

Said lease is accordingly approved by me as to legality and form as is evidenced by my approval endorsed upon said lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3897.

OFFICES INCOMPATIBLE—CITY AUDITOR AND CLERK OF WATERWORKS DEPARTMENT OR ELECTRIC LIGHT DEPARTMENT—SECTION 4276, GENERAL CODE, DISCUSSED.

SYLLABUS:

1. *The provisions of Section 4276, General Code, purporting to authorize the council in cities having a population of less than twenty thousand to merge certain offices therein named, are in conflict with the provisions of Section 1, Article XVIII of the Constitution of Ohio.*

2. *The council of a city which operates under general laws, is without power to merge the office of city auditor with that of the clerk of the waterworks department or electric light department when the electric light department and the waterworks department are combined, regardless of the population of the city.*

COLUMBUS, OHIO, December 30, 1931.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication wherein you submit for my consideration two questions:

(1) "May Council by ordinance merge the duties of City Auditor and Electric Light Department Clerk, under the provisions of Section 4276 G. C.?"

(2) If such merging of offices is lawful, may any part of the compensation of the merged office be paid from electric light funds?"

I am advised that these questions have been submitted at the request of the authorities of several villages which have advanced by reason of the late Federal census, to cities, and the desire to simplify, as much as possible, the government of these cities. One of these municipalities is the city of Miamisburg, where council sought to combine, by ordinance, the duties of city auditor and clerks of one or more boards of the city, by authority of Section 4276, General Code. The solicitor of Miamisburg has advised the council that they are without power to combine these various positions, even though the statute, in terms authorizes such action. He contends that the statute is unconstitutional.

The question is made for the reason that in a number of previous opinions of this office, the action of various municipalities in combining the duties of city auditor with those of clerks of the boards mentioned in Section 4276, General

Code, has been sanctioned without considering the question of the constitutionality of the statute. Said Section 4276, General Code, reads in part, as follows:

"* * In cities having a population of less than twenty thousand the city council may, by a majority vote, merge the duties of the clerk of the water works, if any, clerk of the board of control and clerk of the city council with the duties of the city auditor, allowing him such additional assistants in performing such additional duties as council may determine."

The Constitution of Ohio, in Section 1, Article XVIII, classifies municipalities on the basis of population, into cities and villages, and it has been held by the Supreme Court of Ohio that the legislature is without power to make a further classification of municipalities, or a sub-classification thereof, on the basis of population. *City of Elyria v. Vandemark*, 100 O. S., 365.

In the above case, the court had under consideration Section 4250 of the General Code. This section authorizes cities having a population of less than twenty thousand to provide by ordinance for the merger of the office of Director of Public Safety with that of Director of Public Service, one Director to be appointed to perform the duties of both positions. The court said:

"The Constitution of the state having classified municipalities on a basis of population the legislature is without authority to make such classification thereof for the purpose of legislation affecting municipal government."

In a recent case decided by the Court of Appeals of Richland County, wherein the court had under consideration the provisions of Section 4209, General Code, by the terms of which statute, the salaries of councilmen in cities operating under general laws are limited, and graded on the basis of population, the court held that the statute was unconstitutional, citing as authority therefor, the case of *City of Elyria v. Vandemark*, supra, *City of Mansfield v. Endly*, 38 O. A., 528, Ohio Bar, issue of September 8, 1931. This case was affirmed by the Supreme Court June 17, 1931, case number 22867.

As Section 4276, supra, wherein it grants authority to merge certain offices of a city government, limits that power to those cities having a population of less than twenty thousand, it clearly amounts to a classification of cities on the basis of population in the same sense that the provisions of Sections 4250 and 4209, General Code, are classifications of cities, and must therefore be held to be, in the light of the authorities mentioned above, unconstitutional, and an attempt on the part of the council of a city which operates under general laws to merge these offices, as authorized by the statute, is void.

It will be observed that the statute, Section 4276, General Code, does not mention clerk of the electric light department of a city as being one of the positions that may be merged with the office of city auditor. I am informed, however, that your specific question grew out of a situation where the electric light and waterworks department of a city were combined and the particular electric light department clerk referred to by you was really clerk of the waterworks department.

In specific answer to your first question, therefore, I am of the opinion that

the council of a city which operates under general laws is without power to merge the duties of city auditor with those of the clerk of the waterworks department or electric light department where the waterworks department and the electric light department are combined.

In view of the answer to the first question, your second question does not require an answer.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3898.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN GUERNSEY,
PICKAWAY, STARK AND RICHLAND COUNTIES.

COLUMBUS, OHIO, December 30, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

3899.

APPROVAL, TRANSCRIPT OF PROCEEDINGS RELATING TO PUR-
CHASE OF BONDS OF LAKE COUNTY, OHIO—\$35,000.00.

COLUMBUS, OHIO, December 30, 1931.

Industrial Commission of Ohio, Columbus, Ohio.

3900.

APPROVAL, BONDS OF JACKSON TOWNSHIP RURAL SCHOOL DIS-
TRICT, CLERMONT COUNTY, OHIO—\$12,000.00.

COLUMBUS, OHIO, December 30, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3901.

APPROVAL, BONDS OF VILLAGE OF UNIVERSITY HEIGHTS, CUYA-
HOGA COUNTY, OHIO—\$9,000.00.

COLUMBUS, OHIO, December 30, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.