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MUNICIPALITY—LEGISLATIVE BODY — MAY LAWFULLY AUTHORIZE ESTABLISHMENT OF COURSE OF IN-SERVICE TRAINING FOR SUCH OFFICERS AND EMPLOYES AS MAY BE DEEMED PROPER—COST MAY BE PAID OUT OF MUNICIPAL FUNDS—PROVISO, UNLESS FORBIDDEN BY CHARTER.

SYLLABUS:

The legislative body of a municipality, unless forbidden by a provision in a charter adopted by it, may lawfully authorize the establishment of a course of in-service training for such of its officers and employes as it deems proper, and may authorize payment of the cost thereof out of municipal funds.

Columbus, Ohio, February 28, 1952

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your communication requesting my opinion, and reading as follows:

"Re. Expenditure of Public Funds for 'In-Service Training'

"The City of Dayton conducted a program of 'in-service training' for municipal officers and employes in the year 1949.

The report of our examination of city records for the year 1949 disclosed expenditures for purposes incident to said 'in-service training' program as follows:

(Here follows a statement of the items of expense involved in the operation of the 'in-service training' program in question.)

"All of the foregoing expenditures were held by our examiner to be illegal, based upon the various rulings and opinions of the Attorneys General pertaining to such matters which were available for reference at that time.

"In view of the decision of the Ohio Supreme Court in the case of State ex rel. McClure v. Hagerman, there is some doubt concerning the correct interpretation of municipal home rule powers under the Constitution as they apply to the authority for a municipality to expend public funds for the purpose of providing a course of 'in-service training' for personnel employed in the various departments and bureaus of city government.

"The real question involved herein is whether or not it is the responsibility of the municipality, at public expense, to train and educate the officers and personnel employed by the city in the performance of their duties.

"It may be argued that efficiency in government will be increased by a so-called course of in-service training. However, it should be pointed out, in this connection, that the majority of such officers and employes are under civil service, and must be presumed to be qualified for the positions to which they are appointed, and capable of performing the duties assigned them.

"There is also the question as to the nature of the benefits accruing from such a program of 'in-service training.' In view of the fact that public employment is largely transitory in scope, it would appear that the greater and more lasting benefits to be obtained from a course in in-service training redound to the employe rather than to the employer.

"The municipality has no duty to train and educate its employes and officers, at public expense, imposed upon it. The duty to make and keep himself qualified rests with the individual at his own expense, and should not be assumed by the city. An officer or employe is presumed to be qualified or he would not have been employed.

"Your attention is respectfully directed to the following Opinions of the Attorney General in support of the theory that it is the duty of the individual and not the city to educate and prepare himself for the duties assigned him as a municipal employe.

"Opinion No. 197, pages 343 to 346, of 1919 Opinions. (See cases cited and reasoning used in above opinion.)

"Opinion No. 2615, page 730 of 1940 Opinions

"Opinion No. 1052, page 662 of 1949 Opinions.

"We are enclosing herewith a copy of the letter received from the city attorney and trial counsel for the City of Dayton, which will further explain in detail the nature of the program desired to be established for in-service training of city employes.

(See cases cited and reasoning used in above opinion.)

"In view of the fact that this Bureau is called upon to determine the legality of such expenditures in the course of its annual audit of city records, and since the question is of statewide interest, we respectfully request that you give consideration to the following questions and furnish us with your formal opinion in answer thereto:

"1. Is it legal for a municipality having adopted a charter to expend public funds for the purpose of conducting a course of in-service training for its officers and employes?

"2. Is it legal for a non-charter municipality operating under general laws to expend public funds for the purpose of conducting a course of in-service training for its officers and employes?"

Accompanying your letter, you have submitted a memorandum by the City Attorney of Dayton, together with literature published by the International City Managers' Association. I am aware of the many rulings in opinions of former Attorneys General, holding municipal expenditures within very narrow bounds, and I have no doubt that those opinions would seem to afford justification for your finding in the particular case presented. I do not consider it necessary to review those opinions at length. Suffice it to say, that many of them were tinctured with the old doctrine that municipal corporations had only such powers as the General Assembly had seen fit to grant. This principle was wiped out by the so-called home rule amendment in 1912, but it has been impossible either for attorneys or the courts to get wholly away from the old doctrine and to appreciate the complete revolution that was brought about by the adoption of Article XVIII of the Constitution, commonly known as the Home Rule Amendment, and we find the court frequently searching the statutes in the effort to discover whether a municipality has a certain power.

