

In Opinions of the Attorney General for 1917, page 2122, the then Attorney General held, in the second paragraph of the syllabus, that:

“The heads of departments may reduce the salary of an employe in the classified civil service whose position does not fall within any of the groups for which the legislature has established salary schedules, provided such reduction be not made for any of the improper motives prohibited by the civil service law.”

To the same effect is the case of *State, ex rel Wilkins, vs. Merrell*, 10 Abs. 283, wherein it was held that state officers can reduce the salaries of employes in the classified service of the state. Judge Allread, in the course of his opinion, said that:

“We do not doubt that the state officers may in good faith, acting without political or religious prejudice, reduce the salaries of its employes.”

See also 7 O. Jur. 609.

The salary paid to a permanent appointee in the classified service of either the state or the county at the time of his or her appointment creates no vested right in the incumbent of such a position or obligation on the part of the appointing authority that the same salary will be paid in the future. The employment of a person in the classified service of either the state or the county is not a contract, express or implied, on the part of the appointing authorities that the compensation paid at the time of the appointment of such person will continue in the future. Since the county commissioners have the right to determine the compensation to be paid the county dog warden, it may reduce the salary of such employe even though he is in the classified service of the county, providing the same is made in good faith by the county commissioners.

Specifically answering your inquiry, I am of the opinion that the county commissioners can reduce the pay of a county dog warden who is in the classified service of the county, providing the reduction in pay is made in good faith and not for improper motives.

Respectfully,

JOHN W. BRICKER,

Attorney General.

141.

VILLAGE STREET COMMISSIONER — A PUBLIC OFFICER — SALARY
MAY NOT BE PAID FROM MOTOR VEHICLE LICENSE TAX OR
GASOLINE TAX.

SYLLABUS:

1. *A street commissioner in a village is a public officer with a fixed term and with duties fixed by law.*

2. *The compensation of a street commissioner in a village, when fixed by council as provided by section 4219, General Code, should be paid from the general fund of the village, and no part of such compensation may lawfully be paid*

from the village's portion of motor vehicle license taxes or motor vehicle fuel taxes, regardless of whether or not that compensation is fixed on an annual, monthly, per diem or per hour basis.

COLUMBUS, OHIO, February 14, 1933.

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

GENTLEMEN:—This will acknowledge your request for my opinion in answer to the following questions:

"1. When a village street commissioner's salary is fixed on a monthly or annual basis, may all or any part of his compensation be paid from the village's portion of gasoline tax and motor vehicle license receipts?

2. When a village street commissioner's salary is fixed on a per diem or per hour basis, may that part of his compensation earned for doing work or supervising work done in connection with the repair and construction of streets, be paid from the village's portion of gasoline tax or motor vehicle license receipts?"

In presenting your request you direct my attention to an opinion rendered by my predecessor, which is found in the Opinions of the Attorney General for 1929, at page 1343. It was there held:

"The salary of a city superintendent of streets who performs general duties with reference to streets and sewers, may not legally be paid from the motor vehicle license and gasoline tax receipts, in whole or in part."

The motor vehicle license tax and gasoline tax, more properly called the motor vehicle fuel tax, are license and excise taxes respectively, provided for by legislative enactment for definite purposes. The proceeds of these taxes are limited in their uses, by both constitutional and express legislative provisions, strictly to the purposes for which the taxes are levied. Section 5, Article XII, Constitution of Ohio; Sections 5527, 5537, 5541, 5541-8, 6309-2 and 6309-2c, General Code.

Except as to that portion of the proceeds of motor vehicle fuel taxes which is allocated to cities between April 5, 1932, and March 1, 1933, which portion may, by action of the council of the city with the approval of the state relief commission, be expended for poor relief purposes within the city (section 6309-2c), the use of that portion of these funds which is the proceeds of taxes levied by section 5527, General Code, is strictly limited by the terms of section 5537, "for the sole purpose of maintaining, repairing, constructing and repaving the public streets and roads within such corporation."

A somewhat broader provision is made in section 5541-8, General Code, with reference to a municipality's share of the proceeds of the motor vehicle fuel tax levied by force of section 5541, General Code, sometimes referred to as the "additional tax of two cents per gallon on motor vehicle fuel." It is there provided that a municipality's share of this tax may be used "for the sole purpose of constructing, maintaining, widening, reconstructing, cleaning and clearing the public streets and roads within such corporation, and for the purchase and maintenance of traffic lights." A similar provision is made in section 6309-2, General

Code, with reference to the uses to which a municipality may put its share of the motor vehicle license tax. It is there provided "such moneys shall constitute a fund which shall be used for the maintenance, repair, construction and repaving of public streets, and for no other purpose and shall not be subject to transfer to any other fund."

The present existing provisions of law, hereinbefore referred to, limiting municipalities in the use of their portions of these taxes are not materially different than they were in 1929 when the opinion you refer to was rendered, nor are they materially different than they were at the time of the rendition of an opinion rendered by this office in 1924, upon which the conclusions of the Attorney General in the 1929 opinion were to a great extent based. In the 1924 opinion which is reported in the published Opinions of the Attorney General for that year, at page 254, it is expressly held that any necessary expenses of engineering and supervision, and other items of expense especially created on account of the maintenance and repair of streets in a city, might lawfully be paid from that portion of the proceeds of the motor vehicle license tax allocated to the city for the special purpose of maintaining and repairing streets. Where, however, the surveying and engineering incident to such maintenance and repair were performed by the chief engineer of the city and his assistants, who were officers appointed for a definite period at a fixed salary and whose general duties included others than the engineering and surveying for the maintenance and repair of streets, such officers could not lawfully be paid from this special fund.

