

intended to vest discretion in a board of education to fix the remuneration of a clerk, and allow it to change the salary at will, if circumstances so warranted.

This conclusion is strengthened by a reference to sections 4213, 4219, 7690-1 and 7697, General Code. In the first two sections, the legislature specifically provided that the salaries of municipal officers and employes could not be increased or diminished during their term of service. In the third mentioned section, namely section 7690-1, General Code, it is provided that a board of education may increase but not diminish the salary of a teacher during the term.

The last mentioned section, 7697, General Code, provides that the salary of a city director of schools may not be changed during his term. Obviously, the legislature has seen fit in these cases to provide against change of salary, but has not in the case of a clerk of a board of education.

It is true that article II, section 20, Ohio Constitution, provides as follows:

"The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

However, in the cases of the *Board of Education of the City School District of the City of Cleveland vs. Juergens*, 110 O. S. 667, and the *Board of Education of the City School District of the City of Cleveland vs. Featherstone*, 110 O. S. 669, it was held that the salary of a clerk of a city school district could be increased during his term since said clerk was not an "officer" within the inhibition of article II, section 20, Ohio Constitution, *supra*. These cases are directly in point here, as the statutes, under consideration in said cases, namely sections 4747 and 4781, General Code, quoted *supra*, apply to a clerk of a village school district as well as to a clerk of a city school district. For a complete analysis of the above cases, I refer you to an opinion of the Attorney General found in Opinions of the Attorney General for 1925, Vol. I, page 327, pages 327, 328, and 329, being particularly applicable to your question.

In view of the above discussion, I am of the opinion that the salary of a clerk of a village school board may be increased or decreased during his term of office.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4777.

MUNICIPALITY—MAY EXCHANGE LAND OWNED BY CITY FOR
OTHER LAND—COMPETITIVE BIDDING NOT REQUIRED WHEN.

SYLLABUS:

When a municipality, after having acquired a parcel of real estate for the purpose of extending a street, determines that a portion of such real estate is not needed by the city for such purpose or any other purpose, if such land is of no legal value to anyone, by reason of its shape and dimensions, except one adjoining owner who is willing to exchange therefor lands needed by the city for the completion of such improvement, such exchange may legally be made without

competitive bidding, even though the municipal charter provides that in all sales or purchases of real property an opportunity shall be given for competitive bidding.

COLUMBUS, OHIO, December 2, 1932.

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

GENTLEMEN:—Your recent request for opinion reads:

"The City of C. in acquiring land for street widening and opening purposes, has frequently traded land it already owned, and which was not needed for public purposes, for land it desired to purchase. Sometimes it is an out and out trade, and at other times there is an added monetary consideration, but the legality of the procedure whereby the city barter away its land by trading is brought to question.

Pertinent charter and general ordinance provisions of the city are as follows:

Charter Sec. 1: Powers of the City. * * * May acquire property in fee simple or lesser interest or estate by purchase, gift, devise, appropriation, lease, or lease with privilege to purchase, for any municipal purpose; may sell, lease, hold, manage and control such property and make any and all rules and regulations by ordinance or resolution which may be required to carry out fully all the provisions of any conveyance, deed, or will, in relation to any gift or bequest, or the provisions of any lease by which it may acquire property:

Charter Sec. 60. * * * The commissioner of purchase and supplies shall make all purchases for the city in the manner provided by ordinance, and shall, under such regulations as may be provided by ordinance, sell all property, real and personal, of the city not needed for public use or that may have become unsuitable for use or that may have been condemned as useless by the director of a department. * * *

Charter Sec. 61. Before making any purchase or sale, the commissioner of purchases and supplies shall give opportunity for competition, under such rules and regulations as the council shall establish. * * *

Ordinance Sec. 237. When real estate is to be leased or sold, by or for the City of C. the resolution provided for * * * shall be advertised * * * as in the case of other sales. The city Manager shall report to the city council all bids received in the matter of the * * * sale of real estate, and shall take such action thereon as may be directed and authorized by council. * * *

QUESTION: In view of the existing charter provisions and the terms of the general ordinance relating to the sale of real property, may the City of C., by special ordinance, sell or exchange real estate without giving opportunity for competitive bidding?"

The city of C. being a charter city, it is elemental that the council of a municipality is restricted in the exercise of its powers by the provisions of its charter, in all cases where such provisions are not in conflict with the state Constitution or general laws.

As stated in your inquiry, the charter of the City of C. gives to such city the right to "acquire property in fee simple * * * by purchase * * *" and to

"sell * * * such property * * *." (Section 1, of the charter, supra.) While Section 60, of such charter grants authority to the commissioner of purchases to purchase property under regulations provided by ordinance, and also to sell real property not needed for public use, Section 61 of such charter specifically limits the manner in which such purchases and sales may be made. It provides that:

"Before making any *purchase* or *sale*, the commissioner of purchases and supplies *shall give opportunity for competition*, under such rules and regulations as the council *shall establish*." (Italics the writer's.)

While the language of Section 61 of such charter specifically states that the commissioners shall give opportunity for competition, the same section of the charter provides that such opportunity shall be given in the manner prescribed by the rules of council. The method of giving opportunity for competition is clearly within the discretion of council. By the use of such language, it is evident that the people intended to specifically restrict the city in the purchase and sale of property. The evident intent or purpose of this provision is to require the purchase and/or sale of real estate by the city at the most advantageous price.

You will observe that the provisions of the charter, above referred to, are all concerning sales and purchases of real property while the transaction set forth in the ordinance in question is not, strictly speaking, a sale, but is rather an exchange of certain property which is owned by the municipality, but which the council has determined is no longer suitable or needed by the municipality for its purpose.

In the case of *Green vs. Thomas, Mayor*, 37 O.,A., 489, the Court of Appeals of Franklin County held that a conveyance of property for a consideration other than money, was neither a sale nor a gift. The court further held that such conveyance was not prohibited by Sections 3631, 3698 and 3699, General Code. The legal effect of such sections of the statute is to require municipalities *to sell or enter into a contract for the sale of* real estate only with the highest bidder.

In the case of *Clark, Treasurer, vs. Gault, Treasurer*, 77 O.S. 497, 513, Price J., in delivering the opinion of the court, uses the following language:

"Authors on the subject of sales substantially agree that a sale is a contract founded on a money consideration, by which the absolute or general property in the subject of sale is transferred from the seller to the buyer, and that the essentials of a sale are: (1) a mutual agreement; (2) competent parties; (3) a money consideration; (4) a transfer of the absolute or general property from the seller to the buyer. If any of these ingredients be wanting there is no sale."

In the case presented by your inquiry there is an agreement not to sell, but to barter or exchange. I also assume that a transfer of absolute or general property is contemplated; however, the money consideration is wholly lacking. Therefore, applying the rule laid down by the learned judge, the failure of this element is fatal to the transaction being a sale. The barter of lands is not expressly required by the charter to be subject to competitive bidding.

The question might be raised as to whether the city has the authority to

barter or exchange real property owned by it which is unsuitable or unnecessary for municipal purposes. This question has been before the courts of this state on several occasions and the courts have held that a municipal corporation has the authority to transfer real property owned by it for "an adequate consideration other than money." See *City of Cleveland vs. Library Board*, 94 O. S., 311, *State ex rel. Turner*, Attorney General, 93 O. S., 376; *Green vs. Thomas, Mayor*, *supra*.

The court, in the case of *Perrysburg vs. Ridgeway*, 108 O. S., 245, held that the power to establish, open, improve, maintain and repair public streets within a municipality and full control over the use of such streets is included within the term "powers of local self-government" within the meaning of Article XVIII, Section 3, of the State Constitution.

The ordinance in question shows that the land sought to be acquired is to be used for the extension of one of the streets in the municipality and that by reason of this fact, such transaction comes within the powers granted to the municipality by the terms of the above mentioned section of the Constitution.

A question might also arise by reason of the language contained in Article XVIII, Section 10, of the Constitution, which reads in part, as follows:

"A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use, appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made."

Such question is: If the city acquires real estate in excess of the amount necessary for public use, is it limited by this section in disposing of such property otherwise than by sale?

As I have hereinbefore pointed out, if it were not for the provisions of the above section, other provisions of the Constitution would give such right to the municipality. It must be borne in mind that this section does not purport to give the city the right to sell real estate but merely purports to give the municipality the right to acquire property and impose restrictions thereon when necessary to preserve an improvement being made by the city which might be in the nature of a park or an artistic boulevard or street. The language of this section is not that the city "may sell" but is "may sell * * * with * * * restrictions."

Taking into consideration the evident purpose of such section I am of the opinion that such section, accordingly, grants to the city the right to acquire property for the purpose of placing restrictions thereon and then disposing of the same in order to prevent the use of such property for some purpose which would lessen the value of the improvement being made by the city, and does not limit, nor intend to limit the manner of possession of property by a municipality.

