

1315.

CHARTER VILLAGE—SOUTH CHARLESTON—RIGHT OF COMMISSION
PRESIDENT ACTING AS MAYOR TO RETAIN FEES IN ORDINANCE
CASES—WHEN MANAGER MAY RECEIVE SALARY AND CONSTABLE'S
FEES FOR SERVICES AS MARSHAL.

SYLLABUS:

1. *By authority of the provisions of the charter of South Charleston, the president of the Village Commission, upon his exercise of the judicial functions of a mayor in and for said village, as authorized by the charter, may lawfully collect and retain the fees fixed by statute for mayors of villages in similar proceedings.*

2. *The Village Manager of South Charleston may, under the provisions of the municipal charter, receive both a salary and his fees for services as marshal in the mayor's court, presided over by the president of the village commission, if an ordinance so providing is enacted by the commission.*

3. *The fees of the Village Manager as marshal in such court shall be the same as those allowed constables.*

COLUMBUS, OHIO, December 20, 1929.

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

GENTLEMEN:—This will acknowledge receipt of your communication of recent date, which reads as follows:

"Section 11 of the Charter of the Village of South Charleston, copy of which is enclosed herewith, provides for the election of members of the Village Commission. Section VI of the Charter provides that the president of the Commission, selected by the members of the Commission, shall exercise the judicial functions of a mayor under the general laws of the state. Section V of the Charter provides in part that the president shall be entitled to his costs in the mayor's court.

The Charter makes no provision for the election or appointment of a marshal, but Sections XIV and XV impose the duties ordinarily performed by a marshal upon the village manager.

Question 1. May the president of the Commission, acting as mayor, legally tax and retain fees in ordinance cases?

Question 2. May the village manager legally retain fees assessed for his services as a marshal in village ordinance cases, when the Commission by ordinance have provided that such manager retain said fees?"

The pertinent sections of the charter of the Village of South Charleston are as follows:

Section 2. "There is hereby created a Village Commission to consist of three electors of the village elected at large, who shall hold office for a term of four years beginning January first after their election, except that the member elected at the first election by the lowest vote shall hold office for two years only.

Except as otherwise provided by this charter or by the constitution of the state, all the powers of the village are hereby vested in the village commission, and it may by ordinance or resolution prescribe the manner in which any such power shall be exercised. In the absence of such provision as to any power, such power shall be exercised in the manner now or hereafter prescribed by the general laws of the state applicable to villages."

Section 5. "The members of the village commission shall perform their duties without compensation, except that the president shall be entitled to his costs in the mayor's court. Members of the commission shall hold no other village office or employment, and each member shall give bond in the sum of three thousand dollars with some bonding company, regularly accredited to do business in Ohio, as surety thereof. The bond of each member shall be approved by the other members of the commission; it shall be deposited with the village treasurer, and the premium thereon shall be paid by the village."

Section 6. "The village commission shall at the time of organizing elect one of its members as president and another as vice-president for terms of two years, but no member of the commission appointed thereto to fill a vacancy therein shall be chosen as president thereof. In case the members of the commission within five days after the time herein fixed for their organization meeting, are unable to agree upon a president or a vice-president, then a president or a vice-president, or both, as the occasion may require, shall be selected from all the members of the commission by lot conducted by the village clerk who shall certify the result of such lot upon the journal of the commission.

The president shall preside at all meetings of the commission and perform such other duties consistent with his office as may be imposed by it. He may use the title of mayor in any case in which the execution of legal instruments of writing or other necessity arising from the general laws of the state so requires; but this shall not be construed as conferring upon him the administrative functions of a mayor under the general laws of the state, but he shall exercise the judicial functions of a mayor under the laws of Ohio until such time as such judicial functions, under authority of the constitution and general laws of the state, may be exercised by some other officer appointed for that purpose.

The president of the commission shall be recognized as the official head of the village by the courts for the purpose of serving civil process, by the Governor for the purpose of military law, and for all ceremonial purposes. He may take command of the police and govern the village by proclamation during times of public danger or emergency, and he shall himself be the judge of what constitutes such public danger or emergency. The powers and duties of the president shall be such as are conferred upon him by this charter together with such others as are conferred by the village commission in pursuance of the provision of this charter, and no others.

