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APPROVAL—BONDS OF BELLAIRE CITY SCHOOL DISTRICT, BELMONT COUNTY, OHIO, \$11,000.00.

COLUMBUS, OHIO, March 11, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of Bellaire City School District, Belmont County, Ohio, \$11,500.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of high school building bonds in the aggregate amount of \$36,000.00, dated July 15, 1925, bearing interest at the rate of 5% 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.

240.

CLEVELAND CITY COUNCIL — ADJOURNMENT — ATTENDANCE BY MEMBERS — CANNOT ADJOURN BEYOND TIME OF NEXT REGULAR MEETING.

SYLLABUS:

1. *Opinions of the Attorney General, 1929, Volume II, page 1614, approved and followed.*
2. *The council of the city of Cleveland may legally adjourn a regular session to the day upon which the next regular session will be held, and a member of council attending such session, even though he has not been in attendance previously, cannot be regarded as having been absent, even though the adjourned meeting and the next regular meeting are scheduled for the same time, provided such adjourned meeting is held first.*
3. *The council of the city of Cleveland may not legally adjourn a regular session beyond the time of the next regular meeting as provided for by the city charter and a member of council in attendance at an adjourned meeting held after the next regular meeting cannot be regarded as having been present at the original regular meeting.*

COLUMBUS, OHIO, March 11, 1937.

HON. JOSEPH T. FERGUSON, *Auditor of State, Columbus, Ohio.*

DEAR SIR: I have your communication of recent date requesting my opinion, as follows:

"We are enclosing herewith letter from our Cleveland Examiner, requesting that we submit for your consideration certain questions that seem to have been considered in a former opinion, No. 1072, page 1614 of the Attorney General's Opinions for 1929. However, additional facts are given in the Examiner's letter along with a copy of a letter from one of the framers of the Charter of the City of Cleveland, and abstracts from the rules of order governing the Council of the City of Cleveland. Accordingly, we resubmit the following:

QUESTION 1. If a member is absent from the session recessed but is present at the final roll call in last minute, he is credited with being officially present at a meeting from which he was absent during the transaction of business; is the procedure outlined legal?

QUESTION 2. If a member is absent from the session from which the session recessed but is present at the final roll call in the last minute recess session, he is credited with being officially present at a meeting from which he was absent during the transaction of business for which it was especially called; is the parliamentary device outlined legal if the time of the recess is set for the very minute of the next regular session?

QUESTION 3. When there is a recessed meeting at 6:55 just previous to a prescribed session at 7:00 P. M., and not enough members appear to make a quorum, the members adjourn the 6:55 meeting to another time beyond the regular meeting date. Members who appeared at the special meeting are counted as not having been absent from the prescribed regular meeting which they in fact did not attend; is the procedure outlined legal?

Is the above legal to the extent of authorizing payment of salary without deduction?"

I feel that the answer to your first question is found in Opinions of the Attorney General for 1929, Vol. II, page 1614, the syllabus of which opinion reads as follows:

"The council of the city of Cleveland may legally adjourn

a regular session to the day upon which the next regular session will be held, and a member of council attending such session, even though he has not been in attendance previously, cannot be regarded as having been absent."

The above opinion is correct in stating that a legislative body has the power to recess or adjourn to some definite time in the future. The authority for the power to adjourn, in the case of a municipal council, is very well stated in Cooley's Municipal Corporations, Section 47, page 157, as follows:

"A valid stated or called meeting has the implied corporate power to adjourn to a future day and then resume its business. This adjourned meeting is merely a continuation of the original meeting, and notice is not required for it."

