

subject of the insanity of the defendant, but no provision is made under this section for the payment of such witnesses.

I am presuming from your request that you have used the two medical experts as witnesses in the trial of a case. The expense of procuring these expert witnesses has not been otherwise provided for and you specifically have the right to procure other witnesses for the purposes stated in your request. Certainly, when the prosecuting attorney in the performance of his official duties, one of which is to procure evidence in criminal cases, believes that such an examination as given by the two medical experts referred to in your request is in the furtherance of justice, he may make use of the fund arising under the provisions of Section 3004, G. C.

In specific answer to your request, it is, therefore, my opinion that where a defendant in a criminal case, upon arraignment on an indictment for arson, pleads not guilty by reason of insanity, and an examination of such defendant by medical experts for the purpose of informing the prosecuting attorney as to the sanity of such defendant, either before trial or for the purpose of testifying at the trial of such case, such a service is properly to be procured by the prosecuting attorney and the expense therefor, not being otherwise provided by law, may properly be paid out of the fund arising under the provisions of Section 3004, General Code, when such expenses are incurred in the furtherance of justice.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

2125.

COUNCIL, CITY OF CLEVELAND—POWERS—ORDINANCE  
MAY SETTLE CERTAIN LEGAL CLAIMS FOR OR  
AGAINST CITY—NOT NECESSARY TO REPEAL OR  
AMEND SECTION 82, CLEVELAND MUNICIPAL CODE.

*SYLLABUS:*

*The Council of the City of Cleveland, by the enactment of special legislation has the power to settle certain legal claims for or against the*

*city without expressly amending or repealing Section 82 of the Cleveland Municipal Code.*

COLUMBUS, OHIO, March 21, 1938.

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

GENTLEMEN: This is to acknowledge receipt of your communication, which reads as follows:

"We have a question involving the powers of council, City of Cleveland, on which we would like the opinion of the Attorney General.

Briefly, the facts leading to the question are as follows:

In 1922, the council passed Ordinance No. 56990 delegating certain of its powers to the director of law. This ordinance became Section 82 of the Cleveland Municipal Code, said ordinance being as follows:

"The director of law shall have the power, and he is hereby authorized to adjust, settle, compromise, or submit to arbitration any actions, causes of action, accounts, debts, claims, demands, disputes and matters in favor of or against the City of Cleveland, or in which the City of Cleveland is concerned as debtor or creditor, now existing or which may hereafter arise."

Question: In matters involving settlements of claims, etc., has the council the legal right to recall, withdraw or override the powers it conferred or delegated upon the director of law without amending or repealing Section 82 of the Cleveland Municipal Code, which section is still in force?"

Section 82 of the above ordinance of the Municipal Code of Cleveland provides:

"The director of law shall have the power, and he is hereby authorized to adjust, settle, compromise, or submit to arbitration any actions, causes of action, accounts, debts, claims, demands, disputes and matters in favor of or against the City of Cleveland, or in which the City of Cleveland is concerned as debtor or creditor, now existing or which may hereafter arise."

The above ordinance was passed February 27, 1922. I am unable to find a later ordinance, resolution or charter provision repealing the above quoted ordinance either expressly or by implication. Consequently, I must assume for the purpose of this opinion that this ordinance is in full force and effect. It is also apparent and assumed in this opinion that the "claims" referred to in the above ordinance and mentioned in your request which the Director of Law is authorized to settle or compromise, are those only of a legal character rather than mere moral obligations. Therefore, it will be unnecessary to discuss herein any possible difference between the settlement of legal claims and moral obligations.

I find that the validity of the above mentioned ordinance has been upheld in a well-considered opinion of one of my predecessors in office, to be found in the Opinions of the Attorney General for 1928, Volume III, page 1914, wherein it was assumed that the ordinance referred only to "legal" damage claims. The first branch of the syllabus of this opinion reads 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 opinion was cited with approval in my Opinion No. 317, rendered March 23, 1937.

