1. That the county commissioners may purchase motor vehicles for the use of the sheriff and sanitary engineer or their deputies, such vehicles to be for the use and subject to the regulation of the person for whom purchased;

2. That the county commissioners may purchase motor vehicles for their own use or for the use of any department under their direct control, and such vehicles may be used by other county officials, subject to the regulation of the county commissioners.

Respectfully,
C. C. CRABBE,
*Attorney General.*

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2780.

A CITY MAY NOT INCORPORATE INTO AN ORDINANCE A PROVISION TAKING AWAY THE CERTIFICATE TO OPERATE A MOTOR VEHICLE—SECTION 12607-1 G. C. CONSTRUED.

*SYLLABUS:*

*A city cannot incorporate into an ordinance a provision taking away the certificate to operate a motor vehicle granted by the state, though a provision prohibiting the owner of such certificate from operating a motor vehicle within the city limits would be valid.*

COLUMBUS, OHIO, Sept. 12, 1925.

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

GENTLEMEN:—In your letter of August 12, 1925, you ask the following question:

> "May a city incorporate the provisions of section 12607-1 of the General Code into an ordinance as has been done with the Crabbe Act?"

Section 12607-1, General Code, provides that a person convicted of violating the *state* speed laws, etc., may be prohibited from operating a motor vehicle and also may have his certificate of registration suspended.

The syllabus of the case of *Heppel* vs. *The City of Columbus,* 106 Ohio St. 107, is as follows:

> "By virtue of authority conferred upon municipalities by section 3, article XVIII of the Ohio constitution, to adopt and enforce within their limits such police regulations as are not in conflict with general laws, municipalities may enact and enforce ordinances, the provisions of which are not inconsistent with the general laws of the state, prohibiting the manufacture, possession or sale of intoxicating liquor for beverage purposes and the keeping of a place therein where intoxicating liquors are manufactured, sold, furnished, etc., for beverage purposes."

The court also says, on page 110 of this opinion:

> "It is true that no such authority has been specifically conferred upon the municipalities of the state, but broad and comprehensive power has been delegated to municipalities by the provisions of section 3, article XVIII of

the state constitution, to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws, and a *statute which would deny or abridge that right so conferred by the constitution of the state would be invalid.* (City of Fremont vs. Keating, 96 Ohio St. 468.) The ordinance here in question is a police regulation, which is not only not in conflict but is in entire harmony with the laws of the state. Welch vs. City of Cleveland, 97 Ohio St. 311; and City of East Liverpool vs. Dawson, 101 Ohio St. 527."

Schaffer vs. City; court of appeals of Columbiana county, 101 Ohio St. 527, Law Bull. XXI—150.

96 Ohio St. 468:

"This statute is a police regulation, and, under the section of the constitution above referred to, the municipality has the right to adopt and enforce within its limits police regulations in regard to the same subject matter, not in conflict with this statute.

"Notwithstanding this right conferred upon municipalities by the constitution of Ohio, section 6307, General Code, specially provides that local authorities shall not regulate the speed of motor vehicles by ordinance, by-law or resolution. It is sufficient to say that the general assembly of Ohio cannot deprive a municipality of its constitutional rights. This section is clearly in violation of section 3 of article XVIII of the constitution of Ohio, and void." * * *

"It is claimed, however, that this ordinance is in conflict with the general law on the same subject matter, for the reason that it prescribes a different punishment than that prescribed by the statute of the state.

"This question is not important in the disposition of this case."

In 19 O. C. C. (N. S.), 58, the syllabus is as follows:

"A municipality under power granted by section 1536-1, sub-section 5, Revised Statutes, to regulate ale, beer, porterhouses and shops and the sale of intoxicating liquors as a beverage, may enact a valid ordinance prohibiting the sale of intoxicating liquor on Sunday and making the penalty therefor not exceeding $500 and not less than $100, for a first offense, though the state law on the same subject makes the penalty not exceeding $100 and not less than $25 for the first offense."

