2757.

A MUNICIPALITY MAY LEGALLY LEASE ITS GAS PLANT AND EQUIPMENT REQUIRING THE LESSEE TO FURNISH GAS AT A REASONBLE RATE TO INHABITANTS OF SUCH MUNICIPALITY.

SYLLABUS:

Upon the authority of Travelers Insurance Co. vs. Village of Wadsworth, 109 *O. S.* 440, *a municipality may legally lease its gas plant, requiring the lessee to furnish gas to the inhabitants of such municipality at a reasonable rate.*

COLUMBUS, OHIO, September 4, 1925.

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

GENTLEMEN:—Acknowledgment is made of your communication requesting my opinion on the following:

> "The city of Hamilton owns a complete and sufficient gas distribution system and is now supplying its inhabitants with gas and the city is now purchasing natural gas for such purpose from outside sources.
>
> "Section 3698 of the General Code grants to municipalities special powers to sell or lease real estate or to sell personal property belonging to the corporation when such real estate or personal property is not needed for any municipal purpose. Section 3631 grants to municipalities under general powers the right to acquire by purchase, lease, or lease with the privilege of purchase, gift, devise, condemnation, or otherwise and to hold real estate or any interest therein and other property for the use of the corporation and to sell or lease it, etc. Section 4, article 16, of the Constitution gives to municipalities the power to acquire, construct, own or lease a public utility the product to be supplied to its inhabitants and to contract with others for such product or service. There is nothing in the constitutional provision giving municipalities power to sell or lease.
>
> "An ordinance is proposed to authorize the Director of Service to advertise and receive for leasing of the plant and the furnishing of gas to the inhabitants through the mains and also the rental and the proposed charge to the inhabitants for gas. The proposed leasing is for ten years.
>
> "The question is can the city of Hamilton lease its gas distribution system and at the same time require the lessee to furnish gas and to establish and fix rates to be charged the inhabitants of said city during the period of the lease?
>
> "Your views in this connection will be appreciated."

Briefly stated, your question is whether a city having acquired a public utility for the purpose of furnishing the inhabitants thereof with gas, may lease its plant and require the lessee to furnish such gas and establish the rates to be charged for the use thereof.

The sections of the General Code and the constitutional provision to which you refer, clearly authorize the acquiring of such a utility for the purpose of operation by the city itself. It would seem absurd upon its face to conclude that after a utility has been acquired, in the event that the municipality cannot operate the same at a profit, that it would be denied making such an arrangement in reference to the operation thereof as would be beneficial to the municipality and the people as a whole.

The general purpose of such authority is to enable the municipality to serve the inhabitants by providing for the supplying of such a service.

It will be observed that if a municipality may not enter into such an arrangement, it is easy to conceive of circumstances wherein such a rule would practically confiscate the property. If it should develop that the municipality must operate at a loss, and it has no power to lease such equipment, then it must take its choice of continually operating at a loss or practically abandoning the equipment. In this connection, it must be remembered that the Constitution authorizes the execution of bonds to be secured upon the property when it is purchased from a private concern, all of which contemplates the application of business principles to such transaction.

In the case of *Travelers Insurance Co. vs. Village of Wadsworth,* 109 O. S., 440, it was held, as evidenced by the second branch of the syllabus that:

> "The power to establish, maintain, and operate a municipal light and power plant, under the Constitution and statutes aforesaid, is a proprietarv 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 same constitutional provision was under consideration in this opinion that is under consideration now. If this opinion is to be given the interpretation that the plain language thereof imports, it must be said that in the exercise of the proprietary functions in the operation of a public utility, the municipality is limited only as a private individual would be limited.

Applying the principles of this case to the case under consideration, the conclusion must be that a municipality may enter into a reasonable contract whereby it leases its equipment requiring the lessee to furnish gas at a reasonable rate to the inhabitants of such municipality.

Respectfully,
C. C. CRABBE,
Attorney General

2758.

COUNTY HEALTH DISTRICTS—SECTION 3 OF AMENDED SUBSTITUTE SENATE BILL NO. 94, IS NOT APPLICABLE TO HEALTH DISTRICTS—SECTIONS FOUR AND FIVE OF THE ACT ARE APPLICABLE TO GENERAL HEALTH DISTRICTS.

SYLLABUS:

Section 3 *of amended substitute senate bill No.* 94 *is not applicable to county health districts.*

Sections 4 *and* 5 *of the above act are applicable to county health districts.*

COLUMBUS, OHIO, Sept. 4, 1925.

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

GENTLEMEN:—I am in receipt of your communication as follows:

> "We respectfully request your written opinion upon the following:
>
> "Section 1261-40 G. C., requires that the board of health of a general