and other necessaries as the court in its rules shall designate" contemplates an expenditure above and beyond this amount. The law imposes upon the sheriff the duty to furnish the same, the expense therefor is to be paid by the county.

Respectfully,
EDWARD C. TURNER,
Attorney General.

844.

MUNICIPALITY—CHARTER PROVISIONS—SELECTION OF BOARD OF TRUSTEES OF THE FIREMEN'S PENSION FUND.

SYLLABUS:

Where, by charter provision all powers of local self government are reserved to a municipality, and the legislative powers incident thereto are vested in the council of such municipality, such council is authorized to adopt by ordinance a method of selecting the board of trustees of the Firemen's Pension Fund at variance with that prescribed by general law.

COLUMBUS, OHIO, August 9, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication as follows:

"Article I of the Charter of Cincinnati reads:

"The city shall have all powers of local self-government and home rule and all powers possible for a city to have under the Constitution of the State of Ohio. The city shall have all powers that now or hereafter may be granted to municipalities by the laws of the State of Ohio. All such powers shall be exercised in the manner prescribed in this Charter, or if not prescribed herein, in such manner as shall be provided by ordinance of the Council."

Section 1 of Article II of the Charter reads:

"All legislative powers of the city shall be vested, subject to the terms of this charter and of the Constitution of the State of Ohio, in the Council.

The laws of the State of Ohio not inconsistent with this charter, except those declared inoperative by ordinance of the Council, shall have the force and effect of ordinances of the City of Cincinnati; but in the event of conflict between any such law and any municipal ordinance or resolution the provisions of the ordinance or resolution shall prevail and control.

The Firemen's pension fund had been controlled and administered as provided by statute for years preceding the adoption of the charter but during the year 1927 the City Council adopted an administrative code and provided therein for the reorganization of the said firemen's pension fund trustees in the following manner:

'Administrative Code—Ordinance No. 261—1927, Article XVIII, Section 10—The Board of Trustees of the Firemen's Pension Fund shall consist of the Director of Personnel as President ex-officio, and six (6) other members elected by employees of the Fire Department.

For the purpose of electing Trustees the members of the department shall be divided into three (3) classes as follows:

Class 1, consisting of Marshals and all other members above the rank of Captain.

Class 2, consisting of Captains and Lieutenants.

Class 3, consisting of firemen and other members below the rank of Lieutenant.

The members of Class 1 shall elect one (1) Trustee from their number; the members of Class 2, two (2) Trustees from their number; and the members of Class 3, three (3) Trustees from their number.'

Sections 4600 et seq., G. C., provide for the organization of the board of trustees of the firemen's pension fund and it will be noted that the organization provided for by ordinances differs materially from that provided by statute.

QUESTION: May the Council of the City of Cincinnati legally provide for the organization of the trustees of the firemen's pension fund in the manner outlined above?"

Since I have not the entire charter of the City of Cincinnati before me, I am assuming that there is nothing therein prohibiting the adoption of the administrative code to which you refer. You will observe that Section 1 of Article II of the Charter, from which you quote, vests all legislative powers in the council subject to the terms of the Charter and the Constitution of Ohio. Consequently and unless the Charter prevents the adoption of this code, or it is contrary to the Constitution or statutes adopted pursuant to specific constitutional authority to restrict the powers of cities, council would apparently have the power to provide a general administrative code.

It is unnecessary for me to quote the home rule provisions of the Constitution of Ohio. They are very familiar to you and they have been construed so often that extended comment thereon is unnecessary. I believe it may be safely said that the principles of home rule are now well grounded in Ohio and under the authority of the Constitution, at least such municipalities as have adopted a charter, may exercise fully all powers of local self-government, subject only to the constitutional provisions that local police, sanitary and other similar regulations shall not be in conflict with general laws and that the right is reserved in the legislature to enact

laws restricting the right of municipalities to levy taxes and incur indebtedness, and subject to the limitations of the charter.

Under the provisions of the charter which you quote, there is clearly expressed an attempt on the part of the citizens of Cincinnati to reserve all powers of local self-government. As clearly it is further provided that the exercise of the legislative power in connection with local self-government shall be by council and, in so far as was within the power of the citizens of Cincinnati to so declare, it is stated that all ordinances shall supersede the provisions of general law. This, in effect, is what the adoption of the administrative code in this instance purports to do.

