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1. MUNICIPALITY—POPULATION LESS THAN SIXTEEN THOUSAND — PASSED ORDINANCE — ELECTED TO BECOME A REGISTRATION MUNICIPAL CORPORATION—MAY ELECT BY REPEAL OF FORMER ORDINANCE TO DO AWAY WITH REGISTRATION—SECTION 3503.06 RC.
2. MUNICIPALITY—POPULATION LESS THAN SIXTEEN THOUSAND — ELECTED BY ORDINANCE TO BECOME REGISTRATION MUNICIPAL CORPORATION—LATER DECIDED TO DO AWAY WITH REGISTRATION — MAY ENACT ORDINANCE TO REPEAL FORMER ACTION — ORDINANCE EFFECTIVE UPON DUE PUBLICATION AND LAPSE OF THIRTY DAY PERIOD—SECTION 731.29 RC.

SYLLABUS :

1. Where a municipality having a population of less than sixteen thousand has exercised the right conferred by Section 3503.06, Revised Code, and has by the passage of an ordinance elected to become a registration municipal corporation, it may elect by repeal of its former ordinance to do away with registration.

2. When a municipality having a population of less than sixteen thousand has elected by ordinance to become a registration municipal corporation, as provided by Section 3503.06, Revised Code, and later decides to do away with such registration, it may do so by enactment of an ordinance repealing its former action, and such repealing ordinance will be effective upon due publication and the lapse of the thirty day period prescribed by Section 731.29 of the Revised Code.

Columbus, Ohio, December 6, 1955

Hon. Ted W. Brown, Secretary of State
Columbus, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

"We respectfully request your opinion regarding the question of the authority of a municipality to repeal an ordinance establishing registration.

"Revised Code Section 3503.06 provides in part as follows:

'Any municipal corporation of less than 16,000 population may, by ordinance, elect to become a registration municipal corporation. When such ordinance is adopted the board shall establish and maintain a registration of voters as in the case of registration cities.'

"A municipality of less than 16,000 population did by ordinance elect to become a registration municipal corporation, and the Board of Elections pursuant to this ordinance established and is maintaining registration in that municipality. May the legislative authority of that municipality now repeal this ordinance? And if so, when would such repeal become effective?"

Since you have quoted the provisions of Section 3503.06 of the Revised Code, covering the matter presented by your letter, I do not consider it necessary to re-quote it. It may be noted that this section has undergone an amendment by the last session of the legislature which becomes effective January 1, 1956; but I do not see that it in any wise touches on

the question involved. Prior to the amendment, the board of elections is authorized to provide registration in precincts contiguous to a registration city when deemed necessary to prevent fraud, and is further authorized to "establish and maintain registration of *all the qualified electors of such county.*" By the amendment, these provisions are supplanted by giving authority to the board of elections to "establish and maintain registration of *any or all the qualified electors of such county.*"

It will be observed from the language of the section which you have quoted that any municipal corporation having less than 16,000 may by ordinance "elect" to become a registration municipality. The use of the word "elect" plainly implies the free exercise of a choice. The only real question involved is whether the right to enact such an ordinance carries with it the right to repeal the ordinance so enacted.

In 50 American Jurisprudence, page 525, I find this statement:

"There can, in the nature of things, be no vested right in existing law which precludes its repeal. It is therefore, a well established principle that legislative power includes the power to repeal existing laws, as well as the power to enact laws, subject, of course, to constitutional restrictions and inhibitions, such as the prohibition against the extinguishment of vested rights which have been acquired under the former law, or the impairment of the obligations of a contract, or the denial of due process of law. Sometimes, the power to repeal is reserved by statutory provisions of a general nature. This is unnecessary, however, since irrevocable laws cannot be enacted; one legislature cannot abridge the authority of a succeeding legislature to repeal existing laws."