Despite the fact that no business is transacted or even contemplated at the adjourned meetings of the council and the adjournment is obviously a parliamentary device to circumvent the penalty provided for absentee members by the city charter, yet, as stated in the 1929 Opinion of the Attorney General, *supra*, the motive of the city council is not open to judicial inquiry, much less could this opinion ascribe any fraudulent or impure motives to the parliamentary mechanics of qualifying members of council as being present at the regular meetings of council. On this point the following language is found in 28 O. J., 288:

"As a general rule, the actions and proceedings of councils of municipal corporations in the exercise of discretion vested in them by law, so long as such proceedings are regular and within the limits of their authority, are not subject to judicial control or revision. And it is held, in the application of this rule, that where the action of a municipal council is within the limits of its lawful powers and discretion, the motive prompting such action will not be inquired into by the courts. * *"

Section 9, of the rules of order governing the council of the City of Cleveland, provides:

"Every member shall be in his seat at the time of roll call, otherwise he shall not be recorded as present except upon special order of council. The clerk shall publish in the City Record the names of the members present and absent."

It might be reasonably urged that the foregoing provision contemplates the calling of the roll of members at the beginning of a regular council meeting and consequently those members who only answer the roll call at an adjourned meeting cannot be counted as being present at the regular meeting. It is quite clear that the subterfuge of an adjourned meeting clearly violates the spirit and expressed intentions of the framers of the charter of the City of Cleveland but here again a construction of the foregoing provision of the rules of order is prohibited because a legislative body is the sole judge of its own rules.

Therefore, in specific answer to your first question I am of the opinion that the 1929 Opinion of the Attorney General should be followed.

I believe further that the parliamentary device outlined in your second question is legal primarily for the reasons given in answer to your first question. Secondly, the law will recognize a division of time within a given period. Let us suppose that the meeting adjourned from a regular meeting called promptly at the first second of the first minute of the seventh hour on the Monday evening following the regular meeting. As you state, the roll is called rapidly and the meeting is immediately adjourned, all of which procedure may very possibly require less than a minute's time. The next regular meeting could then be called within the first minute of the hour of seven as required in the city charter. So that even if the adjourned meeting is held and the next regular meeting is called within the same minute it is clear that some fraction of time intervenes between the two meetings. Consequently, I am of the opinion that the parliamentary device outlined in your second question is valid.

An answer to your third question seems to depend upon the ability of the city council to adjourn one regular meeting beyond the time for the next regular meeting. In Hughes' American Parliamentary Guide, revised new edition, 1927, 1928, Section 802, the above question seems to be settled:

"Notice of an adjourned meeting is not necessary as that meeting will be, in fact, a continuance of the original regular meeting. Either a regular or special meeting may be adjourned, *but never beyond the time for the next regular meeting*. If an adjourned meeting does not complete its business, it may adjourn again, subject to the limitation, *not beyond a regular meeting time*. Any business that was in order in the original meeting would be in order at that adjourned meeting."

Upon the principle that the greater includes the lesser, the unfin-

ished business of the adjourned meeting would be absorbed into the business of the next regular meeting. Furthermore it is an accepted principle of parliamentary law that any number of members less than a quorum has only the power to adjourn a meeting to a future date and no power to transact any business whatever. In the present case, where a quorum was not present at the adjourned meeting and an attempt was made to again adjourn beyond the date of the next regular meeting such attempted adjournment was merged into the next regular meeting. Consequently, the adjourned meeting was never held, and it is my opinion that the members of council absent from the original regular meeting but present at the adjourned meeting which never took place, cannot be counted as being present at the original meeting.

The practices here under consideration, constitute a perfectly obvious circumvention of the charter provision which penalizes members of council for being absent from council meetings. However unconscionable these practices may be, I can only pass upon the question of whether or not such practices are within the power of council under the present city charter. If the citizens of the City of Cleveland object to a continuation of these practices their remedy lies not in the courts but in the power to amend their charter.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

241.

MUNICIPAL COURT—EAST LIVERPOOL—NO POWER OF
FIXING ATTORNEY FEES—BY RULE.

SYLLABUS:

The judge of the Municipal Court of East Liverpool has no power to fix attorney fees in cases in his court by rule of court.

COLUMBUS, OHIO, March 12, 1937.

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

GENTLEMEN: I acknowledge receipt of your communication of recent date in which you request the opinion of this office upon the following proposition of law: