

to assessment and place the burden of their proportion of the cost upon the interested township or townships. This negatives the right of the county commissioners in the specific case under consideration to issue bonds for fifteen per cent of the cost and levy against Salisbury Township. The commissioners may, however, make a levy against the township for ten per cent of the cost and make assessments for the remaining five per cent not assumed by the village and issue bonds in anticipation of the collection of the township taxes and assessments, which bonds will be county bonds for which a deficiency levy must be made and in the issuance of which no cooperation on the part of the trustees of Salisbury Township is required.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2357.

PATROLMAN IN CITY—IS OFFICER WITHIN MEANING OF SECTION
4666, GENERAL CODE—MUST BE RESIDENT.

SYLLABUS:

1. *A city patrolman or policeman is an officer within the meaning of Section 4666, General Code, and as such is required to be an elector of the city in and for which he is appointed.*

2. *The appointment of a person as a city policeman who is not a resident of the city for which he is appointed, is illegal and where such illegality persists by reason of the continued non-residence of such officer he may be dismissed from the force without reference to the provisions of Section 486-17a, General Code, relating to the dismissal of persons in the classified civil service.*

COLUMBUS, OHIO, July 16, 1928.

State Civil Service Commission of Ohio, Columbus, Ohio.

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

“The State Civil Service Commission has been requested to institute an investigation of a situation under the city civil service commission of Cambridge, Ohio. This investigation was requested by a discharged patrolman and the situation as presented to this Commission by the employe and the city commission, upon which we desire your opinion, is as follows:

Several years ago a very efficient ex-soldier living about three miles from Cambridge took the examination for patrolman and being the only applicant who could ride a motorcycle the Civil Service Commission was asked to amend its rules to permit employes to be residents of the county, which was done in accordance with the provisions of Section 4666 of the General Code. Subsequently the patrolman in question, also a non-resident of the city of Cambridge, took the examination and later received permanent appointment. An Examiner from the Bureau of Inspection and Supervision of Public Offices, Department of Auditor of State objected to the Mayor to the payment of salary which had been made to the patrolman above referred to, stating that such payments were illegal and informed the mayor that further payments would be illegal. The mayor thereupon discharged such patrolman without complying with the provisions of Section 486-17a of the General Code, and without the formal filing of charges, assuming the position that the patrolman was illegally employed and therefore not entitled to a formal order of removal.”

It is quite clear that if the patrolman whose status is here in question, was illegally appointed by reason of the fact that he was at the time of his appointment a non-resident of the city of Cambridge, Ohio, and if such illegality with respect to his appointment and his status as a patrolman has persisted by reason of his continued non-residence, he could be legally discharged without reference to either the provisions of Section 486-17a providing for the dismissal of officers and employes in the classified civil service, or the provisions of Sections 4379 and 4380, General Code, providing for the suspension and dismissal of officers or employes in city police and fire departments.

Touching the question here presented, Section 4666, General Code, provides as follows:

"Each officer of the corporation, or of any department or board thereof, whether elected or appointed as a substitute for a regular officer, shall be an elector within the corporation, except as otherwise expressly provided, and before entering upon his official duties shall take an oath to support the constitution of the United States and the constitution of Ohio, and an oath that he will faithfully, honestly and impartially discharge the duties of the office. Such provisions as to official oaths shall extend to deputies, but they need not be electors."

As may be noted, this section provides in effect that except as otherwise expressly provided, each officer of the municipal corporation or of any department or board thereof whether elected or appointed shall be an elector within the corporation; and the question here presented is whether a city patrolman or police officer is an officer within the meaning of the provisions of this section of the General Code.

Section 4374, General Code, reads as follows:

"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 4378, General Code, prescribing the duties of city police and fire departments, provides:

"The police force shall preserve the peace, protect persons and property and obey and enforce all ordinances of council and all criminal laws of the state and the United States. The fire department shall protect the lives and property of the people in case of fire, and both the police and fire departments shall perform such other duties, not inconsistent herewith, as council by ordinance prescribes. The police and fire departments in every city shall be maintained under the civil service system, as provided in this subdivision."

In the case of *State ex rel. vs. Jennings*, 57 O. S. 415, it was held that a member of the fire department of a city performing the usual duties of a fireman was not a public officer but was an employe of the city. However, with respect to this question the authorities hold that a city policeman has a different status from that of a city fireman.

In the case of *Blynn vs. City of Pontiac*, 185 Michigan, 35, it was held that policemen were not mere employes of the municipal corporation, but were public officers. The court in its opinion in this case said:

"Policemen generally are charged with the especial duty of protecting the lives of citizens within certain territorial limits, and of preserving the public peace. The preservation of the public peace being a matter of public concern, it has therefore been said that policemen may be considered as public officers. As a rule, they are appointed under authority given by the State, and therefore have generally not been regarded as servants or agents or as otherwise bearing a contractual relation to the municipality."