Although the charter of the City of Cleveland has been amended since the rendition of the 1928 opinion referred to, supra, it has not been altered in any respect material to the question here considered. In fact the provisions of the charter of the City of Cleveland, discussed in the 1928 opinion, remain intact in the 1931 charter although the section numbers have been changed.

Section 53 of the former charter (now Section 93 of the present charter) referring to the duties of the Director of Law, provides as follows:

"In addition to the duties imposed upon the director of law by this charter or required of him by ordinance, he shall perform the duties which are imposed upon city solicitors by the general law of the state, beyond the competence of this charter to alter or require."

The main reasoning of the 1928 opinion is to be found on page 1920, wherein it is stated:

“While the legislative power of the City of Cleveland is placed in the hands of the council, 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. Especially is this true in view of the heretofore quoted provision of Section 53 of the charter which at least impliedly authorizes council, by ordinance, to require the Director of Law to perform duties other than those specifically provided by charter. In pursuance of this authority council has by ordinance imposed the additional duty of settling damage claims upon the Director of Law. This is in my opinion no more of a delegation of legislative power than are the many instances heretofore cited in the case of the State.”

Having determined that the ordinance is not an invalid delegation of the legislative power and that it is a valid enactment still in full force and effect, there remains to be considered the question as to whether the Council may “recall, withdraw or override” the powers so delegated to the Director of Law without amending or repealing the provisions of Section 82, quoted, *supra*. It is, of course, quite obvious that the Council of the City of Cleveland in the exercise of its legislative powers, may at any time it is deemed advisable, repeal or amend Section 82 of the Municipal Code of said city. It is likewise obvious that the Council by reason of its failure to repeal or amend such section is content to leave the general power of settling legal claims for or against the city with the Law Director, but is desirous of settling certain legal claims which might arise from time to time either for or against the City of Cleveland. Bearing this in mind, it would certainly, from a practical standpoint, be a cumbersome procedure for the City Council every time it settled a legal claim to either, first, expressly repeal Section 82 in the ordinance settling a particular legal claim and then later reenact it, or, second, expressly amend Section 82 and then reenact it in its amended form.

Now let us assume the case where the Council of the City of Cleveland enacts an ordinance or resolution settling a particular legal claim in favor of or against the city and in such ordinance does not expressly repeal or amend Section 82 of the Cleveland Municipal Code. Certainly such a special act involving the settlement of a particular claim would not repeal by implication Section 82, a general ordinance giving general power to settle legal claims to the City Law Director. The reason for this is the universal rule of statutory construction to the effect that repeals by implication are not favored

and that a statute or ordinance will not be construed as repealing prior acts on the same subject (in the absence of express words to that effect) unless there is an irreconcilable repugnancy existing between them or unless the new law is evidently intended to supersede all prior acts on the matter in hand and to comprise within itself the sole and complete system of legislation on that particular subject. (See 37 O. Jur. pages 338-339, citing *The State of Ohio vs. Hollenbacher*, 101 O. S. 478, and numerous other authorities.) In the assumed case, the later act would merely operate as a special one with reference to the settlement of a particular legal claim, whereas Section 82 of the Cleveland Municipal Code is an ordinance of general and permanent nature, giving general power to settle claims to the City Law Director, and, if standing alone, would include the power to settle the particular claim in question.

It is a well-settled rule of statutory construction, which serves to dispose of the hypothetical case in question, as well as the subject matter of your inquiry, that where two acts or provisions, one of which is special and the other general, which if standing alone would include the same matter and thus conflict with the special act or provision, the special act must be construed as constituting an exception to the general act, as the legislative power is not presumed to have intended a conflict. (See 37 O. Jur., pages 409, 410, 411 and 412, and numerous cases therein cited.)

It necessarily follows that in the assumed case the special later act without expressly amending or repealing Section 82 would not be construed as repealing the provisions of that section by implication but merely as an exception thereto.

Consequently, in answer to your inquiry, it is my opinion that the Council of the City of Cleveland, by the enactment of special legislation has the power to settle certain legal claims for or against the city without expressly amending or repealing Section 82 of the Cleveland Municipal Code.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*