

same not to be inconsistent with the Constitution or laws of the United States or the state of Ohio, I have endorsed my approval thereon and enclose the same herewith to you.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5049.

POLICE—NON-CHARTER CITY UNAUTHORIZED TO
CREATE POSITION OF SUPERINTENDENT OF BERTIL-
LON BUREAU.

SYLLABUS:

1. *The Council of the City of Lorain, Ohio, a non-charter city, in providing for the personnel to be employed in the police department of such a city cannot create positions other than those enumerated in Section 4374, General Code. Section 8 of Ordinance No. 2965, adopted by the council of the City of Lorain, creating the position of Superintendent of Bertillon Bureau is contrary to and in violation of the provisions of Section 4374, General Code.*

2. *The duty of securing the information required to be furnished to the Bureau of Criminal Identification and Investigation in the Department of Public Welfare, by the Chief of Police of a police department may be assigned by the Chief of Police to any of the police officers enumerated in Section 4374, General Code.*

COLUMBUS, OHIO, December 30, 1935.

The State Civil Service Commission of Ohio, State Office Building, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your letter requesting my opinion which reads in part as follows:

“The State Civil Service Commission directs that your opinion be requested upon the question of whether the Chief of Police of Lorain, Ohio, has authority to transfer the Superintendent of Bertillon to the position of Patrolman in charge of the Vice Squad, or to add to the former position the duties of the latter in addition thereto, in view of Ordinance No. 2965 of that city pertaining to same. * * *”

Ordinance No. 2965, adopted by the Council of the City of Lorain, Ohio, reads in so far as pertinent:

"Section 1. That the Police Department of the City of Lorain, Ohio, shall be composed of the following officers and other members who shall receive the respective salaries hereinafter provided subject to the provisions of Section 12 hereof, payable semi-monthly out of the Safety Fund of the said City and shall give the respective bonds hereinafter required.

Section 2. A Chief of Police who shall receive Two Hundred and Fifty Dollars (\$250) per month, and who shall give bond in the sum of Twenty-five Hundred dollars (\$2500).

Section 3. A Captain of Police who shall receive Two Hundred and Four Dollars (\$204) per month, and who shall give bond in the sum of One Thousand Dollars (\$1000).

Section 4. Three (3) Lieutenants of Police who shall each receive One Hundred and Ninety-two Dollars (\$192) per month, and who shall each give bond in the sum of One Thousand Dollars (\$1000).

Section 5. Four (4) Detectives who shall each receive a salary of One Hundred and Ninety-two Dollars (\$192) per month, and who shall each give bond in the sum of Five Hundred Dollars (\$500).

Section 6. Three (3) Sergeants who shall each receive a salary of One Hundred and Eighty-six Dollars (\$186) per month, and who shall give bond in the sum of Five Hundred Dollars (\$500).

Section 7. One (1) Secretary of the Chief of Police who shall receive One Hundred Fifty Dollars (\$150) per month, and who shall give bond in the sum of Five Hundred Dollars (\$500).

Section 8. One (1) Superintendent of Bertillon Bureau who shall receive a salary of One Hundred and Ninety-two Dollars (\$192) per month, and who shall give bond in the sum of Five Hundred Dollars (\$500).

Section 9. Ten (10) Patrolmen who shall each receive a salary at the rate of One Hundred and Eighty Dollars (\$180) per month, and who shall each give bond in the sum of Five Hundred Dollars (\$500).

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Section 14. The Police Department as herein constituted shall be classified as to service by the Director of Public Safety who shall make all Rules for the Regulation and discipline of said Department, except as otherwise provided by law.

Section 15. Providing that the Chief of Police may at any time detail any of the Patrolmen to the rank of Detective or Vice Squad and any Detective of Vice Squad to the rank of Patrolman.

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I am informed that the City of Lorain, Ohio, is a non-charter city. Being a non-charter city it is subject to the provisions in Title XII, Part 1 of the General Code of Ohio. A non-charter city in the operation of its police department is governed by the provisions of Sections 4368 and 4372 to 4383, inclusive, General Code.

Section 4368, General Code, defines the general duties of the safety director of a non-charter city.

