Note from the Attorney General's Office:

1941 Op. Att'y Gen. No. 41-4685 was modified by
1962 Op. Att'y Gen. No. 62-3071.

4685

1. GROUP LIFE INSURANCE — MUNICIPAL CORPORATION MAY AUTHORIZE PAYMENT OF ALL OR PART OF PREMIUM COVERING LIVES OF EMPLOYES — PART OF COMPENSATION OF EMPLOYES — POLICE AND FIRE DEPARTMENTS EXCEPTED.

2. ENTIRE PREMIUM ON CONTRACT, LIFE INSURANCE POLICY, MUST BE PAID BY EMPLOYES.

SYLLABUS:

1. *A municipal corporation may as part of the compensation of its employes, pursuant to proper action by its legislative authority, authorize the payment of all or a portion of a premium of group life insurance covering the lives of such employes, except members of the police and fire departments.*

2. *An insurance company may not lawfully issue a contract of life insurance in this state covering a group of employes of a municipal corporation unless the entire premium on such policy is to be paid by such employes.*

Columbus, Ohio, December 31, 1941.

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

Gentlemen:

I have your letter of recent date with which you enclose certain correspondence received by you from the Director of Finance of the City of East Cleveland, Ohio, concerning group life insurance on public employes. In your letter you state that in Attorney General's Opinion No. 882, dated July 19, 1937, it was ruled that the provisions of Section 9426-1, General Code, were broad enough to include employes of a municipal corporation and that a municipal corporation could participate in the payment of premiums for group life insurance.

You state that since the time such opinion was rendered said Sec-

tion 9426-1, General Code, has been twice amended, and you now ask whether a city may pay any part of the premium on group life insurance for its employes in view of the provisions of paragraph (g) of Section 9426-1, General Code, as amended.

Section 9426-1, General Code, in its original form, was enacted in 1935 as part of an act "to define group life insurance and to provide for standard provisions for such policies." As first enacted, this section did not specifically and in terms provide life insurance covering employes of a political subdivision or district of the State of Ohio or an educational or other institution supported in whole or in part by public funds, to be group life insurance within the meaning of the act. However, my predecessor in Opinion No. 882, dated July 17, 1937, and found at page 1584 of Volume II of the Opinions of the Attorney General for such year, stated that the statute as it then existed was broad enough in its terms to include employes of a municipality.

Nevertheless, the Ninety-third General Assembly in 1939 amended such Section 9426-1, General Code, by adding thereto paragraph (g) and specifically providing that group life insurance should include life insurance covering employes of a political subdivision or other district of the State of Ohio, or an educational or other institution supported in whole or in part by public funds, or of the State of Ohio or any department or division thereof. If there ever were any doubt as to whether the provisions of Section 9426-1, General Code, were broad enough to include employes of municipal corporations, such doubt was removed by the action of the Ninety-third General Assembly.

In passing, it may be noted that this section was again amended by the Ninety-fourth General Assembly, but the amendment does not affect the answer to your question. Although the amendment to the section made by the Ninety-third General Assembly specifically included insurance covering employes of political subdivisions within the definition of group life insurance, the language used in such amendment raises a serious question as to whether public funds may now be expended in payment of the premiums. Section 9426-1, General Code, in so far as it is pertinent to your inquiry, now reads:

> "(1) Group life insurance is hereby declared to be that form of life insurance covering not less than fifty employees with or without medical examination, written under a policy

issued to the employer, the premium on which is to be paid by the employer or by the employer and employees jointly, and insuring only all of his employees, or all of any class or classes thereof, determined by conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the employer; provided, however, that when the premium is to be paid by the employer and employee jointly and the benefits of the policy are offered to all eligible employees, not less than seventy-five per centum of such employees may be so insured. * * *

(2) The following forms of life insurance are hereby declared to be group life insurance within the meaning of this act: * * *

(g) Life insurance covering employees of a political subdivision or district of the state of Ohio, or an educational or other institution supported in whole or in part by public funds, or of any class or classes thereof, determined by conditions pertaining to employment, or of the state of Ohio or any department or division thereof written under a policy issued to such political subdivision, district or institution, or the proper official or board of such state department or division which shall be deemed to be the employer for the purpose of this act, the premium on which is to be paid by such employees for the benefit of persons other than the employer; provided, however, that nothing herein contained shall permit the state of Ohio or any of the political subdivisions enumerated herein to pay any premiums stated in this section; and provided that when the benefits of the policy are offered to all eligible employees of a political subdivision or district of the state of Ohio or an educational or other institution supported in whole, or in part, by public funds, or a state department or division, not less than seventy-five per cent of such employees may be so insured; provided further that when employees apply and pay for additional amounts of insurance, a smaller percentage of employees may be insured for such additional amounts if they pass satisfactory medical examination. * * * "