In the matter of local administration, at least, it may be said that the delegation of the various administrative duties among the officers and the designation of the various kinds of officers is a matter of purely local self-government. In other words, the council, as to local matters, stands in the same position as the legislature with reference to state matters. It is clearly within the power of the state legislature to create various departments and apportion the administrative duties incident to state government among these various departments as it sees fit, subject only to the restriction that it may not change any constitutional office or the duties appertaining thereto. So likewise council, unless restricted by the Constitution or charter provisions, may create various offices and apportion the various administrative duties incident to local self-government in such manner as it may choose.

Coming to the specific action to which you refer, council in the adoption of the administrative code has attempted to provide a method for the selection of the board of trustees of the firemen's pension fund differing from that prescribed by general law. I do not believe that it could well be contended that the administration of the firemen's pension fund is not a matter of local municipal concern and clearly within the general scope of the powers of the council of Cincinnati, since it is vested with all the legislative powers of local self-government. While it is true that the pension fund which is to be administered by the Board is derived from taxation and the legislature has by the Constitution been given the power to restrict municipalities in the levying of taxes, I do not feel that, because by general law a certain method of selection of a board of trustees of the firemen's pension fund is provided, the legislative intent is shown to make this the exclusive method of administration. To what extent the municipality may levy taxes for this purpose is a matter of interest to the legislature and one on which it has expressly placed a restriction. The administration of the fund, however, which has been derived from taxation, is a matter of purely local concern.

I call your attention to the case of *State ex rel., vs. Edwards*, 90 O. S. 305, which was a proceeding to test the right of civil service commissioners appointed pursuant to charter authority and contrary to the provision of the General Code to hold their office. After referring to the authority of municipalities to adopt charters and to exercise all powers of local self-government, the court mentioned Section 10 of Article XV of the Constitution with relation to civil service. The opinion then went on to state:

"The manner of regulating the civil service of a city is peculiarly a matter of municipal concern. One of the powers of local self-government is the power of legislating with reference to the local government within the limitations of the constitutional provisions above referred to. As long as the provisions made in the charter of any municipality with reference to its civil service comply with the requirement of Section 10 of Article XV, and do not conflict with any other provisions of the constitution, they are valid and under the cases referred to discontinue the general

law on the subject as to that municipality. That provisions adopted by a city might differ from the general laws within the limits defined was not only expected but the very purpose of the amendment was to permit such differences and make them effective."

This case was referred to and used as authority for the decision in the case of *State ex rel. Hile vs. Baker, et al*, 92 O. S. 506, in which a similar question as to the method of the selection of sinking fund trustees was before the Court. While there was no opinion in that case, I believe that it involved the question of whether or not charter provisions could provide a method for the selection of such trustees differing from that prescribed by general law. The Court's conclusion was that such a method of selection was proper.

In the later case of *Hile vs. Cleveland*, 107 O. S. 144, one of the questions involved was also the charter provisions for the appointment of trustees for the sinking fund of the City of Cleveland. It was there claimed that the charter provisions violated Section 4507, General Code, relative to the appointment of such board. The Court disposed of this contention in a sentence on page 149 as follows:

"Upon the question of the sinking fund, *State ex rel. Hile vs. Baker*, 92 O. S., 506, is a specific authority in favor of the amendment."

We find therefore, three separate instances in which the Supreme Court of Ohio has approved a departure by charter provision from the method prescribed by general law for the selection of local boards and officers. Two of these cases involved the selection of a board of trustees of sinking funds. It may well have been argued in these cases, since the sinking fund is derived from taxation and the legislature had expressed itself as to how the persons to administer the fund should be appointed, this method was exclusive and could not be changed by charter provision. Apparently such an argument did not have any weight with the court.

Upon the authority of these decisions, and feeling as I do that the administration of the Firemen's Pension Fund is a matter of purely local concern, I am of the opinion that it is within the power of the council of the City of Cincinnati to provide by ordinance for a method of selecting the board of trustees of the firemen's pension fund of that city, which method differs from that prescribed by general law.

Respectfully,
EDWARD C. TURNER,
Attorney General.

845.

APPROVAL, BONDS OF VILLAGE OF BLUFFTON, ALLEN COUNTY—
\$8,000.00.

COLUMBUS, OHIO, August 9, 1927.