

\$71,500, dated September 1, 1937, bearing interest at the rate of $3\frac{1}{4}\%$ per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1694.

MEANING OF "AUTHORIZE" AS USED IN SECTION 27, OF
THE CHARTER OF THE CITY OF CLEVELAND (Opinion
No. 725, 1937 modified) SUBSEQUENT APPROVAL.

SYLLABUS:

The word "authorize" as used in Section 27 of the charter of the City of Cleveland, in view of seventeen years of administrative practice, is hereby construed to include approval given at a time subsequent to the absences. (Opinion No. 725 modified in view of additional information presented to this office.)

COLUMBUS, OHIO, December 28, 1937.

*Bureau of Inspection and Supervision of Public Offices, State House
Annex, Columbus, Ohio.*

GENTLEMEN:

I recently have had my attention directed to my opinion numbered 725 issued to your office on June 11, 1937. The syllabus of this opinion reads as follows:

"Section 27 of the charter of the city of Cleveland empowers council to authorize absences of council members from council meetings at or before the date of the occurrence of such absences; however, this section of the city charter does not authorize council to excuse absences at any time after the occurrence of such absences."

Additional information which has been presented to this office, in

my opinion, directly affects the issue involved and I am, therefore, taking the liberty of setting forth the facts which I did not have before me when I issued the aforementioned opinion and reconsidering the question.

The charter provision that is involved, namely, Section 27 of the charter of the City of Cleveland, provides as follows:

“For each absence of a member from regular meetings of council, unless authorized by two thirds vote of all members thereof, there shall be deducted a sum equal to two percent (2%) of the annual salary of each member. * * *”

I am now informed that the foregoing provision was part of the charter which became effective January 1, 1914, and remained in effect until January 1, 1924. In 1924 a new charter was adopted, which charter was effective until 1931. The second charter effective from January 1, 1924 until November 9, 1931 did not contain the provision under consideration. The charter now in force, which was adopted in 1931 and which repealed the 1924 charter, re-enacted the above provision as Section 27.

During the effective period of the 1914 charter, the records indicate that it was the regular practice of council to authorize absences at meetings subsequent to such absence. The records reveal that there were at least ninety-seven (97) absences so authorized by council.

The important factor in my opinion is that the question was never raised during the life of the 1914 charter concerning the propriety of the action of council in authorizing, at subsequent meetings, absences of councilmen which had occurred at meetings prior to such authorization.

As indicated in Opinion No. 725, the sole issue is the meaning of the word “authorize.” Several dictionary definitions of the word “authorize” were recited in Opinion No. 725, but I believe in the re-examination of the question, we might well consider other connotations that have been attached to the word as follows:

Webster’s New International Dictionary, 1933 Edition:

- “2. To give legal sanction to; to make legal; to legalize; * * *.
3. To establish by authority, * * *; to sanction: * * *;
4. To sanction or confirm by the authority of some one; * * *.
5. To justify * * *.

SYN. See Ratify.

In 6 Cor. Jur. 865, the word “authorize” is defined as:

“To approve of and formally sanction.”

In support of the foregoing definition, the case of *Hubbard, et al. vs. Fort, et al.* 188 Fed. 987 (1911) is cited. In this case at page 997 the Court said:

“The use of the word ‘authorize’ instead of ‘approve’ does not change the Secretary of War’s act from permissory to plenary. Two of the definitions of the word ‘authorize’ are to approve of; to formally sanction. Cent. Dict. & Cyc.”

Consideration of these definitions, together with those cited in Opinion No. 725, makes it evident that there is some ambiguity as to the meaning of the word “authorize” and we are, therefore, in the realm of statutory construction and interpretation (same rules of construction and interpretation applies to ordinances as to statutes).

The main office of statutory construction and interpretation is the ascertainment of the intent of the enactors of the particular legislation considered. In this case the enactors were the people of the City of Cleveland, who by vote adopted the 1931 charter which contained Section 27. I believe it is safe to say that it was intended that the word have the same meaning as had formerly been attached to it in connection with the same subject.

Inasmuch as the records indicate that during the previous experience with the word in connection with this subject, it was construed to include approval given at a time subsequent to the absence, it is reasonable to conclude that that was the meaning attached to the word at the time of the enactment of the 1931 charter.

I am also impelled to this conclusion by the fact that the foregoing construction had been adopted and acquiesced in during the entire life of the 1914 charter and from the effective date of the 1931 charter until this day. Such interpretation, while not exactly constituting an administrative interpretation, might well be considered as having the same effect. The proposition is stated in Lewis’ Sutherland Statutory Construction, 2nd Ed., Vol. 2, page 889 as follows:

“The practical construction given to a doubtful statute by a department or officer whose duty it is to carry it into execution is entitled to great weight and will not be disregarded or overturned except for cogent reasons, and unless it is clear that such construction is erroneous.”

The Supreme Court of Oregon in the case of *Kelly vs. Multnomah County*, 18 Ore. 356, 359, stated the proposition as follows:

“In all cases where those persons whose duty it is to exe-

cute a law have uniformly given it a particular construction, and that construction has been acquiesced in and acted upon for a long time, it is a contemporary exposition of the statute, which always commands the attention of the courts, and will be followed unless it clearly and manifestly appears to be wrong.”

The rule in Ohio on administrative interpretations is stated in the case of *State, ex rel., vs. Brown*, 121 O. S. 73 at page 75 as follows:

“It has been held in this state that ‘administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do.’ *Industrial Commission vs. Brown*, 92 Ohio St., 309, 311; 110 N. E., 744; (L. R. A. 1916B, 1277).

See also, 36 Cyc., 1140, and 25 Ruling Case Law, 1043 and cases cited.

This is a well recognized principle of statutory construction, and we deem it applicable in the present instance.”

It might be questioned whether the interpretation of the councilmen could be considered as an administrative interpretation inasmuch as it might be argued that they were the direct beneficiaries of their own interpretation. However, the important fact is that this interpretation was acquiesced in and adopted by the officials who had the duty of carrying the provision of Section 27 into execution.

It is, therefore, my opinion that, although I believe Opinion No. 725 was correct in light of the facts that were then in my possession, I must now conclude, in view of the additional information that has been brought to my attention, that the word “authorize” as used in Section 27 of the charter of the City of Cleveland includes approval given at meetings subsequent to the absence.

Respectfully,

HERBERT S. DUFFY,
Attorney General.