

107.

APPROVAL, BONDS OF VILLAGE OF MIAMISBURG, MONTGOMERY COUNTY—\$17,900.00.

COLUMBUS, OHIO, February 20, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

108.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES AS RESIDENT ENGINEERS—ORTON H. JONES—CHARLES I. McNEAL—R. E. HOUSE—GEORGE R. EVANS.

COLUMBUS, OHIO, February 20, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration four bonds, each for the sum of five thousand dollars, and conditioned for the faithful performance of the duties of the principal as resident engineer, as follows:

Orton H. Jones, principal (Wood County), upon which the American Surety Company appears as surety.

Charles I. McNeal, principal (Crawford County), upon which the Northwestern Casualty and Surety Company appears as surety.

R. E. House, principal (Medina County), upon which the Maryland Casualty Company appears as surety.

George R. Evans, principal (Muskingum County), upon which the Columbia Casualty Company appears as surety.

The above bonds are given in pursuance to the provisions of Section 1182 of the General Code, which specifically requires that resident engineers give bond in the amount above indicated with sureties to your approval. The bonds have been properly executed and bear your approval thereon.

It is further noted that in the official roster of the Division of Insurance all of the sureties heretofore mentioned have been duly authorized to transact business in Ohio.

In view of the foregoing, I have approved said bonds as to form and return the same herewith.

Respectfully,

GILBERT BETTMAN,

Attorney General.

109.

CHARTER CITY—EXPENDITURES FOR SERVICES OF SPECIFIC ASSOCIATION PROHIBITED WHERE CHARTER SILENT—LEGALITY OF SUCH A CHARTER PROVISION NOT DECIDED.

SYLLABUS:

In view of the holding in the case of State ex rel. vs. Semple, 112 O. S. 559, a charter city may not legally expend its funds for services and periodicals of an association known as "Conference of Ohio Municipalities" in the absence of specific charter provisions; whether or not such a charter provision could authorize such an expenditure is not decided.

COLUMBUS, OHIO, February 21, 1929.

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

GENTLEMEN:—Acknowledgment is made of your recent communication which reads as follows:

“In the case of *State ex rel. vs. Semple*, Director of Finance of the City of Cleveland, 112 O. S. 559, it was decided that a contribution to a conference of Ohio municipalities in the way of dues was not an authorized expenditure of public funds.

Question: May a charter city legally expend its funds for services and periodicals of an organization known as a Conference of Ohio Municipalities, in the absence of a specific charter provision?

Copy of the proposed contract is enclosed herewith.”

The tentative draft which you enclose purports to be made between Conference of Ohio Municipalities and some designated municipality of the state, and is drafted upon the assumption that said Conference has been organized as a corporation not for profit and has adopted a schedule of charges and has offered an identical contract, except as to schedule of fees to be charged, to every municipality in the state.

The following is quoted from said contract which bears upon the question of the purposes and objects to be accomplished by the same:

“WHEREAS, the Conference of Ohio Municipalities hereinafter referred to as the Conference, is a corporation not for profit, organized under the laws of Ohio, for the purpose of promoting the advancement of efficiency and economy in local government and administration within the State of Ohio, by rendering services to the municipalities of Ohio which they could not without excessive cost, procure each by its individual efforts and for its own individual benefit, by furnishing a medium for the exchange of information as to improved practices and materials, by rendering special consulting services at a reasonable cost, by making studies and investigations of value in the conduct of local government, by publishing the results thereof, by publishing pamphlets, reports, forms, etc., and by other activities pertinent to the purpose stated.”

It further appears from said contract that the so-called Conference agrees to furnish certain services to the municipalities as enumerated therein.

Said services, among others, include furnishing a magazine published by the Conference; furnishing special reports on any subject of general interest affecting the work of the municipality; providing a bureau for the collection, classification and utilization of books and periodicals, pamphlets, reports, etc., for the use of said municipalities and the officers thereof; examination of all measures introduced during the sessions of the General Assembly affecting the powers, duties, government or administration of municipal affairs, and advising the municipalities thereof; keeping the municipalities advised as to the issues and outcome involved in any litigation affecting municipal affairs; advising the municipality of all matters pending before the Public Utilities Commission, or other regulatory authority likely to affect rates or services of utilities serving the municipality, etc.; and furnishing information as to the work of executive and administrative departments of the state and federal government which may affect the municipality.

Said contract contains a clause whereby the municipality binds itself to pay a stipulated fee for the furnishing of the services enumerated.

In another clause of said contract the Conference agrees to furnish the municipality special consulting and other services in connection with any problem or matter arising in the affairs of the municipality upon its request and furnish persons who are especially qualified for such work at a reasonable cost to be agreed upon in each case.

Another clause provides that all moneys received by the Conference from any source shall be devoted to defraying the cost of the services and the proper expenses of the Conference in carrying out its purposes. No moneys shall be paid out as dividends or profits.

It is further provided that the Conference shall have until any date not later than August 1, 1929, to ratify or reject the contract when entered into by a municipality, except that it shall ratify as soon as contracts having a total consideration of \$3,000 have been obtained.

While there are other provisions of said contract not hereinbefore specifically referred to, it is believed that the features above mentioned will be sufficient for the purpose of determining the character of the same.

In the case you mention, decided by the Supreme Court on May 5, 1925 (112 O. S. 559) a very similar condition existed. In that case the party furnishing the service was called "Conference of Ohio Municipalities" which was organized for the purpose of serving as an agency of common action in all matters of common concern to the municipalities of Ohio. The compensation to be paid in that case was called dues for a membership therein. However, very little distinction, if any, can be drawn between the two enterprises. In the first case, upon paying the membership fees, the municipality became entitled to certain services. In the instant case the municipality agrees to pay certain stipulated sums for specified services.

It is therefore believed that what was said by the court with reference to the former case is applicable to the situation before us.

The following is quoted from the per curiam opinion of the court in that case:

"It does not follow, from the broad powers of local self-government conferred by Article XVIII of the Constitution of the state, that a municipal council may expend public funds indiscriminately and for any purpose it may desire. The misapplication or misuse of public funds may still be enjoined, and certainly a proposed expenditure, which would amount to such misapplication or misuse, even though directed by a resolution of council, would not be required by a writ of mandamus, without considering the validity of such a provision, it must be conceded that there is no express provision of the charter of the city of Cleveland relative to the contribution from the treasury of the city to a fund made up of contributions of various municipalities for the purposes enumerated in the constitution of the "Conference of Ohio Municipalities," and no general provision from which authority may be inferred to expend the funds of the city to assist in creating and maintaining an organization with offices and officers entirely separate from those of the city, selected by representatives of various municipalities of the state, with salaries and expenses also fixed by them."

In view of this case and its evident application to the question you present, I am constrained to advise you that a charter city may not legally expend its funds for services and periodicals of an association known as "Conference of Ohio Municipalities" in the absence of specific charter provisions; whether or not such a charter provision could authorize such an expenditure is not decided.

Respectfully,
GILBERT BETTMAN,
Attorney General.