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1. MUNICIPALITY—OWNS AND OPERATES TRANSIT SYSTEM—MAY PAY TO ANY OTHER ADMINISTRATIVE DEPARTMENT OF CITY FULL VALUE FOR ANY SERVICE OR MATERIAL FURNISHED — PART OF OPERATING EXPENSE.

2. MAY NOT PAY FROM OPERATING REVENUES OR PROFITS OF TRANSIT SYSTEM INTO GENERAL FUND OF CITY, STIPULATED SUM FOR GENERAL SERVICES OF COUNCIL, MAYOR OR OTHER GOVERNMENTAL AGENCIES OR DEPARTMENTS OF CITY — MAY TRANSFER SUCH PROFITS TO GENERAL FUND—SECTION 5625-13 ET SEQ., G. C.

3. AUTHORITY OF OFFICIALS WHO OPERATE MUNICIPAL TRANSIT SYSTEM TO MAKE PURCHASES AND INCUR EXPENSES—OPINIONS ATTORNEY GENERAL 1942 PAGE 773 APPROVED AND FOLLOWED.

4. FUNDS SUBJECT TO PROVISIONS OF UNIFORM DEPOSITARY ACT—SECTION 2296-1 ET SEQ., G. C.—EXCEPTION—CHARTER—SPECIAL PROVISIONS AS TO DEPOSIT OF PUBLIC MONEYS.

5. CITY OF CLEVELAND — TAX LEVIES — UNIFORM TAX AND BUDGETARY LAW — ANNUAL GENERAL APPROPRIATION MADE BY COUNCIL—ARTICLE XII, SECTION 2, CONSTITUTION OF OHIO, SECTIONS 5625-1 TO 5625-39 G.C.

6. CITY COUNCIL, CLEVELAND — GENERAL APPROPRIATION OF REVENUES—CLEVELAND TRANSIT SYSTEM—AUTHORITY OF TRANSIT COMMISSION — CONTRACT — EXPENDITURES NOT EXCEEDING TEN THOUSAND DOLLARS.

7. TRANSIT COMMISSION—CASES OF EMERGENCY—PURCHASES INVOLVING EXPENDITURE NOT EXCEEDING TEN THOUSAND DOLLARS WITHOUT ADVERTISING — CLEVELAND CHARTER PROVISION—SECTION 113-4 NOT INVALID—NO VIOLATION OF SECTION 4328 G. C.

SYLLABUS:

1. A municipality owning and operating a transit system may legally pay, as a part of the operating expense of such system, to any other administrative department of the city, the full value of any service rendered or material furnished by such other department to the transit system.

2. A municipality may not legally pay from the operating revenues or profits of its transit system into the general funds of the city a stipulated sum for the general services of the council, mayor or other governmental agencies or departments of the city, but may, if duly authorized by proceedings under Section 5625-13, et seq., General Code, transfer such profits to its general fund.

3. The officials charged with the operation of a municipal transit system may, if they in good faith deem it essential to the efficient operation of the system, make such purchases and incur such expense as would be made or incurred under like circumstances by a private owner in the operation of such system. (1942 Opinions Attorney General, p. 773, approved and followed.)

4. The funds of a municipally owned transit system are subject to the provisions of the Uniform Depositary Act (Section 2296-1 et seq., General Code) unless, pursuant to the provisions of Section 2296-1, General Code, the municipality has adopted a charter having special provisions respecting the deposit of its public moneys.

5. The city of Cleveland, having by amendment of its charter made pursuant to the authority of Article XII, section 2, of the Constitution, and Section 5625-14, General Code, taken itself out from the provisions of Sections 5625-2 and 5625-24 of the General Code in so far as they relate to the limitation on its tax levies, is nevertheless subject to all the remaining provisions of the Uniform Tax and Budgetary Law (Sections 5625-1 to 5625-39, General Code), including the annual general appropriation to be made by council as provided by Section 5625-29, General Code.

6. When the council of Cleveland has made a general appropriation of the revenues available and estimated revenues of the Cleveland Transit System, and has placed them at the disposal of the transit commission created and governed by Sections 113-1 to 113-4, inclusive, of the Cleveland city charter, said transit commission has authority, under Section 113-4 of said charter, to make any contract involving an expenditure not exceeding ten thousand dollars without further specific authorization of the council.

7. The provisions of Section 113-4 of the Cleveland city charter, authorizing the transit commission in case of emergency to make purchases involving an expenditure not exceeding ten thousand dollars without advertising, is not invalid as being in violation of Section 4328 of the General Code.

Columbus, Ohio, December 31, 1943.

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

Gentlemen:

I acknowledge receipt of your communication requesting my opinion, and reading as follows:

> "We are enclosing herewith three letters from our chief examiner, city of Cleveland accounts, to which are attached three groups of questions, concerning the Cleveland Transit System, acquired by said city on April 28, 1942.
>
> One series of questions pertains to the current operation of the System; one, to the expenditure made by various city departments including the Transit System; and one to the operation of an advertising agency which was formerly wholly owned by the Cleveland Railway Company.
>
> Will you kindly examine the inclosures and give us your opinion in answer to said questions, in order that this Bureau and its Examiners may have the benefit of proper legal advice in the conduct of the current examination of accounts of the Cleveland Transit System?"

Accompanying your letter are several communications from your examiner. For the purpose of this opinion, I will consider only the letter concerning the current operations of the system, which reads as follows:

> "In connection with the examination of the records and accounts of the Cleveland Transit System, we have noted certain payments to other departments of the City of Cleveland for various services rendered which may be described as follows:
>
> 1. To the division of streets for services rendered by a paving inspector who is assigned to enforce the rules and regulations of the Service Department in connection with street restorations and repairs made by the transit system. Payment for this service was provided for in the franchise under which the Cleveland Railway Company formerly operated the system. There has been no further legislation of council to provide for this charge since the city purchased the utility.
>
> 2. To the division of architecture for services rendered by employees of that division for the Cleveland Transit System. The amount charged is the actual payroll of such employees plus the share of workmen's compensation and retirement contribution.

3. To the division of buildings and smoke for building, sewer, plumbing and electrical permits.

4. To the department of finance as a reimbursement for a share of the state's assessment against the city for workmen's compensation at the rate of 2.5 percent, while the city's general rate is .81 percent.

