

2582.

MEMBER OF ZONING OR PLANNING COMMISSION OF MUNICIPALITY
IS NOT ENTITLED TO RECEIVE COMPENSATION FOR SERVICES
AS ATTORNEY FOR SUCH COMMISSION.

SYLLABUS:

A member of the zoning or planning commission of a municipality is prohibited from having any interest in the expenditure of money by the municipality by the provisions of section 3808, General Code, and is, therefore, not entitled to receive compensation for services rendered as an attorney for the commission or municipality.

COLUMBUS, OHIO, June 20, 1925.

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

GENTLEMEN:—This acknowledges receipt of your communication as follows:

“The village of “E” became involved in litigation in connection with a zoning plan, and a member of the zoning commission, who was an attorney at law, represented such village and for his services was paid \$2,000.00 from the village treasury.

“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 of the provisions 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 12912, General Code, is also pertinent.

“In view of these sections the bureau advised the member of the commission that the payment of attorney fees to him was illegal and should be refunded. Said member is of the opinion that the conditions justify his and council's action, and his statement in this connection is enclosed herewith.

“Question:

“In view of the above sections and the conditions as outlined by the member of the commission, should a finding for recovery be made?”

Section 4220, General Code, provides as follows:

“When it deems it necessary, the village council may provide legal counsel for the village, or any department or official thereof, for a period not to exceed two years, and provide compensation therefor.”

From the letter of the attorney in question, which is attached to your request for this opinion, it is observed that the village referred to has legal counsel employed, as provided in the foregoing section. His letter further discloses that he was employed as additional counsel by the unanimous vote of the members of the village council and upon the recommendation of the mayor for the purpose of defending the “zoning ordinance.”

There may be some question as to the number of attorneys that a village council

would have power to employ under the provisions of section 4220, General Code, but as a general rule the legal counsel provided for, or solicitor employed, should be considered the attorney of record to perform the legal services for the village.

However, this question need not be further discussed for the reason that the important question involved in your request is whether or not a member of the zoning or planning commission of the municipality may have any interest in any contract of the municipality, or any interest in the expenditure of money within the contemplation of section 3808, General Code. This section is specific in its terms as follows:

"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. * * *

Section 4366-1, General Code, provides as follows:

"The council of each municipality may establish a city planning commission, consisting of seven members, the mayor, the service director, the president of the board of park commissioners, and four citizens of the municipality, who shall serve without compensation, and who shall be appointed by the mayor for term of six years, except that the term of two of the members of the first commission shall be for three years. Whenever such a commission is appointed, it shall have all the powers conferred in section 4344 of the General Code."

Section 4366-7, General Code, provides for the powers of the planning commission, and the division of the municipality into zones as follows:

"The city planning commission of any municipality shall have the power to frame and adopt a plan or plans for dividing the municipality or any portion thereof into zones or districts, representing the recommendations of the commission, in the interest of the public health, safety, convenience, comfort, prosperity or general welfare, for the limitations and regulation of the height, the bulk and location (including percentage of lot occupancy, set back building lines, and area and dimensions of yards, courts and other open spaces), and the uses of buildings and other structures and of premises in such zones or districts. The council of any village is hereby empowered to create and appoint a planning commission, with the powers set forth in this act."

It will be observed that so long as a member of such commission acts as such, he shall serve without compensation. It would at least be contrary to the spirit of this statute for a member thereof to draw compensation under the guise of a different title while performing services of any kind, whether legal or otherwise, as a member of such commission. This would be true, even though section 3808, General Code, did not exist, but this latter section is broad in its scope, taking in all the members of the council, board, officer or commissioner of the corporation. This must necessarily include the members of the zoning or planning commission, and by its terms such officer could not receive compensation fees or money under a contract involving the expenditure of money on the part of the corporation except as provided by law for his fixed compensation.

Respectfully,
C. C. CRABBE,
Attorney General.