In each of the opinions referred to, attention was directed to the case of *Longworth vs. Cincinnati*, 34 O. S., 101, and the analogy pointed out between the question passed upon by the court in that case, and questions relating to paying for the engineering and supervision incident to maintenance and repair of streets from the special fund created for that purpose. In the case of *Longworth vs. Cincinnati*, *supra*, it was held:

"Where the surveying and engineering of such improvement were performed by the chief engineer of the city and his assistants, who were officers appointed for a definite period, at a fixed salary, which the law required to be paid out of the general fund of the city, the reasonable cost to the city, of such surveying and engineering, can not be ascertained and assessed upon the abutting property, as a necessary expenditure for the improvement.

If a superintendent of such an improvement is necessary, and one is employed by the city for that particular improvement, the amount paid by the city, for his services, may properly be included in the assessment."

I have no reason to disagree with the former Attorneys General in their conclusions as expressed in the 1924 and 1929 opinions referred to. I believe these conclusions are sound and the analogy between the questions there considered and the instant question is complete.

A superintendent of streets in a village is a public officer with a definite term and with definite duties fixed by statute, which include the supervision of the maintenance and repair of streets, but are not by any means confined to that. While such a superintendent may for the moment be employed in the supervision of a street repair job, he is during that time also charged by law with other duties. Section 4364, General Code, provides with reference to the duties of a street commissioner in a village, as follows:

"Under the direction of council, the street commissioner, or an engineer, when one is so provided by council, shall supervise the improvement and repair of streets, avenues, alleys, lands, lanes, squares, wards, landings, market houses, bridges, viaducts, sidewalks, sewers, drains, ditches, culverts, ship channels, streams, and water courses. Such commissioner or engineer shall also supervise the lighting, sprinkling and cleaning of all public places, and shall perform such other duties consistent with the nature of his office as council may require."

By force of sections 4219, 4248 and 4363, General Code, a street commissioner in a village is, in my opinion, a public officer, with a fixed term and compensation, which compensation may not be changed during the term for which he is appointed.

Section 4248, General Code, provides as follows:

"The executive power and authority of villages shall be vested in a mayor, clerk, treasurer, marshal, street commissioner, and such other officers and departments thereof as are created by law."

Section 4363, General Code, provides that the street commissioner in a village shall be appointed by the mayor and confirmed by council for a term of one year. Section 4219, General Code, provides that council shall fix the compensation of all officers and employes of the village government, and that the compensation so fixed shall not be increased or diminished during the term for which such officer or employe may have been elected or appointed. It is probable that it is not necessary for council to fix this salary on a yearly, monthly or daily basis. It might be fixed, in my opinion, on an hourly basis, but I do not think that that fact would change the situation. Even though this salary were fixed on an hourly basis, the street commissioner while performing duties incident to the maintenance and repair of streets would be none the less an officer of the village, of the whole village, and would be during the time that he was superintending this work an officer of the village charged with the duties of doing other things for the village. The compensation of an officer or an employe of a political subdivision, who is appointed for a fixed term and charged by law with general duties incident to the affairs of the political subdivision, is in the nature of an overhead expense and should be regarded as a current expense of the entire subdivision payable from the general fund of the subdivision, unless specific provision is made for the payment of such compensation from some particular fund. Without any specific statutory direction with reference to the matter, there is no more reason for the payment of a portion of the compensation of a village commissioner from the street maintenance and repair fund of the village than there would be for the payment of a portion of the mayor's salary, or the clerk's, or the treasurer's. Each one of these officers performs some duties in connection with the maintenance and repair of streets, as well as does the street commissioner, and the fact that the commissioner's compensation may have been fixed by the day or the hour makes no difference.

I am therefore of the opinion in specific answer to your questions that:

1. When a village street commissioner's salary is fixed on a monthly or an annual basis, no part of such salary may lawfully be paid from the village's portion of the motor vehicle fuel or license tax receipts.

2. Even though a village street commissioner's salary is fixed on a per diem or a per hour basis, the same should be paid from the general fund of the village, and no part of it may lawfully be paid from the village's portion of motor vehicle fuel or license tax receipts.

Respectfully,
JOHN W. BRICKER,
Attorney General.

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ARCHITECTS—EMPLOYEE OF FIRM OF ARCHITECTS EXEMPT FROM EXAMINATION WHEN.

SYLLABUS:

The exemption from the requirement of examination contained in paragraph C of Section 1334-7, General Code, of a member of a reputable firm of architects therein set forth applies not only to such persons as have been partners of such architectural firm but also to such employes of a reputable firm of architects as have been in responsible charge of design or supervision during the period of time set forth in the section.

COLUMBUS, OHIO, February 14, 1933.

State Board of Examiners of Architects, 8 East Long Street, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date is as follows:

“Your opinion is requested upon the following question:

May this Board consider an employe of a firm of architects, who has had responsible charge of design and supervision of architectural work in connection with his duties as such employe, as a ‘member’ of such firm within the meaning of the term as used in Subdivision ‘C’ of Section 1334-7, General Code?”

Section 1334-7, General Code, provides in so far as is pertinent as follows:

“The board of examiners may, in lieu of all examinations, accept satisfactory evidence of any one of the qualifications set forth under the following subdivisions of this section:

* * * * *

C. The board of examiners shall grant a certificate of qualification to practice and shall register without examination any one who has been engaged in the practice of architecture in this state for at least one year immediately previous to the date of approval of this act as a member of a reputable firm of architects or under his or her own name; provided, that applicants under this subdivision shall present proof of competency and qualifications to the board; and provided further, that the application for such certificate and registration shall be made within one year after the date of approval of this act.

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