5. To the department of service of a rental charge for the use of rails installed in the streets or over bridges and which were owned by the city before the Transit System was acquired by the city.

We find further that a claim has been rendered by the city's department of finance against the Cleveland Transit System, which yet remains unpaid as follows:

For general services rendered by the various governmental departments of the city of Cleveland, including the council, the mayor's office, the department of finance and the department of law. The amount claimed is one hundred thousand dollars, and is in addition to the payment provided for by Section 41 of the Charter of the city of Cleveland as amended November 3, 1942, the mortgage indenture, etc.

We also note that expenditures have been made or are contemplated for purposes which may be described as follows:

1. Advertising and publicity, an example of which is enclosed herewith.

2. Membership in the American Transit Association.

3. Subscriptions to newspapers and to trade or technical magazines.

4. Expenses of officers of the Cleveland Transit System incurred in attending conventions.

5. For services rendered by the Cleveland Safety Council in promoting general safety measures.

In view of the Home Rule provisions of the Constitution of Ohio, and the provisions of the Charter of the city of Cleveland and amendments thereto, does the city have a legal right to incur the various expenditures described above against the funds of the Cleveland Transit System?

We also submit other general questions pertaining to the

administration of the affairs of the Cleveland Transit System which we state as follows:

1. Are the funds of the Cleveland Transit System in the hands of the City Treasurer subject to the provisions of the Uniform Depositary Act?

2. Are expenditures of the funds of the Cleveland Transit System subject to the provisions of the Uniform Budgetary Act, or does the provisions of the charter prevail? And must the expenditures of this fund be made pursuant to appropriation by the council?"

The general background in the consideration of these and kindred questions concerning the acquisition and operation by a municipality of a public utility such as the one in question, is to be found in the provisions of Sections 4, 5 and 12 of Article XVIII of the Ohio Constitution. These sections read as follows:

Section 4:

"Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the products or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility."

Section 5:

"Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission."

Section 12:

"Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may

> issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure."

Prior to the adoption in 1912 of Article XVIII of the Constitution of Ohio, the Legislature had given to municipalities certain limited rights and powers as to the acquisition and operation of public utilities. These constitutional provisions, however, not only broaden the field but greatly enlarge the powers of municipalities in respect to these matters. The courts of the state have by a considerable number of decisions made it clear that these constitutional provisions remove the municipality rather completely from control of the Legislature in the matter of the exercise of the powers given.

In the case of Dravo-Doyle v. Orrville, 93 O. S. p. 236, the Supreme Court said in the first branch of the syllabus:

> "Section 4, Article XVIII of the Constitution, confers plenary power on 'any municipality' to acquire, construct, own, lease and operate any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and to contract with others for any such product or service."

The court in that case had before it Section 3990 of the General Code, which authorized a municipality to erect or acquire gas or electric works, but contained a proviso that in villages where such works had already been erected by any person, company or corporation, council must before proceeding procure the consent of the owner of such private utility. It was held that the proviso was unconstitutional and void by reason of the provisions of Article XVIII, section 4, above quoted. The court, in the course of its opinion, referring to the limitations contained in the statutes, said:

> "This limitation is wholly inconsistent with the plenary grant of power contained in the article of the constitution referred to, and the statute, so far as this inconsistent provision is concerned, fell simply because it was inconsistent. Authority given by the constitution cannot be lessened by statute. There is no equivalent for a constitutional provision."

Again, the court held in the case of Power Company v. Steubenville,

99 O. S. 421, that where a municipality had, pursuant to Section 4, Article XVIII of the Constitution, contracted with a public utility for its product or service for the municipality and its inhabitants, at a rate specified in the contract, the public utilities commission had no authority to change or alter such rate. Speaking of the effect of statutes inconsistent with constitutional grant in question, the court said in its opinion at page 428:

> " * * * and if there were any conflict between the provisions of the Constitution and the provisions of any statute of this state existing at the time or enacted since this constitutional amendment was adopted such statute must fall."

A like decision was rendered in the case of Lima v. Public Utilities Co., 100 O. S., 416.

In the case of State ex rel. v. Weiler, 101 O. S. 123, the court, having under consideration the portions of the Constitution to which I have referred, particularly Section 12, Article XVIII, pointed out that while the Legislature, by other provisions of the Constitution, was given authority to limit the power of municipalities in levying taxes and incurring debts, such limitations would not apply to moneys borrowed as prescribed in Section 12, Article XVIII, secured only by the property and revenues of the public utility. The court said in its opinion at page 128:

> "The purpose to grant to the municipalities of the state full and complete power with reference to the acquirement, ownership and operation of public utilities was clearly manifested by the members of the constitutional convention in their discussion of the provisions in question as well as by the express language of the constitutional amendments then under consideration and subsequently adopted."

Again, at page 130, the court, after calling attention to certain statutes which had been in force, authorizing the acquisition of specified utilities, said:

> "The acquirement or construction of certain utilities was thereby authorized and included in the purposes for which bonds of the municipality, pledging its general credit, might be issued. The construction or acquirement of a transportation system was not included and hence was not authorized, but as we have seen, the constitutional convention sought to and did confer upon municipalities the broad power to acquire and operate public utilities, which would include a system of transportation in a municipality, and any legislative action inconsistent with the full and free exercise of the power thus conferred is an unauthorized limitation upon the powers granted and must fall, simply because it is inconsistent therewith, as clearly pointed out in the case of Dravo-Doyle Co. v. Village of Orrville, 93 Ohio St., 236."

Numerous other cases might be cited in support of the proposition that these constitutional provisions confer plenary power upon the municipalities in the matter of municipal ownership of public utilities and that statutes which in anywise interfere with their acquisition, management and operation must fall. Among others we note Link v. Utilities Commission, 102 O. S. 336, 338; Middletown v. City Commission, 138 O. S. 596; Ricketts v. Mansfield, 43 O. App. 316. In the case of Middletown v. City Commission, supra, it was held in reference to Section 12 of Article XVIII, authorizing the issuance of bonds secured by the property of the utility, as follows:

> "Section 12, Article XVIII of the Constitution, is self-executing and self-sufficient, and utility mortgage bonds created and issued strictly within its terms are not affected by other parts of the Constitution or by the Uniform Bond Act (Section 2293-1 et seq., General Code)."