In the case of *Deromedias vs. The Village of Yorkville*, 21 N. P. (N. S.) 340, it was held that a policeman is a public officer within the provisions of Section 4666, General Code, and that he must therefore be an elector of the municipality from which he receives his appointment and derives his authority. In an opinion under date of April 21, 1924, Opinions, Attorney General, 1924, 196, this department, following the case of *Deromedias vs. The Village of Yorkville*, *supra*, and applying the same to the question there under consideration, held that a deputy marshal was an officer within the meaning of Section 4666, General Code, and that as such he must be an elector of the village in and for which he is appointed. The decisions on this question in jurisdictions other than Ohio quite uniformly support the proposition that a city policeman is a public officer and not a mere employe of the city. In the case of *Reising vs. City of Portland*, 57 Ore., 295, it was said:

"There is no doubt that a policeman is an officer. He is made a peace officer by Section 1593, B. & C. Comp., and a large part of his duties are such that he must have authority to act, not as agent for the state or city, but by virtue of the office: *Fitzsimmons vs. City of Brooklyn*, 102 N. Y. 536 (7 N. E. 787: 55 Am. Rep. 835); *Padden vs. City of New York*, 45 Misc. Rep. 517 (92 N. Y. Supp. 926); *City of Chicago vs. Bullis*, 138 Ill. App. 297; *City of Chicago vs. Luthardt*, 91 Ill. App. 324; *State vs. Edwards* 40 Mont. 313."

In the case of *City of Chicago vs. Bullis*, 138 Ill. App. 297, the court in its opinion says:

"Persons appointed police officers by a municipal corporation in any form, and especially under a law prescribing their tenure of office and protecting them from discharge, are not agents, servants or employes of the corporation. They are appointed by the corporation in obedience to the statute law of the State, to perform a public service not peculiarly local or corporate. The selection by the municipality has been deemed expedient by the Legislature in the distribution of the powers of the government. They are not to be regarded as servants or agents of the corporation, but as public or state officers, with such powers and duties as the statute confers upon them."

In the case of *Farrell vs. The City of Bridgeport*, 45 Conn., 191 it was held that a policeman of a city is a public officer holding his office as a trust from the State, and not as a matter of contract between himself and the city. The court in its opinion in this case said:

"A policeman of the City of Bridgeport is an arm of the law; he holds an office as a trust from the State; he is a preserver of the public peace; he is not the hired servant of a master; no contract relation exists between him and the city by which he is bound to its service; he can lay down his trust at any time according to his pleasure without exposing himself to an action for damages for breach of contract."

I conclude therefore that a city patrolman or policeman is a public officer, from the essential nature of the duties that he is authorized and required to perform; and that under the provisions of Section 4666, General Code, he is required to be an elector of a municipal corporation in and for which he is appointed. It follows from this conclusion on the facts stated in your communication that the appointment of the police patrolman referred to in your communication was, and continued to be illegal, and that his dismissal from the police force of the City of Cambridge could legally be effected without reference to the sections of the General Code relating to the dismissal for specified causes of all policemen legally appointed and in the classified civil service of the city.

Respectfully,
 EDWARD C. TURNER,
Attorney General.

2358.

TAX AND TAXATION—MUNICIPAL TAX LEVIES AFTER DATE OF
 ANNEXATION OF TERRITORY—COVERS ALL TAXABLE PROPERTY
 IN ANNEXED TERRITORY.

SYLLABUS:

Where proceedings for the annexation of territory to a municipal corporation are completed by the adoption of a resolution or ordinance accepting the application for such annexation and its legal publication, tax levies thereafter authorized by the council of the municipal corporation to meet its annual budget under the provisions of Section 5625-25, General Code, and certified to the county auditor before the first day of October, should be extended for collection on all the taxable property in said municipal corporation including that in the territory annexed.

COLUMBUS, OHIO, July 16, 1928.

HON. LYNN B. GRIFFITH, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication which reads as follows:

“The City of Girard has started proceedings to annex contiguous territory in Liberty Township. The County Commissioners have consented to the annexation. The final transcript of the Commissioners and the accompanying map and petition were filed with the City Auditor, under date of June 19th.

Under Section 3550 of the General Code, the City Council cannot by resolution or ordinance accept the application of annexation until after the expiration of sixty days.

If the annexation is accepted by the City of Girard between the dates of August 19th and October 1st, kindly advise me, if in your opinion, the city tax rate should be levied on the annexed territory.”

I assume from your communication that the annexation proceedings therein referred to is one on the petition of a majority of the adult freeholders of the territory in Liberty Township, the annexation of which to the City of Girard is desired, and that said petition was addressed to the county commissioners and acted upon by them under the provisions of Sections 3548, et seq., General Code. Section 3549, General Code, provides in effect that when the county commissioners find that the statutory