If the president be temporarily absent from the village or become temporarily disabled from any cause, his duties shall be performed during such absence or disability by the vice-president. In the absence of both president and vice-president the other members of the commission shall perform the duties of the president."

Section 15. "The powers and duties of the village manager shall be:

(a) To see that the laws and ordinances are enforced.

* * * * *

(h) And to perform such other duties as may be prescribed by this charter or be required of him by the commission."

Section 20. "The village commission shall fix by ordinance the salary or rate of compensation of all officers and employes of the village entitled to compensation, and may require any officer or employe to give bond for the faithful performance of his duty, in such amount as it may determine, and it may provide that the premium thereof shall be paid by the village."

Section 21. "No member of the village commission, the village man-

ager or any other officer or employe of the village, shall directly or indirectly be interested in any contract job, work or service with or for the village, nor in the profits or emoluments thereof, nor in the expenditures of any money on the part of the village other than his fixed compensation, and any contract with the village in which any such officer or employe is, or becomes interested may be declared void by the village commission.

No member of the village commission, the village manager or other officer or employe of the village shall knowingly accept any gift, frank, free ticket, pass, reduced price or reduced rates of service from any person, firm or corporation operating a public utility or engaged in business of a public nature within the village, or from any person known to him to have, or to be endeavoring to secure, a contract with the village."

Section 71. "Amendments to this charter may be submitted to the electors of the village by a two-thirds vote of the village commission, and, upon petition signed by ten per cent of the electors of the village setting forth any such proposed amendment, shall be submitted by such village commission. The ordinance providing for the submission of any such amendment shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the amendment at a special election to be called and held within the time aforesaid. Not less than thirty days prior to such election the village clerk shall mail a copy of the proposed amendment to each elector whose name appears upon the poll or registration books of the last regular municipal or general election. If such proposed amendment is approved by a majority of the electors voting thereon it shall become a part of the charter at the time fixed therein."

Prior to 1912, there was no express delegation of power to municipalities in the constitution. The first reference to a municipal charter in the basic law of the state came with the adoption in 1912 of the constitutional amendment known as Section 7, Article XVIII, which reads:

"Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of Section 3 of this article, exercise thereunder all powers of local self-government."

It was under authority of this section that the village of South Charleston adopted its charter or municipal constitution. This charter distributes power to different agencies of government, but, as was said by the late Judge Wanamaker in *Perrysburg vs. Ridgway*, 108 O. S. 253:

"* * * that distribution may place such limitation, but not enlargement, upon that power, as the people of the municipality may see fit."

"All powers of local self-government," as used in Section 7 of Article XVIII, supra, includes the power of complete regulation and control of municipal affairs, subject to restrictions imposed by Section 3 of Article XVIII, which reads:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

Under authority thus derived, the village of South Charleston has seen fit to provide, through Section 6 of this charter, that the president of the Charter Commission shall exercise the judicial functions of mayor, and in Section 5 that "he shall be entitled to his costs in the mayor's court." These provisions of the charter not being in conflict with general laws, make it seem clear that the president of the commission may exercise such judicial functions as are conferred upon mayors or villages by Sections 4535, et seq., of the General Code. The Ohio Supreme Court has so held in *Ide vs. State*, 95 O. S. 224, the syllabus of which reads:

"A provision in a municipal charter, adopted under authority of Section 7 of Article XVIII of the State Constitution, continuing in force the general laws of the state conferring judicial functions upon mayors of cities and villages, to be exercised by the president of a city commission by the qualified electors of the municipality, is not in conflict with any provision of the Constitution of Ohio."

The statutes under which the president of the village commission, in hearing cases, will operate, are:

Sec. 4535. "In villages, the mayor shall have final jurisdiction to hear and determine any prosecution for the violation of an ordinance of the corporation unless imprisonment is prescribed as part of the punishment, and in keeping his dockets and files, he shall be governed by the laws pertaining to justices of the peace."