All of these decisions point to the general proposition that the Constitution intends to give municipalities very broad and complete powers not only in the acquisition but in the management and operation of its public utilities, free from any restrictions which the Legislature might seek to impose.

Another proposition that may be laid down as a general foundation for our discussion is that embodied in the syllabus of the case of Travelers Insurance Co. v. Wadsworth, 109 O. S. 440:

> "1. The board of trustees of public affairs of a village, which under authority granted by the Constitution and general law operates an electric light and power plant and lines, has power within Sections 4361 and 3961, General Code, to contract for an insurance policy of indemnity against liability for the operation of the said property.
>
> 2. The power to establish, maintain, and operate a municipal light and power plant, under the Constitution and statutes aforesaid, is a proprietary power, and in the absence of specific prohibition, the city acting in a proprietary capacity may exercise its powers as would an individual or private corporation."

It will be noted that the court mentions certain statutes which undertake to give municipalities powers of the broad character indicated by the syllabus above quoted. It will be evident, however, on reading the decision that the court found abundant authority in the Constitution itself for its holding without resorting to the statutes. Judge Allen, speaking for a unanimous court, quoted with approval from the case of Butler v. Karb, 96 O. S. 472, the first paragraph of the syllabus, reading as follows:

"Municipalities of the state are authorized to establish, maintain and operate lighting, power and heating plants and furnish the municipality and the inhabitants thereof light, power and heat. The powers thus conferred are proprietary in their character and in the management and operation of such plant municipal officials are permitted wide discretion."

Coming to the subject of proprietary powers, the court said:

"With regard to the exercise of proprietary powers the rule is that when exercising those powers the municipality may act *as would an individual or private corporation.* This is the general rule upon the subject.

When a municipality is engaged in operating a municipal plant, under an authority granted by the general law, it acts in a business capacity, and stands upon the same footing as a private individual or business corporation similarly situated. * * * " (Emphasis added.)

Citing Pond, Public Utilities, Section 11; 4 McQuillin on Municipal Corporations, Section 1801; 3 Dillon on Municipal Corporations (5th Ed.), Section 1303, and quite a list of cases from other jurisdictions.

In view of the clear and emphatic statements of our own Supreme Court in the case to which I have just referred, I do not deem it necessary to go into an analysis of the numerous authorities which are cited by the court and which could be considerably amplified. It is sufficient for our purpose to rely implicitly on the broad principle laid down by the court in the Wadsworth case. Let it be noted that the court was considering the power of the village, which had an electric light plant, to purchase a policy of indemnity insurance. And the court applied the following rule as stated at page 449 of the opinion:

"Would a private business man take out liability insurance upon such a business as this Wadsworth utility? Such insurance is often written upon business operated by individuals and by private corporations, and making contracts therefor is generally considered to be the act of a prudent business man."

It will be observed that the court found no statute expressly authorizing the purchase by a municipality of liability insurance. Where the constitution has granted ample power to a municipality, there is, of course, no occasion to look to the acts of the Legislature to find a grant. The court did, however, call attention to Section 4361, General Code, which authorizes the trustees of public affairs of a village to "protect" works, plants and public utilities belonging to said village.

Referring to the claim made in that case, that the contract involved was invalid for failure to procure the clerk's certificate that money was in the treasury to meet the obligation, as required by Section 3806, General Code, then in force, and similar in its requirements to Section 5625-33 now in force, the court said at page 452:

> "However, Section 3806 applies only where payment is to be made from money raised by taxation. Kerr v. City of Bellefontaine, 59 Ohio St., 446, 52 N. E. 1024."

Section 5625-33 requires a certificate of the fiscal officer that the money required for any proposed expenditure or contract has been lawfully appropriated and is in the treasury or in process of collection.

In this connection it may be observed that by the present provision of Section 5625-36, General Code, it is provided:

> "The certificate required by sections 33 and 34 of this act (G. C. secs. 5625-33 and 5625-34) as to money in the treasury shall not be required for the making of contracts on which payments are to be made from the earnings of a publicly operated water works or public utility, but in the case of any such contract, made without such certification, no payment shall be made on account thereof, and no claim or demand thereon shall be recoverable except out of such earnings."

This legislation is apparently in recognition of the independence which was intended, both by the constitution and the statutes, to be accorded to municipalities in the operation of their utilities, and in the disposition and expenditure of the revenues derived from such operation.

We may think of the municipality as acting in a dual capacity in matters under consideration. It is on the one hand the purchaser and on the other hand the seller. We are concerned with the powers of the city as the owner of a transit system to make certain purchases of materials and services. On the other hand we are concerned with the power of the city to sell certain services or materials. If the questions which you raise, as to the right of the transit company to buy the services mentioned in your examiner's letter, were raised in connection with its proposed purchase of those services from outside sources, there would seem to be little doubt or difficulty. One would simply apply as to each proposition the question asked by Judge Allen in the case to which I have referred—"Would a private business man purchase this service in the conduct of the utility of which he was the owner?" Plainly he would if he considered it a proper and useful expenditure for the successful conduct of his

business. Would it be proper for him to pay for such articles or service out of the revenues of his business? Plainly it would.

In an opinion which I rendered to your department on October 30, 1942, found in 1942 Opinions Attorney General, p. 773, I held:

> "When, in the judgment of the officials charged with the operation of a municipally owned transit system, publication of a monthly magazine and distribution thereof among the employes of such system is deemed essential to the efficient operation thereof, the cost of such publication and distribution is a legitimate part of the operating expense of such transit system."

A like ruling would apply to the purchase of every service mentioned in your examiner's letter, except possibly with reference to the services of the governmental departments, such as city council, mayor, etc. As to that I will make comment further on.

The right of the municipality to *sell* the various services outlined in your letter seems to me to present no different questions than those involved in the right of its utility to buy.

