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1. MUNICIPAL PUBLIC UTILITIES BOARD—NOT REQUIRED TO OBTAIN APPROVAL OF MUNICIPAL BOARD OF CONTROL BEFORE AWARD OF CONTRACTS IN EXCESS OF \$500.00 — CONTRACTS IN DEPARTMENT OF PUBLIC SERVICE—SECTIONS 4326-1, 4403 G. C.
2. BOARD NOT ENTITLED TO MEMBERSHIP OR REPRESENTATION ON MUNICIPAL BOARD OF CONTROL OF WHICH THE MAYOR, DIRECTOR OF PUBLIC SERVICE AND DIRECTOR OF PUBLIC SAFETY SHALL CONSTITUTE MEMBERSHIP—SECTIONS 4326-1, 4402 G. C.

SYLLABUS:

1. A municipal public utilities board created in accordance with Section 4326-1, General Code, is not required to obtain the approval of the municipal board of control before awarding contracts in excess of \$500.00 as required by Section 4403, General Code, with respect to contracts in the department of public service.

2. A municipal public utilities board created pursuant to Section 4326-1, General Code, is not entitled to membership or representation on the municipal board of control established by Section 4402, General Code, which provides that the mayor, director of public service and director of public safety shall constitute the membership thereof.

Columbus, Ohio, October 6, 1949

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“A question has arisen in connection with the current examination of the city of Sidney, Shelby County, Ohio, which requires interpretation of the provisions of Sections 4402 and 4403, General Code, and the authority of the Board of Control over contracts awarded by a Public Utilities Board created pursuant to the provisions of Section 4326-1, General Code.

“The council of the aforesaid city passed Ordinance 2400, January 5, 1948, creating a Board of Public Utilities, a copy of which was filed with your office December 16, 1948, in connection with a previous request for an opinion on other matters involving

the Public Utilities Board of that city. Opinion No. 4236, dated January 5, 1949, was rendered in answer to our former request.

"The question of the authority of the Board of Control was not raised at that time. However, the Mayor and the Safety-Service Director now contend that the Board of Control must approve all contracts before an award can be made by the Public Utilities Board.

"Section 4326-1, G. C. is a comparatively new statute, which became effective August 11, 1943, and we are unable to find any official rulings interpreting the same, with the exception of said Opinion No. 4236 of January 5, 1949. We do find, however, two other opinions which may, by analogy, have some bearing on the questions raised in connection with the approval by the Board of Control of contracts awarded by the Board of Public Utilities. Said opinions were rendered in connection with the power of a Board of Park Commissioners to award contracts, and are as follows:

"A. G. Opinion 223, dated April 10, 1915, page 425 of 1915 Opinions

"A. G. Opinion 2037, dated June 26, 1930, page 1009 of 1930 Opinions

Please refer to the aforesaid statutes and Opinions, and give us your formal Opinion in answer to the following questions:

"1. When a city has created a Board of Public Utilities in the manner provided by Section 4326-1, G. C., does such board have the authority to award contracts in excess of \$500 without the approval of the Board of Control, as provided in Section 4403, G. C.?

"2. When a Public Utilities Board has been created by Council, and the members of such board are duly appointed and properly organized in accordance with the provisions of Section 4326-1, G. C., is such board entitled to membership or representation on the Board of Control created under Section 4402, G. C.?

"3. If the power of the Board of Control, in the approval contracts, does extend to those contracts awarded by a Board of Public Utilities created under Section 4326-1, General Code, how shall the membership of such Board of Control be constituted in view of the provisions of said Section 4326-1, G. C. substituting a utilities board for the Service Director in the operation and management of municipal utilities?

"4. If it is determined that said Utilities Board is entitled to representation on the Board of Control, would such

Utilities Board have more than one vote on matters before the Board of Control for approval?"

Your first question places in issue interpretation of Section 4403 of the General Code of Ohio, which reads as follows:

"No contract in the department of public service or the department of public safety in excess of five hundred dollars shall be awarded except on the approval of the board of control, which shall direct the director of the appropriate department to enter into the contract. The members of the board shall prepare estimates of the revenue and expenditures of their respective departments to be submitted to the council by the mayor, as provided by law."

It is clear that the contracts of a municipal public utilities board do not fall within the express terms of the above statutory language. It is only contracts "in the department of public service or the department of public safety in excess of five hundred dollars" which require the approval of the municipal board of control. I am not inclined to believe that the legislature in enacting Section 4326-1, General Code, authorizing the establishment of municipal public utilities boards, intended to effect an amendment of Section 4403, supra, to require that contracts of such boards be subject to the approval of the municipal board of control. In fact, I am of the view that the reason for Section 4326-1, supra, was to permit municipalities to place responsibility for the management and operation of municipally owned public utilities in a board which would be divorced from political considerations and independent of the other offices of the municipal administration.

You suggest that two earlier opinions, found in 1915 Opinions of the Attorney General, page 425, and 1930 Opinions of the Attorney General, page 1009, concerning the power of municipal boards of park commissioners to award contracts, may be helpful in interpreting the above section. While it was held in effect in both opinions that a board of park commissioners, created by authority of Section 4053, General Code, could not award a contract in excess of \$500 without the approval of council or the municipal board of control, the conclusion was reached by reason of Section 4063, General Code, which provides:

"In the letting of contracts, the board of park commissioners shall be governed by the same laws as govern the letting of contracts by the director of public service."

There is no similar statutory provision which requires that a municipal public utilities board be governed in the letting of contracts by the same laws which govern the letting of contracts by the director of public service.

I have also examined Opinion No. 4236, dated January 5, 1949, which appears in 1948 Opinions of the Attorney General, page 610, referred to in your letter, and agree that the question at issue here was not considered there. I should probably also mention that the municipal ordinance creating the public utilities board apparently makes no provision for the letting of contracts by the board. In addition, I should like to note that removal of control over municipally owned public utilities from the department of public service still leaves that department with substantial duties and responsibilities in municipal affairs.

Therefore, in answer to your first question, I am of the opinion that a municipal public utilities board created in accordance with Section 4326-1, General Code, is not required to obtain the approval of the municipal board of control before awarding contracts in excess of \$500 as required by Section 4403, General Code, with respect to contracts in the department of public service.

Your second question involves an interpretation of Section 4402 of the General Code, which reads as follows:

“The mayor, director of public service and director of public safety shall constitute the board of control. The mayor shall be ex-officio president. The board shall keep a record of its proceedings. All votes shall be by yeas and nays and entered on the record, and the vote of a majority of all the members of the board shall be necessary to adopt any question, motion or order.”

The above section leaves little for construction. It is precise and clear as to the membership of the board of control. I can see no basis for enlarging membership of such board by implication. To find that the municipal public utilities board was entitled to representation on the municipal board of control would enmesh the public utilities board in the affairs of the municipality outside the scope of its duties. Therefore, in answer to your second question, I am of the opinion that a municipal public utilities board created pursuant to Section 4326-1, General Code, is not entitled to membership or representation on the municipal board of control established by Section 4402, General Code, which provides that the mayor, director of public service and director of public safety shall constitute the membership thereof.

In view of my answer to your first and second questions, it does not appear necessary to answer your third and fourth questions.

Respectfully,

HERBERT S. DUFFY,
Attorney General.