

It is obvious that the former opinion of this office here referred to is in line with the conclusion which I have reached with respect to the conditions in the deeds here in question.

With the deeds above referred to are two other deeds executed by The Sterling Motor Truck Company and The W. W. Williams Company, respectively, in and by which these companies remise and release to the state of Ohio their undivided one-half interests into a strip of ground twenty-five feet in width off the north side of the second parcel of land above described, which strip of land on and prior to April 3, 1926, was owned of record by these corporations as tenants in common and which was excepted in deeds executed by them to Flora A. Neilson through whom by mesne conveyances The Standard Oil Company owns and holds the second parcel of land above described. This explains the fact that The Standard Oil Company in its deed to the state of Ohio and in its description of the parcel of land thereby conveyed, has excepted said twenty-five-foot strip of land from its conveyance.

The abstract of title and the deeds herein referred to are approved and the same are enclosed herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5154.

OFFICES INCOMPATIBLE — MEMBER, CONSERVATION
COUNCIL MAY NOT HOLD SALARIED POSITION IN
DIVISION OF CONSERVATION.

SYLLABUS:

A member of the Conservation Council may not at the same time hold a salaried position in the Division of Conservation.

COLUMBUS, OHIO, February 8, 1936.

HON. L. WOODSELL, *Commissioner, Division of Conservation,*
Columbus, Ohio.

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

“We are desirous of determining whether or not a member of the Ohio Conservation Council may accept a salaried position in the Division of Conservation and continue serving as a member of said Conservation Council.”

Public offices are said to be incompatible when they are made so by statute or when by reason of the common law rule of incompatibility they are rendered so. Said rule is stated in the case of *State, ex rel. Attorney General, vs. Geberd*, 12 O. C. C. (N.S.) 274 as follows:

“Offices are considered incompatible when one is subordinate to, or in any way a check upon, the other; or when it is physically impossible for one person to discharge the duties of both.”

Section 1438-1, General Code, in which the powers and duties of the Conservation Council are enumerated, contains no express inhibition, and therefore it must be considered whether or not there is anything to prevent one person from holding the two positions in question at the same time by reason of the fact that the duties thereof are inconsistent or conflicting in any manner, or whether one position is subordinate to, or a check upon, the other. In regard thereto, it is provided in section 1438-1, *supra*, that:

“* * *

It is the duty of the conservation council to plan, develop, formulate and institute programs and policies of the division of conservation and to establish such bureaus within the division as are approved by the governor.

* * *

The conservation council may make and establish such rules and regulations not inconsistent with law governing its organization and procedure and administration of the division of conservation as it may deem necessary or expedient.”

By the above provisions, which enjoin upon the Conservation Council the duty of instituting programs and policies of the Division of Conservation, and which require the Conservation Council to establish rules and regulations for the administration of the Division of Conservation, manifestly, all positions held in the Conservation Division are subject to supervision by the Conservation Council. Such being the case, it can readily be seen that if a member of the Conservation Council were holding a salaried position in the Division of Conservation, it is not unlikely for a situation to arise where his interests as an employe of the Division would conflict with his duties as a member of the Conservation Council, and might therefore interfere with his unbiased discharge of said duties.

The possibility of such a conflict of interests therefore impels the conclusion, and it is accordingly my opinion, that a member of the

Conservation Council may not accept and hold a salaried position in the Division of Conservation.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5155.

CONTRACT—DISCUSSION OF CONTRACT RIGHTS OF
SUPERINTENDENT OF SCHOOLS AND BOARD OF
EDUCATION.

SYLLABUS:

1. *A superintendent of schools lawfully employed by the board of education of an exempted village school district prior to December 31, 1930, continues under said contract as the city superintendent of schools until such contract is lawfully dissolved, expires by lapse of time or the superintendent is dismissed for cause, in the event the exempted village school district is advanced to a city school district by reason of a change in population as shown by the census of 1930.*

2. *The board of education in a city school district which is the successor of an exempted village district, is without power to dissolve or abrogate the contract for services with its superintendent of schools, which contract had been entered into by its predecessor, the board of education of the exempted village district by motion or resolution without the consent of the said superintendent, unless it is done by the preferring of charges against the said superintendent and his dismissal in the manner provided for by Section 7701, General Code. If such a contract is dissolved with the consent of the said superintendent he is ineligible for reappointment to such position until after the reorganization of the board of education following the next general election of members of such board. To dissolve such a contract with the consent of the superintendent and reappoint him to the same position prior to the reorganization of the board following the next general election of members of such board would be doing indirectly what is forbidden to be done directly by the formal resignation of the superintendent and his reappointment, as provided by the terms of Section 7702, General Code.*

3. *Where a vacancy occurs in the office of the superintendent of schools in a city school district by reason of the resignation of the said superintendent or his removal for cause, or the dissolution of his contract for services done with his consent, the same person is ineligible for re-*