

heirs of M. Gerhard, a plat of which addition is recorded in Vol. 2, page 275, Records of Plats of Delaware County, Ohio.

*Third Tract.* In Lots Nos. 2166, 2167, 2168, 2169, 2171, and 2172, in M. Gerhard's heirs' addition to the town (now city) of Delaware, Ohio.

Upon careful examination of the abstract of title which is certified by the abstracter under date of October 3, 1930, I am of the opinion that as of said date said Martha W. Battenfield had a good merchantable title to the above described property, free and clear of all encumbrances except the taxes for the year 1931 on said several lots, parcels and tracts of land, the amount of which taxes was undetermined at the time said abstract of title was certified and was, for this reason, not stated therein. These taxes, to the extent that the same may be now or hereafter determined, are a lien upon said respective lots, parcels and tracts.

As above noted, there was submitted to me with the abstract of title a deed form of the warranty deed to be executed by said Martha W. Battenfield. The form of said deed is such that the same, when it is properly executed and acknowledged by Martha W. Battenfield, will be effective to convey the above described property to the state of Ohio with a warranty that said property is free and clear of all encumbrances whatsoever. Before the transaction for the purchase of this property is closed by the issuance of the voucher and warrant covering the purchase price, care should be taken to see that said deed form is properly and legally executed and acknowledged by Martha W. Battenfield.

Encumbrance estimate No. 1359, submitted as a part of the files relating to the purchase of this property, has been properly executed and the same shows a sufficient balance in the appropriation account to pay the purchase price of said property, which purchase price is the sum of \$1200.00.

It is likewise noted that the purchase of this property has been approved by the board of control and that the money necessary to pay said purchase price has been released by said board.

I am herewith returning to you said abstract of title, warranty deed form, encumbrance estimate No. 1359, board of control certificate and other files relating to the purchase of the above described property.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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3835.

OFFICER INCOMPATIBLE—CONCURRENT EMPLOYMENT OF VILLAGE CLERK AS CARETAKER OF PARKS, SUPERINTENDENT OF WATER DEPARTMENT AND ASSISTANT SUPERINTENDENT OF LIGHT DEPARTMENT.

**SYLLABUS:**

*Concurrent employment of a village clerk by the village council as caretaker of parks, and by the village board of trustees of public affairs as superintendent*

*of the water department and as assistant superintendent of the light department, is in violation of section 3808 of the General Code.*

COLUMBUS, OHIO, December 10, 1931.

HON. F. H. BUCKINGHAM, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent request for my opinion, which reads:

“The village clerk at W., Ohio, is also employed by council of that village as caretaker of the parks at a salary of \$25.00 a month, and in addition to that he is employed by the Board of Trustees of Public Affairs of the village as Superintendent of the Water Department at a salary of \$25.00 a month, and as Assistant Superintendent of the Light Department at a salary of \$75.00 a month.

Will you kindly advise whether or not in your opinion such employment as caretaker of the parks, water works department superintendent and light department assistant, is in violation of General Code Section 3808 and Section 12910.”

Section 3808, General Code, reads:

“No member of the council, board, officer or commissioner of the corporation, shall have any interest in the expenditure of money on the part of the corporation other than his fixed compensation. A violation of any provision of this or the preceding two sections shall disqualify the party violating it from holding any office of trust or profit in the corporation, and shall render him liable to the corporation for all sums of money or other thing he may receive contrary to the provisions of such sections, and if in office he shall be dismissed therefrom.”

Section 4279, et seq., General Code, provides for the election of a village clerk and prescribes a portion of his duties. Section 4219 provides that the council of the village fix the compensation for the various officers, clerks and employees of the village, and I assume for the purposes of this opinion that the compensation of the clerk was so fixed.

There is no doubt but that the clerk of a village is an officer of the municipality as the word is used in section 3808 of the General Code, above quoted.

Section 4356, General Code, provides that the council of a village shall provide by resolution or ordinance for the care, supervision and management of all public parks, etc. It follows that in this instance the clerk of the village in question would have an interest in the expenditure of money by the village other than his fixed compensation, namely, the amount allowed him by the council as caretaker of the parks, and, therefore, such employment would be in violation of section 3808, General Code. In this connection it is interesting to note an opinion of the Attorney General, found in Opinions of the Attorney General, for 1913, at page 1676, the syllabus of which reads:

“Work performed by the village clerk for council outside of his statutory duties is presumed to be gratuitously performed, consequently, the clerk may not receive additional compensation for preparing the annual budget required to be submitted by council to the county auditor.”

Coming now to the employment of the village clerk by the board of trustees of public affairs, it should be noted that the board of trustees of public affairs, under section 4357, is established by the village council and consists of three members resident of the village who are elected for a term of two years. There is no doubt but that this board is a branch of the municipal government and that an expenditure by it is an expenditure of the corporation. It therefore follows that compensation paid by a board of trustees of public affairs of a village to a village clerk, for services as superintendent of the water department and assistant superintendent of the light department of the village, would establish an interest on the part of such clerk in an expenditure of the corporation other than his fixed compensation, which would be in violation of section 3808, General Code.

Coming now to the application of section 12910, General Code, to the above facts, said section provides:

“Whoever, holding an office of trust or profit by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education or a public institution with which he is connected, shall be imprisoned in the penitentiary not less than one year nor more than ten years.”

You will observe that this section makes no reference whatsoever to personal services and accordingly there would be no violation of its terms in the sale of personal services. See Opinions of the Attorney General for 1913, at page 1476.

In view of the foregoing, and in answer to your inquiry, I am of the opinion that the concurrent employment of a village clerk by the village council as caretaker of parks, and by the village board of trustees of public affairs as superintendent of the water department and as assistant superintendent of the light department, is in violation of section 3808 of the General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3836.

ANNEXATION OF TERRITORY TO CITY—PETITIONERS MAY WITHDRAW THEIR NAMES BEFORE OFFICIAL ACTION TAKEN—COUNTY COMMISSIONERS HAVE DISCRETION WHETHER TO GRANT SUCH ANNEXATION.

**SYLLABUS:**

1. *Where a petition has been filed for the annexation of territory to a city, under and by force of Section 3548, General Code, signers thereto may withdraw their names at any time before official action is taken on said petition.*

2. *It is not mandatory upon a board of county commissioners to grant the prayer of a petition filed by favor of Section 3548, General Code, for the annexation of territory to a municipality. The commissioners, in such case, are vested*