Section 4372, General Code, provides:

“The chief of police shall have exclusive control of the stationing and transfer of all patrolmen and other officers and employes in the department, under such general rules and regulations as the director of public safety prescribes.”

Section 4373, General Code, authorizes the employment of additional patrolmen and officers for temporary and emergency service.

Section 4374, General Code, reads:

“The police department of each city shall be composed of a chief of police and such inspectors, captains, lieutenants, sergeants, corporals, detectives, patrolmen, and other police court officers, station house keepers, drivers and substitutes, as are provided by ordinance or resolution of council.”

Section 4379, General Code, provides:

“The chief of police and the chief of the fire department shall have exclusive right to suspend any of the deputies, officers or employes in his respective department and under his management and control, for incompetence, gross neglect of duty, gross immorality, habitual drunkenness, failure to obey orders given him by the proper authority, or for any other reasonable and just cause.”

Section 4382, General Code, reads:

“The director of public safety shall classify the service in the police and fire departments in conformity with the ordinance of council determining the number of persons to be employed therein,

and shall make all rules for the regulation and discipline of such departments, except as otherwise provided in this subdivision.”

It will be observed from a reading of these sections that the legislature has provided in detail for the operation of the police department of a non-charter city and that the police department, under Section 4374, General Code, must consist of a Chief of Police, and such Inspectors, Captains, Lieutenants, Sergeants, Corporals, Detectives, and Patrolmen as are provided by ordinance or resolution of council. It will be noted that there is no provision in Section 4374, General Code, which provides for the position of Superintendent of Bertillon Bureau such as created by Ordinance No. 2965. The legislature having failed to provide for such a position, it necessarily follows that a non-charter city would have no authority to create such a position by ordinance or resolution of council. Thus Section 8 of Ordinance No. 2965, adopted by the City of Lorain, creating the position of Superintendent of Bertillon Bureau in the police department of that City, was an act beyond the scope of the law making power of that municipality and in direct violation of Section 4374, General Code.

Although the council of a non-charter city has no authority to create positions in the police department other than those enumerated in Section 4374, General Code, it does not follow that the duties to be performed by the police department cannot be outlined in detail by council. Under the laws of the State of Ohio, it is the duty of the Chief of Police of a city to furnish to the Superintendent of the Bureau of Criminal Identification and Investigation in the Department of Public Welfare, the descriptions, fingerprints, photographs and measurements of persons who are arrested and who are fugitives from justice or who are wanted for serious offenses. Section 1841-15, General Code, reads in part as follows:

“* * * The superintendent shall co-operate with and assist sheriffs, chiefs of police and other law officers in the establishment of a complete state system of criminal identification and in obtaining finger prints and other means of identification of all persons arrested on charge of felony. * * *”

Section 1841-16, General Code, reads:

“The superintendent of the bureau shall prepare standard impression sheets on which finger prints may be made in accordance with the finger print system of identification. Such sheets may provide for such other descriptive matter as the superintendent may prescribe from time to time. Such sheets shall be furnished to each sheriff, chief of police and to the person in charge of every workhouse, reformatory, penitentiary within the state.”

Section 1841-17, General Code, provides:

“The sheriff, chief of police or other person in charge of each prison, workhouse, reformatory or penitentiary shall send finger print impressions and such other descriptive measurements as the superintendent may require on forms furnished by him, to this bureau to be filed, classified and preserved.”

Section 1841-18, General Code, reads in part:

“It is hereby made the duty of the sheriffs of the several counties of the state, the chiefs of police of cities and marshals of villages therein immediately upon the arrest of any person for any felony, to take his finger prints according to the finger print system of identification on the forms furnished by the superintendent and forward the same, together with such other description as may be required and with the history of the offense committed, to the bureau to be classified and filed, but should any accused be found not guilty of the offense charged, then said finger prints and description shall be given to the accused upon his request.