The city does render certain services to individuals or to private industries for which it should make and does make a charge. If it has property which it desires to dispose of, it sells it to individuals or private corporations and is paid therefor. In the management of its own several departments it is certainly good business practice for one department which receives property or service from another department to pay for the same. For instance, if we assume that a municipality owned both a transit system and a waterworks, and the waterworks should employ the vehicles of the transit system to deliver to it large supplies of material from one part of the city to another, no one would question the propriety of reimbursing the transit system out of the funds of the waterworks for the services so rendered. As a matter of fact the law requires this to be done. Section 280, General Code, which is a part of the statutes relating to the functions of the Bureau of Inspection and Supervision of Public Offices, provides:

> "All service rendered and property transferred from one institution, department, improvement, or public service industry, to another, shall be paid for at its full value. No institution, department, improvement, or public service industry, shall receive financial benefit from an appropriation made or fund created for the support of another. When an appropriation account is closed, an unexpended balance shall revert to the fund from which the appropriation was made."

Accordingly, there is not only no impropriety in a city charging one of its utilities for any special service which it may render, or material which it may furnish to its utility, but it would appear to be its duty to do so.

This brings me to a consideration of the items of service by the city departments mentioned in your examiner's letter. Take for example the charge for building, sewer, plumbing and electrical permits. The city certainly has a right to charge a private individual who applies for any of these permits a reasonable fee for their issuance. If the municipally owned utility found it necessary to purchase these permits somewhere other than in its own city, it certainly would have a right to purchase and pay for them. It follows, then, in my opinion, that the city owning a municipal utility of the character in question had a right to make a charge against the utility for such permits. The same principle would apply to all of the various services mentioned in your examiner's letter, except that item which refers to the general service rendered by the various governmental departments of the city, including the council, mayor's office, the department of finance and the department of law.

As to this I cannot apply the principles which I have just stated. These services are purely governmental. In rendering them the city is not dealing in any respect with any proprietary function. The manifest purpose of these services is to provide that general oversight, protection and security which is the very essence and purpose of organized government. These benefits are extended without special charge to all persons and institutions in the municipality, whether resident or transient. They are not services which a municipality sells or can sell to an individual or a private business. They are not the sort of services which any individual or private business needs to purchase or could purchase. If the city is to profit by the operation of its utilities, it cannot be accomplished by the subterfuge of selling to the utility something which cannot be the subject of a sale.

It does not, however, follow that a municipality may not profit by the operation of its public utilities. If in the operation thereof earnings are accumulated in excess of the cost of operation, maintenance, interest and debt charges, the question arises what may be done with such excess earnings?

It is stated in 38 Am. Jur. p. 97, that this question has given rise to a diversity of judicial opinion, some courts holding that such excess earnings cannot be devoted to any other municipal purpose; some, however, including, as I expect to show, Ohio, holding to the contrary. Several incidental questions present themselves. What power has a municipality

in the matter of making rates for the service furnished by its utilities? Has it a right deliberately to maintain rates in excess of actual cost of operation, maintenance and debt charges, whereby a profit will be accumulated? If the profit does accrue, has the municipality the right to turn the same into its general funds? If it has such right, by what procedure may such transfer be made?

I do not think it necessary in this connection to spend time on a discussion of the right of a municipality owning a public utility to establish rates for its services to citizens and customers. That right appears to me to be inherent in the constitutional grant to which reference has been made of authority to "acquire * * * and operate within or without its corporate limits any public utility, the product or service of which is to be applied to the municipality and its inhabitants". This certainly carries with it the necessary implication for the right to fix the rates at which to sell the service of such utility. Furthermore, if it may fix rates by agreement with a public utility with which it contracts for service, as stated in the decisions to which I have called attention, it may certainly fix the rates which it may charge for like services, to be furnished from its own plant.

As to the right to fix a rate which will yield a profit, it appears to me that the court recognized that right in the case of Dravo-Doyle v. Orrville, supra, in holding that the municipality had "plenary power", and in several other cases to which I have referred, declaring that the powers of the municipality given by the constitution could not be limited by legislative enactments. The case of Butler v. Karb, 96 O. S. 472, contains suggestive language in the opinion. At page 483 the court said:

> "We think it must be conceded that the city, acting in a proprietary capacity, may exercise its powers as would an individual or private corporation. It may be that for a time the business will not be remunerative at the rates charged, yet with proper management the business may develop to a point where it will even yield a profit to the city and therefore result to 'its own special benefit and advantage.'"

I find more explicit statements by the court as to the right of the city to fix rates which will yield a profit in the case of Niles v. Union Ice Corporation, 133 O. S. 169, 10 O. O. 239, where the court held:

> "A patron purchasing electric energy from a municipally owned electric light and power plant or system, occupies, with respect to the purchase price paid, the same position as if the purchase were made from a private corporation engaged in the same business. The patron loses all interest in and control over the purchase price after it is paid, and it becomes the exclusive property of the municipality, with the right to use, transfer or divert it to any uses and purposes authorized by law."

This was a case brought by the municipality under favor of Section 5625-13a, et seq., seeking permission to transfer to its general fund a sum of money that had been accumulated as profit from the operation of its municipal light plant. The Union Ice Corporation, having intervened, claimed as a customer of the plant that it had a right to object to such transfer on the theory that the city could charge no more than the amount necessary for the operation, maintenance and debt charges of the plant and that any surplus belonged to the consumer.

The court discusses this proposition at considerable length and Judge Day, speaking for the entire court, says at page 181:

> "This contention proceeds on the theory that a municipality has no right to charge for its utility service or produce a rate in excess of cost, i. e., that it has no right to make a profit. Nevertheless, we are not referred to any statute or constitutional provision denying this right. In the absence of such prohibition, a municipality, no less than a private corporation engaged in the operation of a public utility, is entitled to a fair profit. In the operation of a public utility, a municipality acts not in a governmental capacity as an arm or agency of the sovereignty of the state, but in a proprietary or business capacity."

Citing Travelers Ins. Co. v. Wadsworth, supra, and other authorities.

Proceeding further at page 182 of the opinion, the court says:

> "So long as the rate is reasonable, the courts cannot prohibit a municipality from making a profit on the operation of its electric light and power system, *in the absence of any restriction in the statute* which enables it to operate such system." (Emphasis added.)

In an earlier case, Cincinnati v. Roettinger, 105 O. S. 145, the court, dealing with excess revenues arising from the operation of a municipal waterworks, held:

> "Section 3959, General Code, is constitutional and operates as a valid limitation upon the uses and purposes for which revenues derived from municipally owned waterworks may be applied. By virtue of the provisions of that section, surplus revenues derived from water rents may be applied only to repairs, enlargement or extension of the works, or of the reservoirs, and to the payment of the interest of any loan made for their construction, or for the creation of a sinking fund for the liquidation of the debt."

