

1956.

CHARTER CITY—PROVISIONS STRICTLY FOLLOWED—ALL CLAIMS SHALL BE PRESENTED TO COMMISSIONER OF ACCOUNTS—WHO SHALL DRAW WARRANT—CITY COUNCIL.—NO POWER OR AUTHORITY TO ORDER CITY TREASURER TO DRAW CHECK—WHERE ASSISTANT OR DEPUTY IN TREASURER'S OFFICE WAS ABSENT FROM HIS POST AND MONEY STOLEN—LIABILITY—FINDINGS.

SYLLABUS:

1. *When the people of a charter city make a specific provision as to the means by, and manner in which, and the conditions under which claims against the city must be presented and allowed, the charter provisions must be strictly followed.*

2. *Where an assistant or deputy in the treasurer's office of a charter city responds to a telephone call and during his absence a sum of money is stolen from his cage or compartment, and the Bureau of Inspection and Supervision of Public Offices of the State of Ohio makes a finding against him in such amount and he returns it to the city treasury, the council of such charter city is without power or authority to reimburse such assistant or deputy for the amount so paid.*

This is particularly true where the City Council in its resolution recites the fact that such assistant or deputy was legally liable for the return of the money, in the face of a charter provision which specifically provides that no claim against the city shall be allowed and paid which is contrary to law or ordinance.

3. *Where the city charter provides that all claims against the city shall be presented to the Commissioner of Accounts, by him examined into and found to be justly and legally due and payable before he draws his warrant therefor, the city council has no power or authority to order the city treasurer to draw his check in payment of a claim.*

4. *When the city council of a charter city flies in the face of the city charter in the allowance and payment of claims against the city, the Bureau of Inspection and Supervision of Public Offices of the State of Ohio, is warranted in making findings against those responsible for such payment.*

COLUMBUS, OHIO, February 21, 1938.

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

GENTLEMEN: I am in receipt of your communication of recent

date with letter from your Examiner and copy of Resolution No. 106622 of the City of Cleveland, Ohio, appended thereto.

Your question is tersely stated, viz :

“Can the council of a charter city legally authorize the reimbursement to an employe of the amount of a finding for recovery paid by him, on the judgment of said body that he was without fault or neglect, but nevertheless was legally liable for the return of the money?”

I gather from Resolution No. 106622, passed by Council of the City of Cleveland on June 28, 1937, that on or about May 21, 1936, there was stolen from a cage in charge of J. C. C., the sum of \$1,949.00, the same being surreptitiously removed from the cage while Mr. C. had *apparently designedly* been called to answer a telephone message.

The resolution further recites that Mr. C., *while legally liable for the return of the money*, was entirely without fault or neglect on his part ; that Mr. C. has repaid such sum to the city treasurer, and it is resolved that the City of Cleveland reimburse Mr. C. in such amount, and the city treasurer was authorized to draw a check therefor. I note that a finding was made against Mr. C. by your Bureau before he paid the money into the city treasury.

I have considered Sections 2303 to 2306, inclusive, of the General Code, as well as the case of State ex rel. *Bolsinger vs. Swing, et al.*, 54 O. A., 251.

If a charter city was not being dealt with herein your problem would be easy of solution, as the resolution does not bring the case within the purview of Sections 2303 et seq., *supra*, and the *Bolsinger* case above cited would be dispositive of it, as I regard it as a well reasoned case. But Cleveland is a charter city, and such charter must be followed when public funds are being expended.

The City of Cleveland duly framed and has adopted a charter.

Your question involves the expenditure of public moneys and must be strictly construed. It make no difference what you or I or anybody else may think of the policy displayed in the enactment of this resolution. The policy had to be determined by the City Council. The City Council did determine it and that is the end of the policy feature of the enactment.

This resolution runs counter to the City Charter. I refer to the present Charter. Under a chapter of the Charter, not numbered but denominated “Financial Procedure,” I find that Section 105 of the Charter provides in part :

“No claim against the city shall be paid unless it be evi-

denced by a voucher approved by the head of the department or office for which the indebtedness was incurred; and each such director or officer and his surety shall be liable to the city for all loss or damage sustained by reason of his negligent or corrupt approval of any such claim. The Commissioner of Accounts shall examine all pay-rolls, bills and other claims and demands against the city and shall issue no warrant for payment unless he finds that the claim is in proper form, correctly computed and duly approved; *that it is justly and legally due and payable*; that an appropriation has been made therefor which has not been exhausted, or that the payment has been otherwise legally authorized and that there is money in the city treasury to make payment. * * *” (Italics the writer’s.)

I do not deem it necessary to quote the remaining provisions of the section. Suffice it to say, power is delegated therein to the Commissioner of Accounts to fully investigate any claims. He can go so far as to examine the claimant and other persons on oath touching the genuineness of the claim and if he issues a warrant on the treasury authorizing payment of any item for which an appropriation has not been made or for the payment of which there is not a sufficient balance to pay it, *or which is otherwise contrary to law or ordinance*, he and his sureties shall be individually liable to the city for the amount thereof.

The people of the City of Cleveland by the adoption of this section of the charter threw safeguards around their public funds and the City Council can not go beyond them.

Mr. C’s claim may have been just, but it had to be more than that, it had to be legal, which the ordinance providing for his reimbursement says it was not. Realizing that the claim was not legal, council by ordinance allowed it.

I do not know whether the claim passed through the hands of the Commissioner of Accounts or not, but if it did not it should have, as the people of the city had provided that all claims against the city should have his approval. No exception is made in the charter relative to claims allowed by ordinance and this claim for reimbursement should have gone through his hands, notwithstanding provision was made in the ordinance authorizing the city treasurer to draw a check therefor.

The people of the City of Cleveland have said flatly that a claim such as the one herein involved, should not be paid by the city. The claim may be just, but we are dealing with law and not theology.

Answering your question specifically, I am of the opinion that the City Council not only had no power to pass the reimbursement ordinance

in question, but that it was distinctly prohibited from so doing by the section of the city charter above cited and quoted.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1957.

COUNTY COMMISSIONERS—BOUND BY SECTION 5625-38 G. C.—CANNOT RESTRICT COUNTY AUDITOR IN PAYMENT OF SERVICES TO DEPUTIES, ASSISTANTS, CLERKS, ETC.—APPROPRIATION SHALL BE ANNUAL NOT MONTH TO MONTH MEASURE.

SYLLABUS:

1. *County commissioners cannot restrict the county auditor in the matter of payment for services rendered by deputies, assistants, clerks, etc., to county officers, beyond the limitations contained in Section 5625-38, General Code.*

2. *County Commissioners cannot make a month to month appropriation for deputy, assistant and clerk hire for a county officer for the reason that Section 5625-28, General Code, provides that they shall adopt an annual appropriation measure.*

COLUMBUS, OHIO, February 21, 1938.

HON. HUGH A. STALEY, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR: I am in receipt of your communication of recent date, as follows:

“A situation has arisen in this county by reason of which the following question has been submitted to this office. I should like to have your opinion upon the situation.

Section 2981 of the General Code provides that the compensation of deputies, assistants, clerks, bookkeepers or other employees of the county officials shall not exceed in the aggregate the amount fixed by the commissioners by such office. The county commissioners do not desire to appropriate sufficient money to enable the county surveyor to pay the salaries which he has fixed for the assistants in his office. Your predecessor in office, in 1929, in Opinion 1216, held substantially that in