The Supreme Court in one of the first cases arising under this amendment, Fitzgerald v. Cleveland, 88 Ohio St., 338 (1913), seemed to recognize this change, in holding that a municipality might by a provision in its charter, formed pursuant to Section 7 of Article XVIII, and in entire disregard of the statutes, determine what officers should administer its government, which should be appointed and which elected, and how nominated. The court had under its consideration particularly, Sections 3 and 7 of that article, which read:

> "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."

At the time that decision was rendered, the Supreme Court was of the opinion that a municipality could only avail itself of the powers of local self-government by adopting a charter, which proposition was later expressly overruled in Perrysbury v. Ridgeway, 108 Ohio St., 345. In the course of the opinion in the Fitzgerald case, the following language was used at page 344:

> "As to the scope and limitations of the phrase 'all powers of local self-government,' it is sufficient to say here that the powers referred to are clearly such as involve the exercise of the functions of government, and they are local in the sense that they relate to the municipal affairs of the particular municipality."

At page 348 of the opinion the court referred to provisions in the Constitution which authorize the legislature to limit the powers of a municipality in levying taxes and incurring debts, and also to the limitations contained in Section 3, that police regulations should not be in conflict with general laws. The court followed with this language:

> "The inclusion of these limitations in Article XVIII is a conclusive indication that the convention which framed it was conscious of the wide scope of the powers which they were conferring upon the cities of the state with reference to their local self-government.

> "Not alone this, but in connection with the comprehensive grant they disclose the intention to confer on municipalities *all other powers of local self-government* which are not included in the limitations specified." (Emphasis added.)

This statement of the far reaching powers conferred upon municipalities directly by the people through the Constitution, has been reiterated and amplified by the Supreme Court in many succeeding opinions, and is so well rooted in our present day conception of home rule powers of municipalities that it does not seem necessary to resort to a recital of decisions.

Typical of the opinions by this office restraining municipal powers, we may note Opinion No. 2615, Opinions of the Attorney General for 1940, page 730. A portion of the syllabus reads as follows:

> "Officials and employes of a municipal corporation are presumably elected and appointed to their positions because of their fitness by experience and education to discharge their respective duties and in the absence of an express charter provision a municipality is without authority to employ an expert tax consultant whose duties are advising and educating such officials and employes in respect to their duties."

This opinion, as well as many others rendered during the last twenty-five years, relied to a considerable extent on the per curiam opinion in the case of State ex rel. Thomas v. Semple, 112 Ohio St., 559, decided in 1925, wherein the court denied the right of the City of Cleveland to join and pay a membership fee in an organization known as "Conference of Ohio Municipalities," the purpose and object of which was stated to be to serve as an agency of common action in all matters of common concern to municipalities of Ohio. In the course of the opinion it was said:

> "It does not follow, from the broad powers of local self-government conferred by Article XVIII of the Constitution of the state, that a municipal council may expend public funds indiscriminately and for any purpose it may desire. The misapplication or misuse of public funds may still be enjoined, and certainly a proposed expenditure, which would amount to such misapplication or misuse, even though directed by a resolution of council, would not be required by a writ of mandamus."

That decision has been criticized by Attorneys General on several occasions, but they felt compelled to follow it. However, the Supreme

Court in the recent case of State ex rel. McClure v. Hagerman, 155 Ohio St., 320, expressly overruled the case of State ex rel. v. Semple, and held:

> "1. The legislative body of an Ohio municipality has the power and authority under the Home Rule Amendment to the Constitution of Ohio, adopted in 1912, unless it has adopted a charter containing a specific prohibition against such expenditure, to determine whether payment of the cost of membership in an association of municipal finance officers out of municipal funds is for a general purpose, and its decision will not be overruled by this court unless it clearly appears that there was an abuse of discretion or that as a matter of law such expenditure is not for a public purpose.
>
> "2. The objectives, purposes and activities of the Municipal Finance Officers Association of Ohio as disclosed by the evidence in this case are not such as to justify this court in holding that the commission of the city of Dayton as the legislative body of the city abused its discretion in directing an expenditure for a membership in that association. (State, ex rel. Thomas, v. Semple, Dir. of Finance, 112 Ohio St., 559, overruled.)"

