

2993.

"BURNS LAW"—CERTIFICATE UNDER SECTION 5660 G. C. FOR SALARIES OF OFFICERS OF MUNICIPALITY WOULD BE SUFFICIENT IF MADE AT BEGINNING OF PERIOD FOR WHICH OFFICERS ARE PAID.

SYLLABUS:

1. *Section 5660 of the General Code, found in 111 Ohio Laws, page 371, is applicable to the payment of salaries of officers and employes of a city whether such compensation is fixed on a yearly or monthly basis.*

2. *A certificate under Section 5660 of the General Code for the salaries of officers and employes of a municipality would be sufficient if the same is made at the beginning of the period for which the officers and employes are to be paid.*

COLUMBUS, OHIO, December 9, 1925.

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

GENTLEMEN:—I am in receipt of your communication as follows:

"Section 5660, General Code, as amended 111 O. L. 375, provides that no contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds from whatsoever source derived, shall be made or assumed by any authority, officer, or employee of any county or political subdivision or taxing district, nor shall any order for the payment or expenditure of money be approved by the county commissioners, council, or by any body, board, officer or employee of any such subdivision or taxing district, unless the auditor or chief fiscal officer thereof first certifies that the money required to meet such contract, agreement or other obligation, or to make such payment or expenditure has been lawfully appropriated or authorized or directed for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation, etc.

"Question 1. Are the above provisions applicable to the payment of salaries of officers and employes of a city whose compensation is fixed on a yearly or monthly basis?"

"Question 2. If the certificate is required would it be sufficient compliance with the law to issue such certificate at the beginning of the period for which officers and employes are to be paid, that is, at the beginning of each half month, or month or week?"

Section 5660 of the General Code as amended in 111 O. L., page 371, in part provides as follows:

"No contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds from whatsoever source derived, shall be made or assumed by any authority, officer or employe of any county, or political subdivision or taxing district, nor shall any order for the payment or expenditure of money be approved by the county commissioners, council or by any body, board, officer or employe of any such subdivision or taxing district, unless the auditor or chief fiscal officer thereof first certifies that the money required to meet such contract, agreement or other obligation or to make such payment or expenditure has been lawfully appropriated or

authorized or directed for such purpose, and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification, which certificate shall be filed with such authority, officer, employe, commissioners, council, body or board, or the chief clerk thereof."

While there may be some question as to whether it is necessary under Section 5660 to have the certificate therein provided prior to the employment of public officers by reason of the decision in the case of *Youngstown vs. National Bank*, 106 O. S. 563, wherein the Supreme Court held that the Burns Law does not apply to the payment of salaries or compensation of its public officers, whether such officers are elected or appointed, it is believed that Section 5660 as last enacted, does make it mandatory that such certificate be made before any payment or expenditure of money is made in any case. This it is believed, is due to a change in the context of Section 5660, wherein it provides that no order for the payment or expenditure of money may be approved by the commissioners, council or by any body, board, officer or employe unless such certificate is made. The intent and purpose of this part of Section 5660 is to make all the subdivisions stay within the appropriations or levies made for the use of the subdivision, this regardless of whether the officers and employes of the subdivision have a compensation which is fixed on a yearly or monthly basis.

It is therefore my opinion that a certificate as provided under Section 5660 of the General Code should be made before any order is issued for the payment or expenditure of money for the salaries of officers or employes.

Your second question is whether such certificate would be a sufficient compliance with the law if it was issued at the beginning of the period for which the officers and employes are paid. Due to the fact that so many of the subdivisions depend upon the fee fund or other sources of income than tax levies, it is believed that it would be impossible at the beginning of the year to make a certificate which would cover the salaries of all officers and employes with any certainty.

It is my understanding that some municipalities make no levy at all for current operating expenses and are dependent upon fees and fines for the payment of the salaries of most of the municipal officers. As these sources of funds are doubtful at times it would make it impossible to certify as required by Section 5660 of the General Code, at the beginning of each fiscal year.

It is my opinion that a certificate under Section 5660 of the General Code for the salaries of officers and employes of a municipality would be sufficient if the same is made at the beginning of a period for which the officers and employes are to be paid.

Respectfully,

C. C. CRABBE,

Attorney General.

2994.

INSURANCE LAW—SUPERINTENDENT OF INSURANCE HAS AUTHORITY TO ASSESS SAME FEE AGAINST A FOREIGN INSURANCE COMPANY AS MAY BE ASSESSED AGAINST AN OHIO COMPANY FOR SIMILAR BUSINESS BY THE HOME STATE OF SUCH COMPANY.

SYLLABUS:

Under the provision of the retaliatory Ohio insurance law as contained in section 658 G. C., the superintendent of insurance of Ohio is authorized to assess the same fees