Your inquiry raises another question, as to whether the city may legally acquire land for the extension and widening of streets, without competitive bidding. From the very nature of the facts, it is self-evident that there could not possibly be any competition in this type of transaction. That is, the only manner in which the street could be widened would be by the acquisition of property abutting on the street to be widened. Such property could only be offered for sale to the city by the person or persons owning the same. If I were to hold that the ordinance and statutes in question compelled competi-

tive bidding for this purpose, such construction would lead to an absurdity, and it is always presumed that the legislature never intends to enact an absurdity.

In the case of *Hill vs. Micham*, 116 O. S., 549, 553, the court says:

“* * * the construction of a statute depends upon its operation and effect, and not upon the form that it may be made to assume. * * * It has also been held that it is the duty of courts, in the interpretation of statutes, unless restrained by the letter, to adopt that view which will avoid absurd consequences, injustice, or great inconvenience, as none of these can be presumed to have been within the legislative intent.”

See also, *Moore vs. Given*, 39 O. S., 661.

From the facts set forth in the ordinance, it is evident that advertisement for, or giving opportunity for competition in the acquisition of a piece of property which, by reason of its peculiar location, or of other circumstances, is the only property that will satisfy the municipality's needs, would be an absurdity and a nullity.

Referring specifically to the question, as to whether the municipality has the authority to barter or trade the unused portion of lands, acquired for street extension purposes, owned by it, for other lands necessary for the completion of the same improvement for which the lands so desired to be traded were acquired, the following facts appear from your communication and the enclosures accompanying the same: That the land sought to be exchanged is a triangular parcel of land formed by an angle of 4°, 34' and 35" the legs of which are approximately 140 feet in length. Such parcel alone has insufficient depth to be suitable for the erection of an improvement thereon, and could have no value to anyone other than the owner of an adjoining parcel except a nuisance value. The ordinance recites, and I therefore assume that the council has determined that the parcel sought to be traded can be advantageously used only by one person. Such recital reads:

“Whereas, in the extension of Carnegie ave., the city of Cleveland is in the process of acquiring a parcel of land adjacent thereto, owned by A. R., and the extension of said Carnegie ave., will leave a parcel of land remaining from the said A. R. parcel, which will not be required for street purposes, and which parcel is so situated that it could be advantageously used only by M. J., the owner of the adjacent property, her successors, and assigns, and * * *.”

It is self-evident that there could not possibly be any competition for the acquisition of this parcel except from one who desires to injure the adjoining property owner by holding the legal title to the street frontage, which has no value standing alone, but would add value to the adjoining property, or even might be used for spite purposes such as erecting bill-boards not for the purpose of revenue but of depreciating the desirability of adjoining property.

Applying the reasoning, which led me to the conclusion that it was unnecessary to advertise for bids for the purchase of a particular piece of property which alone is suitable for the municipal purpose, to the question of the barter or exchange of the lands in question, a similar conclusion is

reached, that is, when such lands are of legal value to one person only there can be no possible competition and it would be an absurdity to require an opportunity for competition that is known not to exist.

I have assumed that there is only one adjoining property owner to whom the parcel sought to be traded is of value. I have not intended to hold, and do not hold, that when there are two or more adjacent owners to whom the parcel in question is of value opportunity need not be given for competitive bidding. Such question is not presented by your inquiry and I express no opinion thereon. Whether competition is of value to the municipality is a question of fact in each instance.

Specifically answering your inquiry I am of the opinion that when a municipality, after having acquired a parcel of real estate for the purpose of extending a street, determines that a portion of such real estate is not needed by the city for such purpose or any other purpose, if such land is of no legal value to anyone, by reason of its shape and dimensions, except one adjoining owner who is willing to exchange therefor lands needed by the city for the completion of such improvement, such exchange may legally be made without competitive bidding, even though the municipal charter provides that in all sales or purchases of real property an opportunity shall be given for competitive bidding.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4778.

INDIGENT PERSON—RELIEF SHOULD BE FURNISHED BY CITY
OR TOWNSHIP OF LEGAL SETTLEMENT—NO RECOVERY BY
SUBDIVISION FURNISHING RELIEF FROM PLACE OF LEGAL
SETTLEMENT.

SYLLABUS:

1. *Relief to an indigent person having a residence as defined in sections 3477 and 3479, General Code, in a city, should be furnished by such city regardless of the present abode of such indigent person.*

2. *The cost of temporary or partial relief furnished by the trustees of a township to an indigent resident of the county may not be recovered from the township or city of legal settlement of such indigent.*

COLUMBUS, OHIO, December 2, 1932.

HON. CALVIN CRAWFORD, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This will acknowledge a request for my opinion from your office which reads:

“We have quite an urgent and serious problem locally involving the application of sections 3476 and 3480-1 and related sections of the General Code.

It seems that in the past it was generally understood that if an indigent person had a legal settlement in the County for twelve