

"When the title to grounds and improvements occupied by agricultural societies is in the county commissioners, the control and management of such lands and improvements shall be vested in the board of directors of such society so long as they are occupied and used by it for holding agricultural fairs. Moneys realized by the society in holding county fairs and derived from renting or leasing the grounds and buildings, or portions thereof, in the conduct of fairs or otherwise, over and above the necessary expenses thereof, shall be paid into the county treasury of the society, to be used as a fund for keeping such grounds and buildings in good order and repair, and in making other improvements from time to time deemed necessary by its directors."

Accordingly, the resolution required by Section 2433-1, General Code, supra, should vest the control and management of said premises and any improvements that shall be made thereon in the board of directors of the county agricultural society. For purposes of certainty, such resolution should contain a legal description of the part of the county home farm the use of which is being permitted, and, as further provided by Section 2433-1, General Code, such other terms and conditions as the county commissioners see fit to prescribe.

Compliance with Section 2445, General Code, is necessarily a condition precedent to the validity of all proceedings of county commissioners, but its terms are undoubtedly too familiar to you to require any quotation or discussion of the same in this opinion.

In specific answer to your inquiry, I am of the opinion that Section 2433-1, General Code, empowers the board of county commissioners to allow the county agricultural society to use a portion of the county home farm not used for county home farm or for other public purposes, upon which to hold county fairs under the control and management of the county agricultural society.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1726.

TRUSTEES OF FIREMEN'S PENSION FUND—UNAUTHORIZED TO MAKE
RULE THAT FIREMEN MUST LEAVE SERVICE ON PENSION AT A
GIVEN AGE.

SYLLABUS:

The trustees of a firemen's pension fund have no legal authority to adopt and enforce a rule to the effect that members of the fire department must leave the service of such department at a given age.

COLUMBUS, OHIO, April 4, 1930.

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

GENTLEMEN:—Acknowledgment is made of your recent communication requesting my opinion on the following question:

"May the Board of Trustees of a Firemen's Pension Fund, legally adopt and enforce a rule that members of the fire department must leave such fire department on pension, at the age of 65 years?"

Sections 4600 to 4615, inclusive, of the General Code, provide for the establishment of a firemen's pension fund in municipalities, and define the duties of the trustees of such fund. Section 4600, as amended by the 88th General Assembly, (113 O. L. 62) provides that the board of trustees of the firemen's pension fund shall consist of six members, two of which shall be chosen by the council from among its own members; two shall be elected by the fire department from its members, and two of said members shall be residents of the municipality not members of the council or of the fire department. One of the latter members mentioned above is required to be chosen by the members chosen by the council, and one of said members last mentioned, shall be elected by the members originally chosen by the members of the fire department.

Section 4605, General Code, provide that each municipality availing itself of the firemen's pension fund shall yearly make a levy not to exceed three-tenths of a mill on each dollar upon all the real and personal property as listed for taxation in the municipality sufficient in amount to provide funds for the payment of all pensions granted to firemen. The section further provides :

“ * * * In the matter of such levy, the board of trustees of the firemen's pension fund shall be subject to the provisions of law controlling the heads of departments in the municipality, and shall discharge all the duties required of such heads of departments.”

There are other provisions of the General Code which provide funds to be credited to the firemen's pension fund, which it is believed unnecessary to discuss in detail herein.

Section 4212, General Code, which is the principal section with reference to the duties of the board of trustees of the firemen's pension fund, provides :

“Such trustees shall make all rules and regulations for the distribution of the fund, including the qualifications of those to whom any portion of it shall be paid and the amount thereof, but no rules or regulations shall be in force until approved by a majority of the board of trustees.”

Section 4615, General Code, requires the trustees of the firemen's pension fund to make a report to the council of the municipality of the condition of the fund on the first day of January of each year.

A reading of the sections hereinbefore referred to will clearly disclose that the duties of the trustees of the firemen's pension fund are necessarily limited to the administration of the funds therein provided for. Said trustees make rules and regulations for the distribution of said funds and determine the qualifications of those who are to participate.

It is a cardinal rule of construction that public officers, under the Ohio law, have only such powers as are expressly granted to them and such implied powers as are necessary to carry into effect the express powers granted.

