

It is assumed that said bond is offered in pursuance to the provisions of section 7945, General Code, which authorizes your board to fix the sum of said bond, but which requires that such amount shall not be less than the "probable amount" that will be under his control in any one year. The statute further requires that the attorney general approve the bond and that the same shall be deposited with the secretary of state.

Assuming that the amount of the bond is in accordance with the determination of your board and that your determination is in accordance with the requirements of the section, I have placed my approval upon said bond and return the same herewith.

Respectfully,
C. C. CRABBE,
Attorney General.

2478.

MUNICIPALITY MAY NOT LEGALLY EXPEND MONEY FOR PURPOSE
OF MAINTAINING AN ORGANIZATION TO COMBAT GAS RATES.

SYLLABUS:

Under the decision of the supreme court in the case of state ex rel. Thomas vs. Semple, director of finance, No. 18879, decided May 5, 1925, a municipality may not legally expend money for the purpose of maintaining an organization of municipalities of Ohio or other states.

COLUMBUS, OHIO, May 12, 1925.

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

GENTLEMAN:—Acknowledgment is made of your communication enclosing a copy of a resolution adopted by the council of the city of Columbus requesting your bureau to submit a question to the attorney general as to "whether or not it would be legal for the city of Columbus to participate in bearing the expense of the Municipal Gas Conference, said Municipal Natural Gas Conference being an organization of cities in Ohio, Pennsylvania, West Virginia and Kentucky organized to secure information useful in combating increased gas rates in said cities, to make such information available to each city in said conference, and, so far as possible, to take joint action in combating such increased rates."

Also some time ago you submitted a similar question as to the same Municipal Natural Gas Conference. In that communication you state:

"To meet the expenses to be occasioned in the work of such organization, an assessment was levied on the cities which are members of the organization equal to one per cent of the per capita population according to the 1920 census."

You further inquire whether a municipality may legally appropriate moneys for such purpose.

The latter communication has been held for several months, due to the fact that in the case of *state ex rel Thomas vs. Semple, director of finance of the city of Cleveland*, No. 18879, a similar question was involved, and the department desired to have the expression of the supreme court upon the subject. This case was de-

cided May 5, 1925. In this case an action in mandamus was instituted on relation of the clerk of the council of the city of Cleveland against the director of finance to compel him to disburse from the funds of the municipality the city's contribution to the support and maintenance of the "Conference of Ohio Municipalities." It is pointed out in the opinion that members of the force of the director of law took opposite sides in a perfunctory presentation of the case. It will be noted in this connection that an examination of the papers filed discloses that the only authorities cited in the brief for the director of finance were citations from the reports of the attorney general as follows:

1912, page 123;
 1919, page 143;
 1919, page 646.

Also a letter written by the attorney general to your bureau, dated February 21, 1924. These opinions deal with very similar questions.

It appeared that the city council passed an emergency resolution authorizing the payment of one hundred dollars to the secretary of the Conference of Ohio Municipalities. The voucher was drawn for the purpose of making such payment, but the director of finance refused to honor it on the ground that it would be an unlawful expenditure of the public money. The court in its opinion, among other things, stated:

"The constitution of the so-called 'Conference of Ohio Municipalities' indicates that it is an organization of the municipalities of the state, the purpose and object of which is to serve as an agency of common action in all matters of common concern to municipalities of Ohio. The dues of municipalities becoming members range from ten to five hundred dollars per year. * * * Among other services to be rendered is the maintenance of a headquarters, and therewith a bureau of information, through which it is proposed to keep the members advised of pending litigation, as well as legislation and other matters affecting their interests, and to publish a periodical.

"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 officers entirely separated 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 the decisions heretofore referred to, it would seem that the advices heretofore given from the attorney general's department relative to the expenditure of funds by municipalities for such enterprises as are described in the inquiries which you present are sustained. It therefore would follow as a general proposition that

a municipality may not legally expend funds for the purpose of maintaining an organization composed of municipalities.

Respectfully,
C. C. CRABBE,
Attorney General.

2479.

OFFICE OF POLICE JUDGE IS AN ELECTIVE OFFICE—MUNICIPALITY HAS NO POWER TO CREATE SUCH OFFICE OR PROVIDE FOR THE APPOINTMENT OF A JUDGE.

SYLLABUS:

The office of police judge is an elective office and no power to create such office or provide for the appointment of a judge therefor can be exercised by any city in Ohio, being contrary to the provisions of the constitution of the state.

COLUMBUS, OHIO, May 12, 1925.

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

GENTLEMEN:—This will acknowledge receipt of your letter of May 5, 1925, reading as follows:

“On April 28th, 1925, the supreme court of Ohio decided the case of state ex rel. Cherrington vs. Hutsinpillar, holding that Ohio municipalities have no power by charter or otherwise to create courts and appoint judges thereof.

“Section 29 of the charter of the city of Xenia provides for the appointment of a police judge by the city commission.

“Section 7 of said charter reads:

“There is hereby created a commission of five members, having the qualifications hereinbefore provided for, who shall be elected at the first general election after the adoption of this charter, who shall exercise all the powers, rights and authority now vested in and exercised by the city of Xenia and its several officers, or which may hereafter be granted to said city. All the powers exercised, or which may be exercised hereafter by municipal corporations are hereby vested in said commission, subject to the provisions of the constitution of Ohio, and said commission may provide by ordinance how any power shall be exercised.”

“Section 8 of the charter reads:

“The commission shall designate by a majority vote one of their number to act as mayor of the city, who shall use the title of “mayor” in any case in which the execution of legal instruments of writing or other necessity arising from, and which, the general law of the state so requires, but this shall not be construed as conferring upon him the administrative or judicial functions of a mayor under the general laws of the state, and he shall not receive any compensation other than as a member of the commission.”

“Question 1: In view of the above decision, may the appointed police judge of the city of Xenia continue to hear and decide cases for the violation of city ordinances?”