It will be noted that paragraph (g) of this section contains no language which prohibits a political subdivision from paying premiums on a group life insurance policy covering the employes of such political subdivision, but provides that nothing in the section shall permit such political subdivision to pay the premiums. The language of the section, however, does provide that the premiums on such a policy must be paid by the employes if such insurance is to fall within the statutory definition of group life insurance.

Section 9426-2, General Code, provides in part:

"Except as provided in this act, it shall be unlawful to make a contract of life insurance covering a group in this state."

This language is plain and explicit and prohibits the making of a contract of insurance covering a group except as provided in the group insurance act of which Section 9426-1, General Code, is a part. A contract of group life insurance entered into by a municipal corporation covering the employes of such corporation would be prohibited by the language above quoted if the contract provided that such municipal corporation was to pay a portion of the premium.

The legality of payments by a municipal corporation of all or a part of the premium of a group life insurance policy covering the employes of such corporation has several times been considered by my predecessors prior to the amendment by the Ninety-third General Assembly to Section 9426-1, General Code. See Opinions of the Attorney General for 1927, Vol. I, page 48; Opinions of the Attorney General for 1928, Vol. II, page 1099; Opinions of the Attorney General for 1931, Vol. II, page 889; and Opinions of the Attorney General for 1937, Vol. II, page 1584. In each of these opinions, the conclusion was reached that such expenditure could be legally made by the municipality. These conclusions were based upon the provisions of Sections 3 and 7 of Article XVIII of the Constitution of Ohio which respectively provide:

Section 3:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

Section 7:

"Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government."

The 1937 opinion contains a review of the previous opinions and calls attention to the fact that the Supreme Court in Perrysburg v. Ridgeway, 108 O.S., 245, held that Section 3 of Article XVIII of the Constitution of Ohio, supra, was self-executing in the sense that no legislative action is necessary in order to make it available to a municipality and that such power so granted is available to a municipality even though it may not have adopted a charter.

It therefore becomes necessary for me to determine whether the power granted to a municipality by Section 3 of Article XVIII of the Constitution to pay premiums on group life insurance policies covering employes of such municipality may be limited, modified or restricted by the action of the General Assembly. It also, of course, is necessary for me to determine whether the General Assembly could prohibit or limit similar action by a municipal corporation which had adopted a charter containing language which authorized such municipal corporation to pay such premiums. In other words, may the General Assembly impair the exercise of such power by a municipality even though it is granted to it by the Constitution?

An answer to this question involves a consideration of the provisions of Section 13 of Article XVIII of the Constitution of Ohio which provides as follows:

> "Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities."

In the 1927 opinion, the then Attorney General stated that a municipal corporation could pay the premium for group insurance covering its employes as part of the compensation to such employes. As I have stated, this conclusion has been accepted and followed by the various other Attorneys General who have considered the question. The question, therefore, is whether the Genral Assembly may limit the power of a municipal corporation to fix the compensation or salary to be paid to the employes or officers thereof. In City of Mansfield v. Endly, 38 O.App., 528, 535, it was said by Sherick, J.:

> "By the expression, 'to exercise all powers of local self-government,' we hold it to be understood that a municipal corporation may enact all such measures as pertain exclusively to it, in which the people of the state at large have no interest or concern, and which they have not expressly withheld by constitutional provision. Applying this understanding to the ordinance in question, we are of one mind that the people of the state of Ohio outside the corporate limits of the city of Mansfield are not interested in the amount of the salary paid by it to its councilmen, and that therefore the subject-matter of the ordi-

> nance is purely one of local concern; and we know of no granted power, inalienable right, or constitutional limitation that in any way abridges the city's power to enact such legislation unless it be, as suggested by it, in contravention of the powers granted to the legislature in Section 13 of Article XVIII and Section 6 of Article XIII, in that the legislature may limit the power of municipalities to incur debts for local purposes and restrict the power of contracting debts."

