

3501

UNIFORMS—POLICE AND FIRE DEPARTMENTS—COLUMBUS—ANNUAL ALLOWANCES TO REIMBURSE MEMBERS—EXPENSE OF REQUIRED UNIFORMS—NOT ADDITIONAL SALARY EARNED—NOT TO BE INCLUDED IN 4% DEDUCTION FROM SALARY RELATING TO POLICE AND FIREMEN'S PENSION LAWS—ORDINANCES 499-48, 500-48—SECTIONS 4609, 4625 G. C.

SYLLABUS:

The annual allowances to reimburse members of the police and fire departments of the city of Columbus for the expense of their required uniforms, as provided by Ordinance Nos. 499-48 and 500-48, are not to be considered as additional salary earned by such firemen and policemen and are not to be included in the 4% deduction from their salary, as provided in Sections 4609 and 4625, General Code, relating to the police and firemen's pension laws.

Columbus, Ohio, July 31, 1948

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen :

I have before me your request for my opinion reading as follows :

“We are enclosing a copy of letter from our examiner J.H.P., City Hall, Columbus, Ohio, together with copies of City Ordinances No. 499-48 and 500-48, in which he seeks information as to the correct interpretation of the phrase

‘annual allowances to reimburse members of the Police and Fire departments for the expense of uniforms’

which are required to be worn by such city Police and Firemen.

“The question involved is the proper definition of the word ‘salary’ as used in Sections 4609 and 4625, General Code. Since this question is of state-wide interest, and inasmuch as we do not have any previous ruling or opinion available for guidance in the matter, may we request your consideration of and opinion in answer to the following questions :

“1. Where the council of a city has provided by ordinance for the reimbursement in a lump sum amount of \$75.00 per annum to all uniformed members of the police and fire departments for the cost of the uniforms, is such amount to be considered additional salary earned by such firemen and policemen?

“2. If such fixed cash reimbursement is considered earnable salary, is it to be included in computing the 4% deduction from salary, as provided in Sections 4609 and 4625, General Code, pertaining to the Police and Firemen’s Relief and Pension fund laws?”

Section 4609, General Code, reads as follows :

“In each municipal corporation, in which there is or hereafter may be established a firemen’s relief and pension fund, the treasurer of the municipal corporation shall deduct from the salary of each member of the fire department an amount equal to four per cent of his salary for each payroll period. The sums so deducted shall be credited to the firemen’s relief and pension fund of the municipal corporation.”

Section 4625, General Code, makes a substantially identical provision relative to the police relief and pension fund.

Upon examination of the ordinances of the City of Columbus, which you have submitted, I note that the preamble of Ordinance No. 499-48 reads in part as follows:

“Whereas, all firefighters and officers in the division of fire who have been advanced or promoted therefrom, *are required to purchase, possess and wear while on duty, prescribed uniforms,* and keep the same at all times in proper repair and condition to pass inspection; and,

“Whereas, it is the sense of this council that such firefighters and officers should be granted an annual allowance to reimburse them for the expense of said uniforms so required; and,
* * *”

Section 1 of the ordinance provides that each regular fire fighter and officer in the division of fire of such city, shall be allowed annually “for said reimbursement” the sum of \$150 for the year 1948, payable in one lump sum, and for the second and any subsequent calendar year in service the sum of \$75.00, payable in semi-annual payments.

Section 2 of said ordinance provides as follows:

“2. The payments provided for in section 1 of this ordinance shall be payable semi-annually in June and December from the clothing allowance fund on *separate payrolls* marked ‘clothing reimbursement’ and be signed and approved as is or may be provided for the signing and approval *of regular payrolls.*”

(Emphasis added.)

The single question presented is whether these allowances by way of reimbursement for the expense of uniforms are to be regarded as a part of the salary of the firemen, within the contemplation of Section 4609 supra. It will be noted that the treasurer of a municipal corporation is required to deduct from the salary of each member of the fire department an amount equal to 4% of his salary “for each payroll period.” The payroll periods for the payment of the regular salary of firemen do not appear from any data submitted, but it is safe to assume that firemen are paid at least monthly, and possibly semi-monthly.