The court based its holding largely upon the proposition discussed at

length in the opinion that rates and charges for services and product of the utility, to the extent that they are in excess of cost, are in effect "taxes"; and that since the Legislature had the power under the Constitution to limit municipalities in the levying of taxes, that section was a valid exercise of the legislative power. In the Niles case, however, the court, without referring to or overruling the Roettinger case in any respect, asserts positively that such revenues, even as to the excess in question, do not constitute a tax, and says at page 182:

> "The rate charged in excess of cost is not a tax or in the nature of a tax, regardless of how the fund derived therefrom is ultimately used. A municipality, acting in a proprietary capacity, cannot impose taxes. While thus engaged, it is engaged in business but not in the business of government. A municipality may impose and collect taxes only when acting as an arm or agency of the state, but when engaged in business, it does not so act."

I reach the conclusion, therefore, that a municipality has the right to make a profit on the rates charged its customers in the furnishing of product or service of its utilities, and, in the absence of restrictive legislation, to devote such profit to such municipal purposes as it may determine. I do not deem it necessary, for the purpose of this opinion, to go into the remedy for rates that are so greatly in excess of cost as to be arbitrary or oppressive.

The case last cited and discussed, Niles v. Union Ice Corporation, also furnishes an answer to the remaining question which I have propounded, namely, as to the procedure whereby profits of a municipal utility may be turned into the general funds of the municipality, for the court there held:

> "Section 5625-13a, General Code, permitting political subdivisions to transfer 'any public funds under its supervision' to another fund, does not release municipal corporations from the limitations upon their taxing power, imposed by the Constitution."

The court appears by its rulings in this case to recognize the holding in the Roettinger case as to the right of the Legislature to limit or control the application of excess revenues from a municipal utility, but the court nevertheless made it clear that the Legislature had not undertaken to exercise any such right of control as to the revenues of the municipally owned electric light plant, and it is certainly true that no statute can be found whereby the Legislature has undertaken to control or limit the disposition of the funds from revenue arising from the operation of a municipal transit system. The Legislature has, however, provided means

whereby funds of a municipality may be transferred from one fund to another. And note that Section 5625-13 provides:

> "No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, *except as hereinafter provided:*" * * * (Emphasis added.)

In view, therefore, of the provisions of Section 5625-13, General Code, and of the supplementary sections 5625-13a, et seq., relating to the transfer of funds *whether raised by taxation or otherwise,* it would follow that the method prescribed by the Legislature is exclusive of other procedure and that the procedure outlined in your letter, whereby the transit system should pay directly out of its revenues into the municipal treasury the sum named for the general services of the mayor, city council, etc., would be merely an attempt to do in an unauthorized manner what could be done lawfully by following the statutes relating to the transfer of funds. I therefore hold that it would be illegal for the transit company to pay the bill of $100,000, or any other sum, for the general services of the various governmental departments of the city, as referred to in your letter.

Your request also calls for an opinion as to the right of the city to pay from the funds of the transit system for certain miscellaneous items, including advertising, membership in American Transit Association, subscriptions to certain magazines, expenses of officers in attending conventions, and services rendered by Cleveland Safety Council. I have no definite information as to the precise nature of any of these services. Nor do I deem it necessary to inquire. The question is to be answered by applying the rule suggested by Judge Allen in the Wadsworth case, supra. My opinion relative to the publication by the transit system of a monthly magazine, the syllabus of which I have already quoted, will express my judgment as to these expenditures. In other words, if these services are deemed by the officials charged with the operation of the system as essential to the efficient operation thereof, the cost is a legitimate part of the operating expense of such transit system.

You further inquire whether the funds of the transit system in the hands of the city treasurer are subject to the provisions of the Uniform Depositary Act. There certainly can be no question that the funds of the transit system belong to the city, and since they are, as stated in your question, moneys in the custody of the city treasurer, it would seem too clear to require any argument or discussion that they are subject to the provisions of the depositary act. That act comprises Sections 2296-1 to 2296-25, inclusive, of the General Code. Section 2296-1 contains among others, the following definitions of terms as used in the act:

"(a) 'Public moneys' means all moneys in the treasury of the state, or any subdivisions thereof, or coming lawfully into the possession or custody of the treasurer of state, or of the treasurer of any such subdivision. 'Public moneys of the state' includes all such moneys coming lawfully into the possession of the treasurer of state; and 'public moneys of a subdivision' includes all such moneys coming lawfully into the possession of the treasurer of the subdivision.

(b) 'Subdivision' means any county, school district, municipal corporation (excepting a municipal corporation or a county which has adopted a charter under the provisions of article XVIII or article X of the constitution of Ohio having special provisions respecting the deposit of the public moneys of the municipal corporation or county), township, municipal or school district sinking fund, special taxing or assessment district or other district or local authority electing or appointing a treasurer in this state."

As no data has come to my hands relative to any charter provision adopted by the city of Cleveland undertaking to make special provisions respecting the deposit of its moneys, I must assume that the funds of the transit system in the hands of the city treasurer are subject to the provisions of the Uniform Depositary Act.

Your communication presents the further question as to the applicability of the Uniform Budgetary Act to expenditures from the funds of the transit system. The right of the Legislature to limit the powers of municipalities in the levy of taxes and contracting debts is found in Article XIII, Section 6, of the Constitution of 1851, and it is restated in Article XVIII, Section 13, adopted in 1912. In Article XIII the Legislature was given the right to "restrict" and in Article XVIII to "limit". Neither provision pretends to give the Legislature the right to "confer" on municipalities the power either to tax or to spend. The fact that the constitutional convention of 1912 saw fit to reiterate this safeguard against municipal extravagance while granting greatly increased municipal power is significant.

If all municipally owned utilities were financed as permitted by Article XVIII, Section 12, by the issuance of bonds secured only by the utility, as I understand the Cleveland Transit System is, and operated solely out of the revenues of the utility, there would be much plausibility in the argument that the power given to the Legislature, as above stated, was intended merely to limit the powers of taxation and expenditure of money derived from taxes, and should not be construed as extending to the revenues arising from the operation of such utilities. But municipalities are not limited to that mode of financing or operation. In the case of

State ex rel. v. Weiler, 101 O. S. 123, to which I have already referred in another connection, it was held:

> "Municipalities of the state are empowered by constitutional provision to acquire any public utility, the product or service of which is to be supplied to the municipality or its inhabitants, and they may issue bonds to raise money for such purpose, pledging the general credit of the municipality to their payment."

