

3261.

OFFICES COMPATIBLE—CITY COUNCILMAN AND CENTRAL COMMITTEEMAN.

SYLLABUS:

A member of city council may at the same time be a central committeeman.

COLUMBUS, OHIO, September 29, 1934.

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

GENTLEMEN:—Your letter of recent date is as follows:

“Will you kindly give this department your opinion on the following question:

Considering the provisions of section 4207 G. C., and in the absence of any charter provisions contrary thereto, may a councilman of a city also hold the office of county central committeeman?”

Section 4207, General Code, in so far as is pertinent provides:

“* * * Each member of council shall be an elector of the city, shall not hold any other public office or employment, except that of notary public or member of the state militia, and shall not be interested in any contract with the city. * * *”

The question which you present was first considered in an opinion appearing in Opinions of the Attorney General for 1916, Vol. I, page 950. After quoting Section 4207, *supra*, the then Attorney General held as appears on page 951:

“It will be noted that the provision of section 4207, G. C., referred to, is limited to public office or employment.

The position of central committeeman is not an employment nor is it to my mind a public office. An office is defined in the case of *The State ex rel. vs. Hunt*, 84 O. S., 149, as

‘A public position to which a portion of the sovereignty of the country attaches, and which is exercised for the benefit of the public.’

The functions of a central committeeman are exercised more particularly for the benefit of a political party than for public benefit and while it may be argued that the functions of a committeeman are at least of minor public interest, I am not inclined to the view that such committeeman is a public officer within contemplation of the provisions of said section 4207, G. C., and am therefore of opinion that an elector may be at the same time a member of council and a central committeeman.”

Somewhat at variance with the foregoing conclusion is an opinion appearing in Opinions of the Attorney General for 1932, Vol. I, page 233, in which the then Attorney General held that a judge of the Supreme Court or a court of common pleas may not be elected to the office of central committeeman. Article IV, Section 14 of the Constitution prohibits such judges from being elected to “any elective office, except a judicial office, under authority of this state”. The then Attorney General, after quoting certain provisions of the election law with re-

spect to powers and duties of central committeemen, held that a judge of the Supreme Court or a court of common pleas could not be elected as central committeeman on the ground that such election would be violative of this inhibition contained in the Constitution. The reasoning of the then Attorney General with respect to this matter is set forth on pages 235 and 236 as follows:

"It is clear in view of the foregoing provisions of the Election Laws of the state of Ohio that central committeemen are elected to serve for a statutory term and that their duties are prescribed by statute. These duties, such as electing chairmen for the purpose of assisting in the formulation of state party platforms and such as filling vacancies occurring in party nominations comprise the exercise of a very important sovereign function in the state government. An application of the rules laid down by the courts for determining what is a public office which have been adhered to in innumerable decisions clearly disclosed that members of a party central committee, whether county or state, are public officers. *State, ex rel. vs. Hunt*, 84 O. S. 143; *State, ex rel. vs. Coon*, 4 O. C. C. (N. S.) 560; *State, ex rel. vs. Kennon*, 7 O. S. 546.

Specifically answering your first question, therefore, it is my opinion that a judge of the supreme court or of a court of common pleas may not be elected to the office of central committeeman."

The foregoing opinion, of course, does not pass upon the question of whether or not the office of central committeeman is a "public office or employment" within the meaning of the phrase as used in Section 4207, *supra*, but the attempt to harmonize or distinguish these two opinions would present considerable difficulty. The conclusion reached by the Attorney General in 1916 is supported by the decision of the Court of Appeals in the case of *Board of Elections vs. Henry*, 25 O. App. 278, motion to certify overruled by the Supreme Court November 2, 1927. In this case, the court expressly held that membership in a party central or controlling committee did not constitute the holding of a public office. The first branch of the syllabus is as follows:

"Court had no authority to contest election of member of central or controlling committee of political party or to recount ballots, since position involved was not public office, and there was no remedy afforded party aggrieved except as provided by statute."

The court clearly expressed itself in the per curiam opinion appearing on page 280 wherein it is stated that "The position involved here is not a public office, and there is therefore no remedy afforded the party aggrieved as to the certificate except as provided by statute."

Whatever may be said as to the reasoning set forth in the 1932 opinion as pertinent to the question here under consideration, it is my judgment that the foregoing decision of the Court of Appeals should be considered as controlling in the matter and you are therefore advised that it is my opinion that a member of city council may at the same time be a central committeeman.

Respectfully,

JOHN W. BRICKER,
Attorney General.