In Volume 6 of McQuillin on Municipal Corporations at Section 21.10, it is said:

"Quite commonly by express provision of charter or statute a municipal corporation may repeal as well as make and amend ordinances. Specific grant of power to repeal ordinances, however, ordinarily is not necessary since it is the general rule that power to enact ordinances implies power, unless otherwise provided in the grant, to repeal them. It is patently obvious that the effectiveness of any legislative body would be entirely destroyed if the power to amend or repeal its legislative acts were taken away from it. There is no implication of power of repeal, however, where an ordinance has been enacted under a narrow, limited grant of authority to do a single designated thing in the manner and at the time prescribed by the legislature, which excludes the implication that the legislative body of the city is given

any further jurisdiction over the subject than to do the one act. In brief, no power of repeal exists as to an ordinance that constitutes the exercise of municipal power exhausted by its single exercise."

As an illustration of the exception above noted the author cites the case of *Thompson v. Marion*, 134 Ohio St., 122. In that case it appeared that the legislature had provided by law for the establishment and maintenance of a police pension fund but left it optional with cities to set up such system. The city of Marion had taken advantage of the law and established a police pension fund for that city. Later it attempted to repeal the ordinance establishing the system. The court held as shown by the second branch of the syllabus:

"Where, pursuant to and in accordance with the provisions of Sections 4616 to 4631, inclusive, General Code, a municipality duly found and declared the necessity for the establishment and maintenance of a police relief fund and made fully operative in that city all the provisions of the statute effectuating the establishment, maintenance and administration of such police relief fund, it may not thereafter render entirely inoperative as to such city the provisions of the statute governing the creation and administration of such relief fund and cause the funds raised for such purpose by taxation pursuant to law to be transferred and expended for other and different uses and purposes."

In the opinion, at page 126, the court said:

"The general rule that the power to enact ordinances implies a power of repeal is inapplicable where the ordinance in question is enacted under a limited authority to do a certain thing in the manner and within the time fixed by the Legislature."

(Emphasis added.)

That case plainly turned on the fact that the state had seen fit to set up a general system of police pension funds, leaving it only to the council of any city to incorporate such system in the city government. In the course of the opinion the court uses this language:

"The pension system for policemen was not created by ordinance of the City of Marion, it is entirely of statutory creation and organization."

I find nothing in the question you present which appears to me to call into application the reasons above set forth for limiting the general power of a municipality to repeal its own enactments nor can I find that

the state has such an interest in the matter of registration as to a municipal corporation that the law should undertake to prevent a municipality which has once elected to adopt registration, to reverse its decision.

It is accordingly my opinion that a municipality which has elected to become a registration municipal corporation would have a right to return to its former status.

In Opinion No. 5983 which I issued on November 28, 1955, I held that a municipality which had, pursuant to law, chosen to adopt one of the optional plans of municipal government set forth in Section 705.41 et seq. of the Revised Code, may after five years operation under such plan, abandon the same and return to its former status under the general laws relating to the government of municipalities. The same principle which led to that opinion appears to me to apply to the question here under consideration.

Coming to your second question, as to the time when the repeal of the former action would become effective, I find nothing in the statutes that would furnish an answer to this question. However, it may be pertinent to point out that in the statute which you have quoted under which a municipality is authorized to adopt registration there is nothing in the statute which indicates the time when such action should become effective. In case the municipality does exercise its right to repeal its former action in this respect, it would appear that without any statutory provision, the return to the former status would automatically become effective whenever the time arrived for an election, either a primary or general election. The concluding sentence of Section 3503.06 supra reads as follows:

“No person residing in any registration precinct shall be entitled to vote at any election, or to sign any declaration of candidacy of many nominating initiative, referendum, or recall petition, unless he is registered as an elector.”

Manifestly, in a precinct in which registration has been dispensed with, any person having the general qualifications of an elector as set forth in Section 3503.01, Revised Code, would have the right to vote regardless of any previously existing requirement of registration.

Accordingly, it is my opinion:

1. Where a municipality having a population of less than sixteen thousand has exercised the right conferred by Section 3503.06, Revised Code, and has by the passage of an ordinance elected to become a regis-

tration municipal corporation, it may elect by repeal of its former ordinance to do away with registration.

2. When a municipality having a population of less than sixteen thousand has elected by ordinance to become a registration municipal corporation, as provided by Section 3503.06, Revised Code, and later decides to do away with such registration, it may do so by enactment of an ordinance repealing its former action, and such repealing ordinance will be effective upon due publication and the lapse of the thirty day period prescribed by Section 731.29 of the Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General