The case of Cincinnati v. Roettinger, supra, dealt with surplus revenues of the water works and an injunction against the application of such surplus revenues to the payment of fixed charges and current expenses of the city. I have already quoted the holding of the court to the effect that Section 3959, General Code, operated as a limitation on the purposes to which revenues from a municipal water works could be applied. The court had before it an ordinance which provided that surplus revenues from the water works should be paid over to the general fund and be used for general municipal purposes. Marshall, C. J., after characterizing such surplus revenue as "taxes", said:

> "If the ordinance under consideration in this case amounts to an effort to levy taxes for general municipal purposes, and if the taxing power is legislative in its nature, then the legislature has the power to place such restrictions thereon as have in fact been provided in Section 3959, General Code. * * * and the provisions of Section 3959 are in the nature of such limitation."

The court also had the question whether Section 3799, General Code, which was the predecessor of Section 5625-13, was in conflict with Article XVIII of the Constitution. That section contained the provision:

> "But there shall be no such transfer except among funds raised by taxation upon all the real and personal property in the corporation, nor until the object of the fund from which the transfer is to be effected has been accomplished or abandoned."

Accordingly, since the surplus revenues of the water works had been characterized by the court as taxes, it held:

> "Section 3799, General Code, is in the nature of a limitation upon taxation, and as applied to cities and villages under charter governments does not violate any of the sections of Article XVIII of the Ohio Constitution and operates to prevent the transfer of revenues from the waterworks fund to the general fund."

As I have already pointed out, Niles v. Union Ice Co., supra, thoroughly explodes the theory that surplus revenues from a municipal utility

are taxes. In addition to the quotation from the opinion in that case, which I have already given, I note the following strong language used by the court:

> "A tax is a tribute levied for the support of government. 38 Ohio Jurisprudence, 714, Section 3. A rate charged for a public utility service or product is not a tax, but a price at which and for which the public utility service or product, is sold (citing authorities), and the excess charged over and above cost, as a profit, enters into and becomes a part of the price. Payment of a tax is an obligation imposed. Payment of a price for a utility product or service furnished by a municipality is voluntarily assumed. Payment of the one is involuntary (38 Ohio Jurisprudence, 716, Section 6); payment of the other entirely voluntary. The obligation in the one case arises by operation of law, while in the other case it arises out of contract, express or implied. * * *
>
> Since the rate charged is not a tax in its inception, ultimate use of surplus funds derived therefrom for the support of municipal government will not convert it into taxes or cause it to assume the nature of taxes."

However, since the court did not find it necessary to overrule the Roettinger case, we must accept it as the law and hold that municipal revenues derived from a utility owned by it, although the same is non-tax supported, are subject to enactments of the Legislature limiting their expenditure, and that such revenues and the expenditure thereof are within the provisions of the so-called Uniform Budgetary Law, which is a part of the Uniform Tax Law, unless the city has, by charter provision, taken steps to take itself out of the provisions of that law in so far as it may legally do so.

Section 5625-14 provides in part:

> "The provisions of sections 5625-2 and 5625-24 of the General Code shall not apply to the tax levies of any municipality which, by its charter or amendment thereto, provides or has provided for a limitation of the total tax rate which may be levied without a vote of the people for all the purposes of the municipality, or for the current operating expenses thereof. Said charter or charter amendment may also provide for the levying of taxes by said legislative authority outside of said charter limitation upon approval by the majority of the electors of said municipality voting thereon at a November election."

Section 5625-2, therein referred to, is the ten mill limitation prescribed by Article XII, Section 2, of the Constitution, which constitutional provision permits a municipality by provision in its charter to exceed that limit. Section 5625-24 contains the provisions authorizing the budget com-

mission of the county to adjust the budgets of the various taxing subdivisions so as to keep the total levy within the limitations of the law.

I find on examination of the Cleveland City Charter that said city has adopted an amendment, embraced in Sections 37-1, 37-2, 37-3 and 37-4 of its charter, providing, in accordance with Section 5625-14, General Code, for a limitation of the rate which may be levied without a vote of the people, and for additional levies to be approved by vote of a majority of the electors. By the adoption of such an amendment, therefore, the city has taken itself out of the provisions of Sections 5625-2 and 5625-24 of the General Code to the extent contemplated by Section 5625-14, General Code. It has not, however, escaped certain other provisions of the tax law.

Section 5625-4 requires the division of the taxes levied into certain specified distinct levies.

Section 5625-9 requires the establishment of several specified funds, including:

> "(g) A special fund for each public utility operated by a subdivision."

Sections 5625-13 and 5625-13a to 5625-13g provide the circumstances and the exclusive means by which moneys may be transferred from one fund to another; applicable as we have seen to surplus earnings of a public utility. Niles v. Union Ice Company, supra.

Sections 5625-20 to 5625-33, inclusive, of the General Code, relate to the preparation of the budget of each taxing subdivision and the appropriation to the various funds, which appropriation must be within the estimated revenues certified by the budget commission after it has made the adjustments required by Section 5625-24, General Code. In view of the provisions of Section 5625-14, General Code, to which I have called attention, and the action of the city of Cleveland pursuant thereto, it might be argued that the city had entirely exempted itself from compliance with the provisions of law relative to preparation of a budget and appropriation based on the budget commission's certificate. But an examination of Section 5625-14 will disclose that the only exemption a municipality may secure is from the ten mill limitation and the application by the budget commission of that limit to the budget requirements of that municipality. There is left to the budget commission all the other powers given by Section 5625-24 and related sections, but as to such municipality the commission must allow it for its own purposes the rate which it has fixed by its charter, instead of holding it within the ten mill limitation.