It is true that the ordinance speaks of the reimbursement for uniform expense as being payable on “separate payrolls” and after the first year, payable semi-annually, in equal installments. However, I do not attach great importance to the fact that these semi-annual payments are to be

paid on what is called a "separate payroll" since the terms of the ordinance itself make it very clear that the council is undertaking merely to reimburse the fireman for the expense entailed in the purchase and care of his uniform, which, according to the preamble, he is required to provide and wear while on duty, and to keep in proper repair and condition to pass inspection.

Taking the word "salary" in its ordinary significance, we find it defined by Webster, as follows:

"The recompense or consideration paid, or stipulated to be paid, to a person at regular intervals for services; fixed regular wages, as by the year, quarter, or month;"

The word has been defined in practically the same terms by a large number of judicial utterances. Reference to "Words and Phrases," will disclose a very large number of cases in which it is defined substantially as in the case of *People v. Adams*, 65 Illinois Appeals, 283, where it was said:

"Salary is the reward or compensation for services performed. Applied to a public officer, it is the reward or compensation for the performance of his official duties."

In a great many statutes where compensation of an officer is fixed by law, provision is made that he may receive in addition thereto, his necessary expenses incident to the performance of his duties. Such expense allowance, if reasonable, and confined to actual expenses, does not constitute an increase of or addition to the fixed salary. It is true that a so-called expense allowance can be so designed as to amount to an increase in salary. This was the case in *State ex rel. v. Raine*, 49 O. S., 580, where the court held:

"A statute, whatever terms it may employ, the only effect of which is to increase the salary attached to a public office, contravenes section 20, of article II, of the Constitution of this state, in so far as it may affect the salary of an incumbent of the office during the term he was serving when the statute was enacted."

The facts in that case were that in Hamilton county the statute fixed the salary of the county commissioners at \$2,000 per annum. The General Assembly passed an act providing that each county commissioner of said county should be allowed for expenses incurred by him in the discharge of his duties in said county the sum of \$1,000 per annum. The court pointed out that independent of this statute each county commis-

sioner was entitled by law to his salary of \$2,000 and necessary traveling expenses when traveling outside the county on official business. The court held that the \$1,000 allowed by the new act, as well as the \$2,000 allowed by the former law, "is a reward paid a public officer for the performance of his official duties, and is therefore salary." It was accordingly held that to the extent that it affected the salaries of commissioners during the term which they were serving when enacted, the act was unconstitutional and void.

The soundness of that decision cannot be doubted. There is, however, a plain distinction between the situation there involved and that with which we are concerned. While it is true that we have nothing upon which to determine the exact annual cost of the uniforms of a fireman and policeman, yet the ordinances do specifically provide for the allowances not for expenses generally, but for the specific purpose of reimbursement of the officer for the cost of purchasing and keeping up his uniform. It would appear that the council in effect determined that the amount allowed represented a fair coverage of that expense.

It is worthy of note that the allowance for uniforms which military officers are required to provide and wear, is not regarded as a part of the income of such officer, for the purpose of federal income tax. Plainly, this is upon the theory which is applicable to the case we are considering, that these uniforms are required and are only intended to be worn while the officer is performing his official duties. They therefore constitute an expense incident to such performance.

What has heretofore been said in regard to firemen and the allowances to them for reimbursement for uniform expense applies equally to the ordinance relating to policemen, whose provisions are identical with the ordinance relative to firemen.

Accordingly, in specific answer to your question it is my opinion that the annual allowances to reimburse members of the police and fire departments of the city of Columbus for the expense of their required uniforms, as provided by Ordinance Nos. 499-48 and 500-48, are not to be considered as additional salary earned by such firemen and policemen and are not to be included in the 4% deduction from their salary, as provided in Sections 4609 and 4625, General Code, relating to the police and firemen's pension laws.

Respectfully,

HUGH S. JENKINS,

Attorney General.