The court in the course of the opinion makes the following statement:

> "The charter contains no provision which would prohibit the expenditure in question and none which would specifically authorize it. Therefore, the authority to make the expenditure, if such authority exists, is inherent as an incident of the powers of the municipality under the provisions of the Constitution, adopted in 1912. It must be considered well settled that the funds of a municipality can be expended only for public purposes. The object to be achieved or promoted by the expenditure must be reasonably related to the operation of the municipal government."

At page 324, the court discussing the meaning of the words "public purposes" or "municipal purposes" said:

> "What is a public use is not capable of absolute definition. A public use changes with changing conditions of society, new appliances in the sciences, and other changes brought about by an increase in population and by new modes of transportation and communication. * * * Generally, a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation, the sovereign powers of which are used to promote such public purpose. * * * The modern trend of decision is to expend and liberally

> construe the term 'public use' in considering state and municipal activities sought to be brought within its meaning. * * *
>
> "The determination of what constitutes a public purpose is primarily a legislative function, subject to review by the courts when abused, and the determination of the legislative body of that matter should not be reversed except in instances where such determination is palpable and manifestly arbitrary and incorrect. 37 American Jurisprudence, 734, 735, Section 120."

The court then refers to the prevailing trend of authority in other states, saying:

> "This problem is not unique to Ohio. In one form or another it has been faced in all sections of the nation. With changing conditions and increasing complexity of government, the tendency of the courts has been toward greater liberality with respect to approval of expenditures by municipalities, which at an earlier date might not have been considered as being for public purposes."

Citing City of Glendale v. White, 67 Ariz., 231; People ex rel. Schlaeger v. Coal Company, 392 Ill., 153; Hayes v. Michigan, 316 Mich., 443, and other cases.

It seems to me plain that in the light of the decision and discussion in State ex rel. v. Hagerman, supra, the determination whether the conduct of a course of in-service training for the officers and employes of the city in question is a public purpose and should be undertaken is a matter that must be left to the sound discretion of the city's legislative body.

In view of your suggestion that the majority of officers and employes are under civil service, and must be presumed to be qualified for the positions to which they are appointed, and capable of performing the duties assigned to them, and in view of the 1940 opinion from which I have quoted, I feel that I may with propriety call attention to the fact that writers of high eminence on municipal affairs take a different view.

In the memorandum which accompanied your letter, there is a quotation from an article on "Municipal Administration," by John C. Bollens, of the Department of Political Science of the University of California, published in the 1950 issue of "Public Management," referring to a program such as the City of Dayton has attempted to follow and highly commending it as tending to more efficient municipal service.

Among the documents furnished in connection with your request, I note a volume of over five hundred pages, published by the International

City Managers Association. This volume, which deals only with municipal public works administration, is one of eight dealing with different phases of municipal administration. Accompanying this volume is another containing a complete outline of sixteen lessons on the different phases of the subject. A casual examination of these books reveals an amazing amount of technical and highly practical information, the study of which would certainly lead to a better training of municipal employes who may be entrusted with the operation and supervision of municipal public works. I note, too, from the information furnished, that this series of texts, started in 1935, has grown to the point where, in 1949, more than 4,360 copies were purchased by various municipalities and others interested in these training courses.

Under the doctrine of the Hagerman case, the municipal authorities may well be allowed to determine whether the public interest will be best served by giving certain of its employes an intensive course of training under competent instruction rather than by trusting that they will acquire skill by long service without such instruction.

I think it proper too to refer to the example set by many of the largest private industries in providing courses of intensive instruction and training for their salesmen and certain other groups of employes. A municipality whose operations frequently involve the employment of thousands of persons and the expenditure of millions of dollars ought certainly to have the right to adopt and use methods which have proven worth while in private business.

In accord with the ideas expressed by the court in the Hagerman case, I see no reason why the legislative body should not have the right to decide to institute such training schools as are mentioned in your letter.

Accordingly, in specific answer to your submitted questions it is my opinion that the legislative body of a municipality, unless forbidden by a provision in a charter adopted by it, may lawfully authorize the establishment of a course of in-service training for such of its officers and employes as it deems proper, and may authorize payment of the cost thereof out of municipal funds.

Respectfully,

C. WILLIAM O'NEILL
Attorney General