Also, on page 60 the court uses the following language:

"After discussing this claim, the court says:

" 'And it is no ground of objection to the validity of prohibitory ordinances, thus authorized, that the general laws of the state do not extend the prohibition to all parts of the state. Morality and good order, the public convenience and welfare, may require many regulations in crowded cities and towns which the more sparsely settled portions of the country would find unnecessary.'

"So, too, it may well be that in municipalities where there is a congested population, more severe penalties are necessary and proper to secure an observance of the law than are necessary where the population is sparse and the sales comparatively few. What might be a very severe penalty in the

way of a fine to one whose sales are limited to two dollars or three dollars a day might be very light for one whose sales are many times that amount per day, and when the legislature gave to municipalities the power 'to regulate ale, beer, porter houses and shops and the sale of intoxicating liquor as a beverage,' it was presumed that it was done for the purpose of enabling municipalities to make such regulations, and provide such punishment for the violation of such regulations as the municipality might think best. In short, that the municipality might need some legislation different from that needed for the regulation of those places outside of municipalities.

"We reach the conclusion, therefore, that the ordinance is valid."

This case is affirmed in 81 Ohio St. 539.
Silea vs. Canton 23 N. P. (N. S.) 166.
In 8 Ohio Nisi Prius (N. S.) 153, the court says, on page 157:

"(Penalty for violation of ordinance.) To make the violation of ordinances a misdemeanor, and to provide for the punishment thereof by fine or imprisonment, or both; provided, that such fine shall not exceed five hundred dollars and such imprisonment shall not exceed six months.

"This paragraph is contained in the general enumeration of powers granted to municipal corporations, and *cannot control specific powers granted to such municipal corporations.*"

In Alliance vs. Joyce, 49 Ohio St. 7, the court says, on page 17:

"Such general power vested in the municipality to prohibit places where intoxicating liquors are sold at retail, is, in itself, sufficient to authorize the adoption of an ordinance adequate to the object proposed. As an ordinance without a penalty would be nugatory, *municipal corporations have an implied power to provide for their enforcement by reasonable and proper fines against those who violate them.* Fisher vs. Harrisburg, 2 Grant (Pa.) cas. 291; Barter vs. Commonwealth, 3 Pa. (Pen. 7 W.) 253; Trigally vs. Memphis, 6 Coldw. (Tenn.) 382.

"But such power does not rest in implication alone. By section 1861 of the Revised Statutes, it is provided as follows:

" 'By-laws and ordinances of municipal corporations may be enforced by the imposition of fines, forfeitures and penalties, on any person offending against any such by-law or ordinance; and the fine, penalty or forfeiture may be prescribed in each particular by-law or ordinance, or by a general by-law or ordinance made for that purpose; and municipal corporations shall have power to provide, in like manner, for the prosecution, recovery and collection of such fines, penalties and forfeitures.'

"Standing alone, this section imposes no limitation upon a municipal corporation's passing an ordinance making the fine for an offense discretionary within fixed reasonable limits, whereby the tribunal might be enabled to adjust the fines to the circumstances of the particular case. And the section, taken by itself, would be no barrier to the passage of an ordinance like that of the city of Alliance, imposing a fine, upon conviction, of not less than fifty dollars, nor more than two hundred dollars for the first offense."

In Opinions of the Attorney General for 1919, Vol. 2, page 1540, the opinion says:

"Section 3628, General Code, which relates to the powers of municipalities, provides as follows:

" 'To make the violation of ordinances a misdemeanor, and to provide for the punishment thereof by fine or imprisonment, or both, but such fine shall not exceed five hundred dollars and such imprisonment shall not exceed six months.'

"Article XVIII, section 3, of the amended constitution of Ohio provides as follows:

" '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.'

"The supreme court of Ohio, in the case of city of Fremont vs. Keating, 98 Ohio St. 468, clearly holds that under said constitutional provision municipalities may 'adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws.' Said opinion makes no distinction as to the application of such rules as between chartered and non-chartered municipalities.

"Therefore, in view of the foregoing, I am of the opinion that non-chartered as well as chartered municipalities may enact proper ordinances regulating the carrying of concealed weapons."

In the cases of *Village of Struthers* vs. *George Sokol,* and *City of Youngstown* vs. *John Sandela,* 140 N. E. Rep. p. 519, September 4, 1923, the syllabus reads as follows:

"1. Municipalities in Ohio are authorized to adopt local police, sanitary and other similar regulations by virtue of section 3, article XVIII of the Ohio constitution, and *derive no authority from, and are subject to no limitations of,* the general assembly, except that such ordinances shall not be in conflict with general laws.

"2. In determining whether an ordinance is in conflict with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.

"3. A police ordinance is not in conflict with a general law upon the same subject merely because certain specific acts are declared unlawful by the ordinance, which acts are not referred to in the general law, or because certain specific acts are omitted in the ordinance but referred to in the general law, or because different penalties are provided for the same acts, even though greater penalties are imposed by the municipal ordinance."

In this opinion the court said, in referring to the case of Fremont vs. Keating, 96 Ohio St. 468:

"It was pointed out in that case that a different penalty was prescribed by the ordinance than that prescribed by the statutes of the state, and that fact was held to be unimportant and not to create a conflict between the statute and the ordinance."

And further along in that opinion the court said:

"It is the spirit and the pronouncement of the decisions in all the foregoing cases that by virtue of section 3 of article XVIII of the Ohio consti-

tution as amended in 1912, municipalities of the state have police power directly conferred by the people in all matters of local self-government and that upon all of the subjects covered in those cases municipal legislation was a valid exercise of the local police power. The question presented in the instant case has been more nearly met in the recent case of *Heppel vs. Columbus,* decided by this court December 12, 1922, not yet reported. The syllabus of that case is as follows:

" 'By virtue of authority conferred upon municipalities by section 3, article XVIII of the Ohio constitution, to adopt and enforce within their limits such local police regulations as are not in conflict with general laws, municipalities may enact and enforce ordinances the provisions of which are not inconsistent with the general laws of the state prohibiting the manufacture, possession or sale of intoxicating liquor for beverage purposes and the keeping of a place therein where intoxicating liquors are manufactured, sold, furnished, etc., for beverage purposes.'

"It will be seen, therefore, that unless there is some conflict between the ordinance and the state law which would invalidate the ordinance, this court has repeatedly answered the present inquiry."

The court also takes up the word "conflict," and says in relation thereto:

"No real conflict can exist unless the ordinance declares something to be right which the state law declares to be wrong, or vice versa. There can be no conflict unless one authority grants a permit or license to do an act which is forbidden or prohibited by the other."

The certification of registration referred to in section 12607-1, General Code, is the certificate issued by the *state* by virtue of section 6298, General Code.

An ordinance of a city or village only has effect within such municipality, while a certificate granted by the state under section 6298, General Code, is effective throughout the whole state.

The right to issue such a license is vested in the state, and for a municipality to take away such license, in the absence of a statutory right to do so, would be to permit a municipality to usurp the power granted the state by the legislature and would conflict with the state's rights as set forth in the rule laid down in *Struthers* vs. *Sokol,* supra.

However, for a council to pass an ordinance providing that its court could prohibit an offender against such ordinance from operating a motor vehicle within the limits of such municipality, would not be in conflict and would be permissible as set forth in the court decisions herein mentioned.

It is my opinion, therefore, that a city cannot incorporate into an ordinance a provision taking away the certificate to operate a motor vehicle granted by the state, though a provision prohibiting the owner of such certificate from operating a motor vehicle within the city limits would be valid.

Respectfully,
C. C. CRABBE,
*Attorney General.*