

and of general circulation in the community is a non-partisan English newspaper it follows that publication must be made either by posting, as provided in Section 4232, General Code, or by publication in two newspapers, or by publication only in the one paper that is published and of general circulation in the community.

Upon consideration of the history of legislation on the subject and the decision of the Supreme Court in the Elmwood Place case, *supra*, and bearing in mind that there have been no material changes in Sections 4227, 4229 and 4232, General Code since the decision of the above case, I am of the opinion that in a municipality in which there is only one English newspaper published and of general circulation, and that of a non-partisan character, the publication in that paper of such ordinances, resolutions, statements, orders, proclamations, notices and reports by law, or ordinances to be published in the manner and for the period required by law, is a compliance with the requirements of Section 4228, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1323.

BOARD OF TRUSTEES OF PUBLIC AFFAIRS—HAS SOLE AUTHORITY TO ENTER CONTRACTS FOR CONSTRUCTION OF MUNICIPAL WATERWORKS COSTING MORE THAN \$500—BOARD ESTABLISHED BY VILLAGE COUNCIL—AUTHORITY OF MAYOR AND VILLAGE CLERK DISCUSSED.

SYLLABUS:

1. *If the contracts involve the expenditure of more than five hundred dollars (\$500.00), the board of trustees of public affairs in a village has the sole authority to enter into contracts for the construction of municipal waterworks in said village, after such waterworks have been authorized by the council of said village.*
2. *When the council of a village determines to construct municipal waterworks, it shall at such time establish a board of trustees of public affairs for said village, and thereafter, all administrative duties with respect to the construction and operation of the said waterworks vests in said board of trustees of public affairs. These duties include the employment of engineers, the adoption of plans and specifications and the advertising for and the letting of contracts for the construction of such waterworks.*
3. *The mayor and clerk of a village, under no circumstances, have authority to execute contracts on behalf of said village for the construction of municipal waterworks therein.*

COLUMBUS, OHIO, December 2, 1927.

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

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

“The syllabus of Opinion No. 1140 to be found at page 2467, Volume 3 of the Opinions for 1915, reads:

‘It is the duty of the council of a village when it orders waterworks to be constructed, to establish a board of trustees of public affairs, and it is the duty of the mayor, subject to confirmation by council to appoint the members of such board to hold office until the next regular election.

It is the duty of the board of trustees of public affairs to secure plans, specifications and estimates of proposed waterworks and after the expenditure therefor has been approved by council to let a contract for the work with the lowest and best bidder after advertisement as directed in Section 4328, G. C.

The mayor and clerk of the council have no authority to let a contract for the construction of waterworks.

Where council has secured plans and specifications for the waterworks and bids have been received after advertisement therefor by the village clerk, the board of trustees of public affairs may approve and ratify the action of council and the village clerk and let a contract to the lowest and best bidder.'

The pertinent paragraphs of the syllabus of Opinion No. 231, to be found at page 164 of the Opinions for 1923, read:

'The Board of Trustees of Public Affairs of a village are not authorized to enter into a contract involving an expenditure of more than \$500.00 without the action of the council authorizing such expenditures. It follows that the preparation of plans, employment of engineers, adoption of plans and acquirement of lands for waterworks purposes would necessarily be under the control of council.

The management and control of such waterworks after established is in the hands of the Board of Trustees of Public Affairs, subject to the limitations of Section 4328 with reference to contracts involving more than \$500.00.'

These opinions appear to conflict and the Bureau will greatly appreciate your views in connection with the following questions.

QUESTION 1. May the council of a village employ an engineer and adopt subsequent plans for the construction of a waterworks, advertise for bids and through the mayor and clerk of the village enter into contracts before a board of trustees of public affairs has been created?

2. Does the board of trustees of public affairs have sole authority to enter into contracts?"

Sections 4211, 4328, 4357 and 4361, General Code, read as follows:

Sec. 4211. "The powers of council shall be legislative only, and it shall perform no administrative duties whatever and it shall neither appoint nor confirm any officer or employee in the city government except those of its own body, except as is otherwise provided in this title. All contracts requiring the authority of council for their execution shall be entered into and conducted to performance by the board or officers having charge of the matters to which they relate, and after authority to make such contracts has been given and the necessary appropriation made, council shall take no further action thereon."