The intent of the Legislature to make these restrictive regulations apply to all revenues and expenditures of a municipality, including those growing out of its operation of public utilities, is shown by the provisions of Sections 5625-33 and 5625-36, General Code. Section 5625-33 provides in part:

> "No subdivision or taxing unit shall:
>
> (a) Make *any appropriation* of money except as provided in this act; provided that the authorization of a bond issue shall be deemed to be an appropriation of the proceeds of the same for the purpose for which such bonds were issued, but no expenditure shall be made from any bond fund until first authorized by the taxing authority.
>
> (b) Make *any expenditure* of money unless it has been appropriated as provided in this act. (G. C. Secs. 5625-1 to 5625-39) * * *
>
> (d) Make *any* contract or give *any order* involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same * * * has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. * * * " (Emphasis added.)

Section 5625-36 makes a specific exception as to one feature of the requirement of Section 5625-33, providing:

> "The certificate required by sections 33 and 34 of this act (G. C. Secs. 5625-33 and 5625-34) *as to money in the treasury* shall not be required for the making of contracts on which payments are to be made from the *earnings* of a *publicly operated water works or public utility.*" * * * (Emphasis added.)

The reaction from this exception, however, leaves us with the conviction that except for this certificate as to *money being in the treasury,* the provisions of Section 5625-33, and of all the previous sections of which it is the culmination, do apply to the revenues arising from the operation of a municipal public utility.

My opinion, therefore, in specific answer to your question, is that the funds of the Cleveland Transit System are subject to the provisions of the Uniform Budgetary Act, subject only to the exemption as to the ten mill limitation, embodied in the amendments to the charter found in Sections 37-1, 37-2, 37-3 and 37-4 of that charter.

It is my further opinion that expenditures of such funds must be pursuant to general appropriations made by the council.

I come then to a consideration of Section 4328, General Code, which relates to expenditures by the director of public service in all matters under his control, including operation of public utilities, which under the general law are committed to his management. (Section 4326, General Code.) Section 4328 provides:

> "The director of public service may make any contract or purchase supplies or material or provide labor for any work under the supervision of that department not involving more than five hundred dollars. When an expenditure within the department, other than the compensation of persons employed therein, exceeds five hundred dollars, such expenditures shall first be authorized and directed by ordinance of council. When so authorized and directed, the director of public service shall make a written contract with the lowest and best bidder after advertisement for not less than two nor more than four consecutive weeks in a newspaper of general circulation within the city."

The question arises whether in the conduct of a municipal utility under the control of a commission set up by its charter for that purpose a municipality is governed by this section.

The case of Phillips v. Hume, 122 O. S. 11, is authority for the proposition that the right given to the Legislature by the Constitution to restrict or limit the power of municipalities to levy taxes and incur debts extends to municipalities which have as well as those which have not adopted a charter, and the court held:

> "The requirement for advertising provided in Section 4328, General Code, is one of the methods of limitation expressly imposed upon the debt incurring power of municipalities, when an expenditure exceeds five hundred dollars; and if the provisions of a city charter are in conflict with a state law upon that method they must yield to the requirements of the state law."

The Cleveland charter in Sections 113-1 to 113-8, inclusive, has undertaken to set up a new and distinct body known as the Transit Board, to which it has given not only the full control and management of its transportation system, but certain of the powers ordinarily reserved in municipal charters, and exclusively reserved by the general municipal law to the council. It is worth noting that the 95th General Assembly, in House Bill 246, enacted Section 4326-1, providing in part as follows:

"Whenever in any municipal corporation, the council or governing body thereof, shall, by ordinance, declare it to be essential to the best interests of such municipal corporation, the duties relating to the management and operation of municipally owned public utilities conferred upon the director of public service by sections 3956 and 4326 of the General Code, shall be vested in a board composed of three members."

The Cleveland charter provision is identical with this act as to number, appointment and terms of the members of the transit board. The charter provisions in question were adopted prior to such enactment. It is noteworthy in enacting this law whereby the powers of the director of service may be transferred to such board, nothing is said about the limitations imposed by law on the conduct of the director. This is in contrast to the provisions relating to a board of public affairs in villages, who by the provisions of Section 4361, General Code, are to be governed by the statutes relating to the director of public service, including Section 4328.

The Cleveland charter deals with purchases by the transit board as follows:

"Section 113-4. PURCHASES. Notwithstanding the provisions of Section 108, and as an exception thereto, the board shall authorize all contracts, involving an expenditure for the transit system in excess of five hundred dollars ($500.00), and no contract involving such an expenditure in excess of ten thousand dollars ($10,000.00) shall be made unless first authorized by ordinance of council. All contracts in behalf of the board shall be made by the chairman after competitive bidding with the lowest responsible bidder, and all contracts in excess of five hundred ($500.00) shall first be advertised once a week for two consecutive weeks in the City Record; provided, however, that in case of emergency which could not reasonably have been foreseen, when delay would result in great public inconvenience or irreparably endanger the property or operations under control of the board, purchases involving an expenditure not exceeding ten thousand dollars ($10,000.00) may, when authorized by the board, be made by the chairman without such advertising but competitive bids shall be requested by posting or otherwise."

Here then we find preserved, in part at least, the principle of advertising as required by Section 4328, General Code, and as emphasized by the case of Phillips v. Hume, supra, with the exception that this charter provision undertakes to give the transit board authority, in any situation which it considers an emergency, to make an expenditure up to $10,000 without advertising. I do not regard this exception as important. We are dealing with expenditures from moneys arising from the operation of a purely business enterprise. These moneys are not derived from taxation. The case of Phillips v. Hume, supra, dealt with purchases which created

an obligation or debt against the municipality. This appears plainly from both the syllabus and the opinion.

But a contract of purchase payable from the revenues of a municipally owned utility need not create a debt against the municipality, and I hold that when so limited, as provided in Section 5625-36, hereinabove quoted, the provision of Section 4328, General Code, relative to advertising, does not apply and the provision of the Cleveland charter last above noted is, therefore, not invalid.

Nor do I consider that the provision of that section, requiring special authorization of the council for every expenditure exceeding five hundred dollars, is applicable to the Cleveland Transit system. Conceding the right of the people to make their own charter and under such charter to exercise "all powers of local self government", as granted to them in Article XVIII, Sections 3 and 7 of the Constitution, who is to say but the people to what body or bodies they will commit the powers of legislation? The constitution nowhere requires them to have a council. They might, if they saw fit, commit *all powers* and functions of their local government to one man. If, therefore, they do commit to one body, which they call the council, general powers of legislation, and to another body, which they call a transit board, certain limited powers of a legislative character, who can object? Certainly not the Legislature.