And on page 537, it was further said by Judge Sherick:

> "And now, considering the plaintiff's theory that the ordinance incurs a debt and that Section 13 of Article XVIII and Section 6 of Article XIII of the Constitution of Ohio warrant the legislature in its assumption of power to curtail that prerogative of local self-government, we are of opinion that the salary of a municipal official, although it be in a manner a debt, is not such as is contemplated by these two constitutional limitations upon a city's power, but rather that they refer to the legislature's power to create a tax limitation and maximum indebtedness, and to the manner of expenditure of public funds. It was never intended, under these two sections, to delegate to the legislature the power to determine the salary of municipal officers. To permit a city government to define and prescribe the duties of a municipal official and then to permit the legislature to fix his compensation would not only seem to be, but would be, utter foolishness. If the council should by ordinance fix its members' salaries, or those of other municipal servants, at too high a figure, we have no doubt that the municipal electorate would quickly right the situation. If the plaintiff's interpretation of these sections is correct, then the people of the state delegated to the legislature that which they expressly reserved to their municipal subdivisions; and they are thereby deprived of one of the first essentials of municipal home rule. Such was not the purpose of the people as expressed in 1912 in the adoption of Article XVIII."

The judgment in this case was affirmed on other grounds in 124 O.S., 652, and so far as I have been able to ascertain there has been no decision by our Supreme Court in which the power of the General Assembly to limit the compensation or salary to be paid employes or officers of municipal corporations was determined. Accepting the decision of the Court of Appeals, therefore, I must reach the conclusion that the General Assembly has no power to prohibit a municipal corporation from expending public funds in payment of group life insurance premiums covering employes of such municipal corporation and that the group insurance law, in so far as it purports so to do, is inoperative. Any such expenditures made by a municipal corporation would therefore not be illegal.

What I have said heretofore applies generally to employes of municipal corporations, but a different rule has been established by our Supreme Court with respect to employes in the police and fire departments. In Cincinnati v. Gamble, 138 O.S., 220, it was held that in matters of state-wide concern the power of the state is supreme and that the home rule provisions of the Constitution hereinbefore quoted are no limitation on the power of the General Assembly to legislate. The third and fourth paragraphs of the syllabus of this case read:

> "3. In matters of state-wide concern the state is supreme over its municipalities and may in the exercise of its sovereignty impose duties and responsibilities upon them as arms or agencies of the state.
>
> 4. In general, matters relating to police and fire protection are of state-wide concern and under the control of state sovereignty."

See also State, ex rel. Strain, v. Houston, 138 O.S., 203. The spirit of these decisions is that acts of the General Assembly with respect to the police and fire departments are controlling where they conflict with municipal action. Consequently, the provisions of the group insurance law are operative to prohibit a municipality from expending its funds in payment of premiums on a group life insurance policy covering members of the police or fire department.

Although the General Assembly does not have power to prohibit municipal corporations from making such expenditures except as to members of the police and fire departments, it does not follow that an insurance company may not be prohibited from issuing such a contract in this state. In State, ex rel. Allstate Insurance Company, v. Bowen, 130 O.S., 347, it was held as is shown by the first paragraph of the syllabus:

> "The business of insurance is one of public interest, affecting all classes of people and property, and is therefore properly the subject of legislative regulation and control. Domestic and foreign corporations engaged in the insurance business in Ohio must conform their business and contracts to the provisions of the statutes of Ohio regulating and controlling the same." (Verducci v. Casualty Co. of America, 96 Ohio St., 260, 117 N.E., 235, approved and followed.)

The General Assembly unquestionably has constitutional power,

therefore, to prohibit insurance companies from issuing a contract covering a group of employes of a municipal corporation where the entire premium thereon is not to be paid by such employes, even though it may not have power to prohibit the municipal corporation itself from making such payment. In other words, if an insurance company enters into a contract whereby it insures the lives of a group of municipal employes, it violates the laws of this state if the policy does not provide that the entire premium on such policy is to be paid by the employes, even though the premium on such a policy may be lawfully paid by a municipal corporation.

I realize that these two conclusions do not appear to be at all consistent but in view of the provisions of the Constitution, I am of the opinion that they are correct. You are therefore advised that:

1. A municipal corporation may as part of the compensation of its employes, pursuant to proper action by its legislative authority, authorize the payment of all or a portion of a premium of group life insurance covering the lives of such employes, except members of the police and fire departments.

2. An insurance company may not lawfully issue a contract of life insurance in this state covering a group of employes of a municipal corporation unless the entire premium on such policy is to be paid by such employes.

Respectfully,

THOMAS J. HERBERT,

Attorney General.