Sec. 4328. "The director of public service may make any contract or purchase supplies or material or provide labor for any work under the supervision of that department not involving more than five hundred dollars. When an expenditure within the department, other than the compensation of persons employed therein, exceeds five hundred dollars, such expenditure shall first be authorized and directed by ordinance of council. When so authorized and directed, the director of public service shall make a written contract with the lowest and best bidder after advertisement for not less than two or more than four consecutive weeks in a newspaper of general circulation within the city."

Sec. 4357. "In each village in which waterworks, an electric light plant, artificial or natural gas plant, or other similar public utility is situated, or when council orders waterworks, an electric light plant, natural or artificial

gas plant, or other similar public utility, to be constructed, or to be leased or purchased from any individual, company or corporation, or when the council shall have determined to establish a schedule of rates or charges of rents for use of the sewerage system and sewage pumping, treatment and disposal works of the village, council shall establish at such time a board of trustees of public affairs for the village, which shall consist of three members, residents of the village, who shall be each elected for a term of two years."

Sec. 4361. "The board of trustees of public affairs shall manage, conduct and control the waterworks, * * * The board of trustees of public affairs shall have the same powers and perform the same duties as are possessed by, and are incumbent upon, the director of public service as provided in Sections 3955, 3959, 3960, 3961, 3964, 3965, 3974, 3981, 4328, 4329, 4330, 4331, 4332, 4333, and 4334 of the General Code, and all powers and duties relating to waterworks in any of these sections shall extend to and include electric light, power, and gas plants and such other similar public utilities, and such boards shall have such other duties as may be prescribed by law or ordinance not inconsistent herewith."

In the opinion of 1915 to which you refer, the Attorney General employs this language on page 2470:

"It will be observed that under the language of Section 4361 of the General Code, above quoted, the board of trustees of public affairs is given the same powers and duties relative to the making of contracts as are conferred upon the director of public service in cities by virtue of Sections 3961, 4328, 4329, and 4334. Under these last sections it is clear that it is not only the right but also the duty of the director of public service in cities to contract for the erection of a waterworks plant and to manage and control such plant after its construction. Since the board of trustees of public affairs is by direct reference given the same power relative to making contracts as the director of public service in cities, it follows that the board of trustees should contract for and supervise the erection of a waterworks plant whenever the village council orders such waterworks to be constructed, and by ordinance directs such expenditure of money."

In the opinion of 1923, the Attorney General, after quoting the provisions of Section 4328, General Code, states at the top of page 167:

"From the foregoing, it would seem that inasmuch as council must make the appropriation for the necessary funds it will be within the power of such council to attach such conditions to the expenditure of the same as in its judgment is necessary and proper."

It is apparent that the conclusions reached by the Attorney General in 1923, with reference to the respective rights and duties of a village council and the board of trustees of public affairs, concerning the securing of plans, employment of engineers, acquirement of lands and the making of contracts for the original construction of waterworks and other public utilities, were based entirely upon the fact that before contracts can be made by boards of trustees of public affairs involving the expenditure of more than \$500.00, council must first authorize such expenditure and therefore it necessarily follows that all things connected with the expenditure would be under the control of council. In the language of the opinion it is said:

"It will be within the power of council to attach such conditions to the expenditure of the same as in its judgment is necessary and proper."

It is clear from the wording of Section 4357, *supra*, that when council orders waterworks to be constructed it shall establish *at such time* a board of trustees of public affairs. That is, a board shall be created at the same time the construction of waterworks is ordered. It is equally clear from the provisions of Section 4361, *supra*, that the board of trustees of public affairs shall possess all the powers and perform all the duties that are possessed by and are incumbent upon the director of public service in cities. It does not necessarily follow that because the law requires that before the board of trustees of public affairs in a village or a service director in a city may enter into a contract involving the expenditure of more than \$500.00, authority therefor must first be given by council, that council makes the contract or attaches such conditions to the expenditure of the money as to amount to a dictation of the details of the expenditure.

If that were true, it would amount to the elimination of the board of trustees of public affairs and the service director in all matters involving an expenditure of more than \$500.00 and make of them ministerial officers to carry out the orders of council. In my opinion this is not the intent of the law. By the same reasoning the conclusion would necessarily be reached, that if after the construction of a public utility repairs were necessary which would involve the expenditure of more than \$500.00, the letting of the contracts for the same should be done by council instead of by the board of trustees of public affairs.

It is true that the functions of council in a city and in a village are different with respect to matters not otherwise expressly provided for. In a city the powers of council are purely legislative, while in a village council performs certain administrative functions as well as those which are purely legislative. Contracts made on behalf of a village are made by the council, unless by express provision the power is taken from council and lodged in some other agency, as is the case with respect to the control and management of waterworks.

It will be observed that Section 4211, *supra*, applies only to cities. By its clear provisions administrative duties with respect to contracts for either the construction, operation or repair of waterworks are to be entered into and conducted to performance by the officer having charge of such matters, to-wit, the director of public service, although such contracts require the authority of council for their execution if they involve expenditures of more than \$500.00.

By the enactment of Sections 4357, *et seq.*, General Code, providing for the creation of a board of trustees of public affairs in villages wherein public utilities are situated or to be constructed or leased or purchased, and conferring on such board of trustees of public affairs all the powers and duties with respect to such utilities as are incumbent on directors of public service in cities, the legislature has made the terms of Section 4211, General Code, applicable to villages as well as cities so far as the construction and management of public utilities are concerned.

In answer to your specific questions, I am, therefore, of the opinion:

1. When the council of a village determines to construct municipal waterworks it shall at such time establish a board of trustees of public affairs for said village, and thereafter all administrative duties with respect to the construction and operation of such waterworks vests in said board of trustees of public affairs. This includes the employment of engineers, the adoption of plans and specifications, and the advertising for and the letting of contracts for the construction of such waterworks. Inasmuch as the employment of engineers, adopting of plans and letting of contracts for municipal waterworks could not be done before council determines to construct said waterworks, and inasmuch as council must establish the board of trustees of public affairs for the village at the same time that it determines to construct the waterworks, the council of a village could not employ engineers, adopt plans and let contracts for

such construction before it had established such a board, and the mayor and clerk of the village under no circumstances would have authority to execute contracts on behalf of the village for such construction.

2. If the contracts involve the expenditure of more than \$500.00, the board of trustees of public affairs in a village has the sole authority to enter into contracts for the construction of municipal waterworks in said village, after such waterworks have been authorized by the council of said village.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1324.

INSANE—AUTHORITY TO TRANSFER FROM OHIO STATE REFORMATORY TO LIMA STATE HOSPITAL.

SYLLABUS:

1. *By the terms of Sections 1841-2, 1841-3 and 1841-4, General Code, authority to transfer insane inmates of the Ohio State Reformatory to the Lima State Hospital is vested in the Department of Public Welfare.*

2. *By the terms of Sections 2216 and 2217, General Code, the Probate Courts of Franklin and Richland Counties also are authorized to order the transfer of insane inmates of the Ohio Penitentiary and the Ohio State Reformatory, respectively, to the Lima State Hospital.*

COLUMBUS, OHIO, December 2, 1927.

Ohio State Reformatory, Mansfield, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter which reads as follows:

“Your recent ruling that transfers from this Institution to the Ohio Penitentiary are to be made on the recommendations of the Clemency Board and with the written consent of the Governor is very clear but we are at a loss to know just how transfers are to be made from this Institution to the Lima State Hospital. We have at the present time four inmates that our physician here feels are insane and should be transferred to the Hospital for the Criminal Insane. Should these transfers be approved by the Clemency Board with the written consent of the Governor or can they be authorized by the Director of Public Welfare?”

I assume that you refer to Opinion No. 819, dated August 2, 1927, Opinions, Attorney General for 1927. This opinion was reviewed in Opinion No. 1280, dated November 18, 1927, Opinions, Attorney General for 1927, wherein the following language appears:

“Opinion No. 819, dated August 2, 1927, Opinions, Attorney General, 1927, is erroneous in so far as the language appearing therein purports to authorize the Ohio Board of Clemency, with the written consent of the Governor, to transfer inmates of the Ohio State Reformatory to the Ohio Penitentiary. The language which should have appeared therein is that such transfers can be made by the *Ohio Board of Administration (now the Director of Public Welfare).*”