I am not without authority on the proposition above suggested. In State ex rel. v. Lynch, 86 O. S. 71, the first case in which the Supreme Court undertook a construction of the Home Rule provisions of the Constitution, Judge Shauck, speaking for the court, said:

> "But the amended article authorizes the electors of a municipality to secure some immunity from the *uniform government* which it perpetuates as the *primary status* of all municipalities, and to entitle their municipality 'to exercise all powers of local self-government.'" (Emphasis added.)

Shortly thereafter the court gave more emphatic expression to its recognition of the freedom of municipalities to distribute their functions of local government as they please. In Fitzgerald v. Cleveland, 88 O. S. 338, it was held:

> "Under Sections 3 and 7, Article XVIII, as so amended, municipalities are authorized to determine what officers shall administer their government, which shall be appointed and which

elected, that the nomination of elective officers shall be made by petition by a method prescribed, and elections shall be conducted by the election authorities prescribed by general laws."

The case of Youngstown v. Park Commission, 68 Oh. App. 104 (22 O. O. 186), furnishes a rather close analogy to the proposition under consideration. It was held:

"1. A charter provision of a municipality which creates a particular fund for park and recreation purposes and confers upon the park commission power to make expenditures out of such fund in any amount, without authority of the municipal council, does not violate Section 13, Article XVIII, Constitution, or Section 4328, General Code, which provides that when an expenditure 'exceeds five hundred dollars, such expenditure shall first be authorized and directed by ordinance of council.'

2. Such an expenditure by the park commission, out of a fund appropriated by council for the use of the commission, creates no debt against the municipality, and is not subject to laws passed pursuant to Section 13, Article XVIII, Constitution, which provides that 'laws may be passed to limit the power of municipalities to * * * incur debts for local purposes.' "

The court said at page 107 of the opinion:

"Upon adoption that charter became the organic law of that city and by reason of the new distribution of governmental power therein a sovereign power was created as far as such local self-government was concerned, subject to the exceptions of the Constitution as amended. * * *

The city is supreme over matters of local self-government and may pass and enforce such laws, other than police, sanitary and similar regulations as are not in conflict with general laws on those subjects and the provisions of its charter will repeal statutes in conflict therewith subject to the limitation of Section 3, Article XVIII of the Constitution, as amended. * * *

Section 13, Article XVIII of the Constitution, provides that 'laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes.' But the expenditure in question created no debt against the city for the reason that it would be paid out of a fund already appropriated by the council for the use of the park and recreation commission."

I have already referred to Section 5625-36 and its provision dispensing with the necessity of a certificate that there is money in the treasury where a proposed expenditure is to be made "from the earnings of a

publicly operated water works or public utility". What meaning are we to ascribe to this language, and to the further provision that "no claim or demand thereon shall be made except out of such earnings"? Does it not rest upon the idea that the restrictions of Section 5625-33 requiring the certificate were designed mainly for the protection of funds produced by taxation, and that the Legislature intended to exempt a municipally owned utility from the restrictions which it had placed on the expenditure of public funds so long as the utility is using its own revenues for its operation and not creating an obligation against the municipality?

It was frequently held that earlier statutes, such as Sections 2702 (Burns Law) and 3806 Revised Statutes, which were analogous to Section 5625-33, General Code, were not applicable to contracts payable out of revenue not derived from taxation. 28 Oh. Jur. p. 855; Cincinnati v. Holmes, 56 O. S. 104; Comstock v. Nelsonville, 61 O. S. 288.

It was so held relative to expenditure of the revenue of a public utility in Kerr v. Bellefontaine, 59 O. S. 446; Findlay v. Parker, 17 O. C. C. 294 (Aff'd. 63 O. S. 565).

These authorities strengthen my opinion that the restrictions applicable to tax funds are not to be applied with equal strictness to revenues arising from the operation of a municipal utility.

It is my opinion that where the council of Cleveland has in its annual appropriation required by Section 5625-29, General Code, placed at the disposal of the transit commission the funds in hand and the estimated receipts of the transit system, the transit commission may determine, without further action by the council, the propriety of making and may make expenditures from the funds so appropriated without further action of council.

In specific answer to the several questions presented by your communication, it is my opinion:

1. A municipality owning and operating a transit system may legally pay, as a part of the operating expense of such system, to any other administrative department of the city, the full value of any service rendered or material furnished by such other department to the transit system.

2. A municipality may not legally pay from the operating revenues or profits of its transit system into the general funds of the city a stipulated sum for the general services of the council, mayor or other governmental agencies or departments of the city, but may, if duly

authorized by proceedings under Section 5625-13, et seq., of the General Code, transfer such profits to its general fund.

3. The officials charged with the operation of a municipal transit system may, if they in good faith deem it essential to the efficient operation of the system, make such purchases and incur such expense as would be made or incurred under like circumstances by a private owner in the operation of such system. (1942 Opinions Attorney General, p. 773, approved and followed.)

4. The funds of a municipally owned transit system are subject to the provisions of the Uniform Depositary Act (Section 2296-1 et seq., General Code) unless, pursuant to the provisions of Section 2296-1, General Code, the municipality has adopted a charter having special provisions respecting the deposit of its public moneys.

5. The city of Cleveland, having by amendment of its charter made pursuant to the authority of Article XII, section 2, of the Constitution, and Section 5625-14, General Code, taken itself out from the provisions of Sections 5625-2 and 5625-24 of the General Code in so far as they relate to the limitation on its tax levies, is nevertheless subject to all the remaining provisions of the Uniform Tax and Budgetary Law (Sections 5625-1 to 5625-39, General Code), including the annual general appropriation to be made by council as provided by Section 5625-29, General Code.

6. When the council of Cleveland has made a general appropriation of the revenues available and estimated revenues of the Cleveland Transit System, and has placed them at the disposal of the transit commission created and governed by Sections 113-1 to 113-4, inclusive, of the Cleveland city charter, said transit commission has authority, under Section 113-4 of said charter, to make any contract involving an expenditure not exceeding ten thousand dollars without further specific authorization of the council.

7. The provisions of Section 113-4 of the Cleveland city charter, authorizing the transit commission in case of emergency to make purchases involving an expenditure not exceeding ten thousand dollars without advertising, is not invalid as being in violation of Section 4328 of the General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.