In reading the sections hereinbefore mentioned, there would appear to be no provisions which either expressly or by implication in any wise authorize the board of trustees of the firemen's pension fund to determine the qualifications of any member of the fire department to serve in such capacity. Such board of course may determine whether or not a given member is qualified to receive a pension, and fix the terms and conditions upon which one may be pensioned or receive contributions from the pension fund. However, we must necessarily look to other provisions of the statutes to determine the authority which functions in connection with the removal of officers.

Section 4367, General Code, creates a department of public safety to be administered by a director of public safety.

Section 4368, General Code, which refers to the duties of the director of public safety, provides :

“Under the direction of the mayor, the director of public safety shall be the executive head of the police and fire departments. He shall be the chief administrative authority of the charity, correction and building departments. He shall have all powers and duties connected with and incident to the appointment, regulation and government of these departments except as otherwise provided by law. He shall keep a record of his proceedings, a copy of which certified by him shall be competent evidence in all courts.”

Section 4377, General Code, provides :

“The fire department of each city shall be composed of a chief of the fire department and such marshals, assistant marshals, firemen, telephone and telegraph operators as are provided by resolution or ordinance of council. The director of public safety shall have the exclusive management and control of such other officers, surgeons, secretaries, clerks, and employes as are provided by ordinance or resolution of council.”

Section 4379, General Code, provides :

“The chief of the police and the chief of the fire department shall have exclusive right to suspend any of the deputies, officers or employes in his respective department and under his management and control, for incompetence, gross neglect of duty, gross immorality, habitual drunkenness, failure to obey orders given him by the proper authority, or for any other reasonable and just cause.”

Section 4380, General Code, provides that in the case of the suspension of an employe, the chief of police or the chief of the fire department, as the case may be, shall certify such fact to the director of public safety who shall inquire into the cause of such suspension, etc. However, in connection with the question you present, it will be necessary to consider the provisions of the State civil service law.

Section 486-8, General Code, enumerates twelve classes of officers and employes who are to be regarded in the unclassified service. The section then provides that all persons in the employ of the state, the several counties, cities and city school districts thereof, not specifically included in the unclassified service to be designated as the competitive class and the unskilled labor class.

Without an extended discussion of the provisions of this section it may be concluded that firemen are included within the classified service, as defined by said section. In view of the fact that firemen are within classified service, it necessarily follows that we must look to be provisions of the civil service law in order to determine in what manner such officers or employes may be dismissed from the service.

Section 486-17a, General Code, which relates to the tenure of office and removal provides that the tenure of every officer and employe holding a position in the classified service shall be “during good behavior and efficient service.” The section further provides that any such officer or employe “may be removed for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination,” etc. The section further provides that the appointing authority shall furnish such employe with a copy of the order of removal, and give such officer a reasonable time in which to

file an explanation. The section also provides for an appeal from a decision of the order of such appointing authority to the state or municipal commission, as the case may be.

From the foregoing, it will be seen that the question you submit involves the termination of the services of an employe of the fire department. It further clearly appears that such a proceeding is a matter governed by Section 486-17a, of the Civil Service Law.

Therefore, it is my opinion that the provisions of the sections hereinbefore mentioned, impel the conclusion that it is not within the power of the trustees of the firemen's pension fund to make and enforce a rule that members of the fire department must retire at a given age. In reaching this conclusion, it is assumed that you have reference to a non-charter city. However, in so far as the power of the trustees of the firemen's pension fund with reference to the matters about which you inquire are concerned, it is believed that the conclusions would be the same, even though a charter city were involved.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1727.

APPROVAL, BONDS OF SOUTH EUCLID-LYNDHURST VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY—\$71,000.00.

COLUMBUS, OHIO, April 4, 1930.

Industrial Commission of Ohio, Columbus, Ohio.

1728.

APPROVAL, BONDS OF CITY OF CUYAHOGA FALLS, SUMMIT COUNTY—\$11,000.00.

COLUMBUS, OHIO, April 4, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1729.

APPROVAL, NOTES OF LOUISVILLE VILLAGE SCHOOL DISTRICT, STARK COUNTY—\$90,000.00.

COLUMBUS, OHIO, April 4, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.