

OPINION NO. 70-113

Syllabus:

The treasurer of a village may not at the same time be employed as a clerk for the board of trustees of public affairs and receive compensation for both positions.

To: James R. Scott, Guernsey County Pros. Atty., Cambridge, Ohio
By: Paul W. Brown, Attorney General, August 31, 1970

I have your request for my opinion as to whether or not the treasurer of a village can also serve as clerk for the board of trustees of public affairs.

The positions of village treasurer and clerk of the board of trustees of public affairs are authorized by Sections 733.42 and 735.28, Revised Code, respectively.

Section 733.42, supra, states:

"The treasurer of a municipal corporation shall be elected for a term of four years, commencing on the first day of January next after his election. He shall be an elector of the municipal corporation."

Section 735.28, supra, provides in part:

"The board shall organize by electing one of its members president. Unless the office of clerk of the board has been consolidated with the office of clerk of the village, as authorized by section 733.28 of the Revised Code, it may elect a clerk, who shall be known as the clerk of the board of trustees of public affairs."

The fact that the village treasurer is a village officer is strongly implied in Section 733.23, Revised Code, where it states:

"The executive power of villages shall be vested in a mayor, clerk, treasurer, marshal, street commissioner, and such other officers and departments thereof as are created by law."
(Emphasis added.)

According to Glenville v. Englehart, 19 O.C.C. 285, 10 O.C.D. 409 (1900), a village treasurer is a village officer.

Section 733.78, Revised Code, provides in part:

"No member of the legislative authority or of any board and no officer or commissioner of the municipal corporation shall have any interest, other than his fixed compensation, in the expenditure of money on the part of such municipal corporation. Any person who violates this

section shall be disqualified from holding any office of trust or profit in the municipal corporation, and shall be liable to the municipal corporation for all sums of money or other things received by him, in violation of this section, and if in office he shall be dismissed therefrom."
(Emphasis added.)

Wright v. Clark, et al., 119 Ohio St. 462 (1928), stated in the third branch of the syllabus:

"Neither fraud, nor conspiracy, nor unreasonable profits, are necessary elements of a cause of action for recovery of money from an officer of a city or village, under the provisions of Section 3808, General Code."

Section 3808, General Code, corresponds to present Section 733.78, Revised Code.

Also, at page 471 of the opinion, Marshall, C.J., stated:

"* * *It was the purpose of the Legislature in that enactment (Section 3808, General Code) to reach all persons holding positions in a city or village government who are charged with official responsibility in conducting an economic administration of corporate affairs, and to prohibit them from having any interest in the expenditure of corporate funds.'"

Furthermore, Petermann v. Tepe, 87 Ohio App. 493 (1949), provides:

"* * *We think it obvious that by the use of this phrase the General Assembly intended to make it clear that Section 3808, General Code, did not prevent the official from drawing his salary. The whole intent was that he should not receive anything beyond that from the corporation in any way."
(Emphasis added.)

Consequently, consistent with Opinion No. 4589, Opinions of the Attorney General for 1932, which held a member of the board of trustees of public affairs of a village may not be employed as a sewer inspector by the village council, Opinion No. 2389, Opinions of the Attorney General for 1934, which held that the offices of city treasurer and secretary of the sinking fund trustees were incompatible if the person was compensated for acting as secretary, and Opinion No. 3835, Opinions of the Attorney General for 1931, which held the concurrent employment of a village clerk as a caretaker of the village parks violated Section 3808 of the General Code, an officer of a village may not enter into an employment contract for compensation in another village position.

Therefore, it is my opinion and you are hereby advised that the treasurer of a village may not at the same time be employed as a clerk for the board of trustees of public affairs and receive compensation for both positions.