And the superintendent of the state bureau of criminal identification shall report any dereliction in the performance of this duty by any sheriff, chief of police, or marshal, or any dereliction in the duty imposed upon any person having charge of a state institution as provided in section 1841-15 of the General Code, to the governor, who shall make immediate investigation thereof, and upon the order of the governor the proper disbursing officer shall not issue any salary voucher or pay voucher to any said official found by the governor to be derelict in the performance of the duties provided by this enactment until such dereliction has been corrected. * * *

Section 1841-19, General Code, reads in part:

“It shall also be the duty of each sheriff or chief of police to furnish said bureau with descriptions, finger prints, photographs and measurements of persons arrested who in their judgment are wanted for serious offenses, are fugitives from justice, or in whose possession at the time of arrest are found goods or property reasonably believed to have been stolen, all persons in whose possession are found burglar outfits or burglar tools or burglar keys, or who have in their possession high power explosives reasonably believed to be intended to be used for unlawful purposes, or persons who are in possession of infernal machines or other contrivances in whole

or in part and reasonably believed by said sheriffs or chiefs of police to be intended to be used for unlawful purposes, * * *."

It will be observed that it is made the duty of the Chief of Police of a municipality to furnish to the Bureau of Criminal Identification and Investigation certain required information about persons who are arrested for violating certain laws or who are wanted as fugitives from justice. This information is to be furnished by the Chief of Police, according to the provisions of Sections 1841-13, et seq., General Code. However, there is nothing in the statutes which prevents the Chief of Police of a municipality from detailing to an officer in the police department of a city the task of securing the information that must be furnished by virtue of the provisions of Sections 1841-13, et seq., General Code, to the Bureau of Criminal Identification and Investigation. However, the fact that such information must be furnished by the Chief of Police does not impliedly empower the council of a non-charter city to establish within the police department of such city, the position of Superintendent of Bertillon Bureau.

Inasmuch as a non-charter city can only employ in its police department the police officers enumerated in Section 4374, General Code, it follows that the duty and functions of a Bertillon Bureau can be delegated by the Chief of Police only to the police officers enumerated in Section 4374 and the council of a non-charter city is without authority to create a position in the police department, the duties of which are in furtherance of the provisions of Sections 1841-13, et seq., General Code.

Under Section 4372, General Code, the Chief of Police has exclusive control of the transfer of all patrolmen and other officers and employes in the police department, subject to such rules and regulations as may be adopted by the Director of Public Safety. Under that grant of authority a Chief of Police may assign any patrolman or other police officer to perform the services required under the criminal identification laws of the State of Ohio and combine such duties with such other duties which are performed by patrolmen or other officers in a police department.

In view of the fact that the council of a non-charter city has no authority to create the position of Superintendent of Bertillon Bureau in the police department, it becomes unnecessary for the purposes of this opinion, to pass upon the question of whether the Chief of Police of Lorain, Ohio, has authority to transfer the Superintendent of Bertillon Bureau to the position of patrolman in charge of the Vice Squad.

Specifically answering your inquiry it is my opinion that the council of the City of Lorain, Ohio, a non-charter city, in providing for the personnel to be employed in the police department of such a city, cannot create positions other than those enumerated in Section 4374, General Code. Section 8 of Ordinance No. 2965, adopted by the council of the City of Lorain, creating

the position of Superintendent of Bertillon Bureau is contrary to and in violation of the provisions of Section 4374, General Code.

The duty of securing the information required to be furnished to the Bureau of Criminal Identification and Investigation in the Department of Public Welfare, by the Chief of Police of a police department may be assigned by the Chief of Police to any of the police officers enumerated in Section 4374, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5050.

APPROVAL, BONDS OF CITY OF AKRON, SUMMIT COUNTY,
OHIO, \$10,000.00.

COLUMBUS, OHIO, December 30, 1935.

State Employes Retirement System, Columbus, Ohio.

5051.

APPROVAL, BONDS OF CITY OF LIMA, ALLEN COUNTY,
OHIO, \$100,000.00.

COLUMBUS, OHIO, December 30, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

5052.

BILL OF SALE—APPROVAL OF FORMS RESPECTING SAFETY
GLASS (SUPPLEMENTING O. A. G. 4148, APRIL 15, 1935).

SYLLABUS:

Additional questions added to "new motor vehicle" and "used motor vehicle" bill of sale forms, because of the enactment of House Bill No. 81, passed