Sec. 4556. "The fees of the mayor, in all cases, shall be the same as those allowed justices of the peace, and the fees of the marshal, chief of police, and other police officer serving writs or process of the court, in all cases, shall be the same as those allowed constables."

Coming now to your second question, it is to be observed that Section 20 of the charter provides that the village commission shall fix by ordinance the salary or rate of compensation of all officers and employes of the village. The commission, being the legislative authority of the village, would have the same power to enact such an ordinance as would council in an unchartered municipality, under the holding of the Ohio Supreme Court in *Flotron vs. Barringer*, 94 O. S. 185.

If the commission desires to thus provide that the compensation of the village manager shall be his salary, plus fees as marshal, it has such authority by virtue of Section 20 of the charter of the village.

It is to be observed that Section 21 of the charter, *supra*, provides that:

"No member of the village commission (or) the village manager * * * shall directly or indirectly be interested in * * * the expenditure of any money on the part of the village other than his fixed compensation. * * *"

Had the language "his fixed salary" been used, a different question would be presented.

The Charter Commission may, therefore, by ordinance authorize the village manager to retain fees for services as marshal in addition to his salary.

In conclusion, I am of the opinion that:

1. By authority of the provisions of the charter of the Village of South Charleston, the president of the Village Commission, upon his exercise of the judicial functions of a mayor in and for said village, may lawfully tax and retain the statutory fees for said services.
2. The Village Manager of South Charleston may, under the provisions of the

municipal charter, receive both a salary and his fees for services as marshal in the mayor's court, presided over by the president of the Village Commission, if an ordinance so providing is enacted by the Commission.

3. The fees of the Village Manager as marshal in such court shall be the same as those allowed constables.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1316.

APPROVAL, ABSTRACT OF TITLE TO LAND OF ALBERT F. ELLETT IN
CITY OF ALLIANCE, STARK COUNTY, OHIO.

COLUMBUS, OHIO, December 20, 1929.

HON. A. W. REYNOLDS, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination an abstract of title and warranty deed relating to the proposed gift by the city of Alliance to the State of Ohio of an armory site in the city of Alliance, county of Stark, State of Ohio, which premises stand in the name of Albert F. Ellett, and are more particularly described as follows:

“A part of Outlot Number Three Hundred Forty-one (341) in the City of Alliance, Lexington township, Stark county, Ohio, and more fully described as follows:

Beginning at the center of the intersection of Johnson avenue and Vine street in said city; thence West Three Hundred Fifty-two and Six Tenths (352.6) Feet along the Center Line of Vine street, to the Center Line of Buckeye avenue, extended, and the true place of beginning of the land herein conveyed; thence northerly Thirteen Hundred Ninety-seven and No Tenths (1397.0) Feet along the Center Line of Buckeye avenue extended, to the North Corporation Line of the City of Alliance; thence Westerly Six Hundred Fifty and Six Tenths (650.6) Feet along the Northern Corporation Line to the West Corporation Line of said city; thence South, Seven Hundred Fifty (750) Feet along the West Corporation Line to an iron pin; thence East One Hundred Fifty-seven and Eight Tenths (157.8) Feet; thence South One Hundred (100) Feet to the North Line of Rossland Road extended; thence East One Hundred Eighty-two and Eight Tenths (182.8) Feet along the North Line of Rossland Road extended, to a point; thence South Five Hundred Forty-seven (547) Feet along the East Line of Ashland avenue extended, which is a street Fifty (50) Feet in width, to the Center Line of Vine street; thence East Three Hundred Ten (310) Feet along the Center Line of Vine street, to the place of beginning, containing Sixteen and Sixty-three Hundredths (16.63) Acres of land more or less, but subject to all legal highways.”

While the deed is direct from said Albert E. Ellett and his wife, Clara H. Ellett, to the State of Ohio, and recites that the consideration of \$9,500.00 was received from State of Ohio, you inform me that this sum was in fact paid by the city of Alliance.

The abstract under consideration was prepared by Hart and Kuehler, attorneys at law, of Alliance, under date of December 2, 1929, and it is my opinion that it shows a good merchantable title to said premises in Albert F. Ellett and Clara H. Ellett, his wife, subject to the following liens: