home "shall not receive any compensation for their services," but the same section provides that they (the trustees) "shall be allowed their necessary expenses while on duty." The language of section 4207, General Code, does not read "remunerative public employment." Hence, I am of the view that under section 4207, General Code, a city councilman cannot hold the public employment of trustee of a county children's home at the same time.

Coming now to your second question, I may refer you to an opinion of this office appearing in Opinions of the Attorney General for 1918, volume I, page 636. The first two paragraphs of the syllabus of said opinion read as follows:

> "1. The inhibition found in section 4207, G. C. against holding another public office is not limited to office in or appointment by the municipality, but extends to all public offices and employments.
>
> 2. Whenever a member of council accepts and holds by other public office or employment, he ipso facto forfeits his office of councilman."

This opinion refers to many preceding opinions of former Attorneys General. I concur with the holding of the second paragraph of the syllabus of such opinion. Consequent'y, in specific answer to your second question, I am of the opinion that the acceptance by a city councilman of the public employment of member of the board of trustees of a children's home automatically forfeits the office of city councilman.

I am mindful of the reference which you make in your postscript to the opinion of my immediate predecessor, reported in Opinions of the Attorney General for 1930, volume I, page 650. In that opinion there were no statutory inhibitions against the holding of the office of township trustee and position of member of the board of trustees of a county children's home, and said offices were not found to be incompatible under the common law rule. In this opinion, however, there exists a statutory inhibition, which cannot be circumvented.

Respectfully,
JOHN W. BRICKER,
Attorney General.

834.

BEER—STOCKHOLDELR INTERESTED IN MANUFACTURE OF BEER WITHIN MEANING OF SECTION 12 OF AMENDED SUBSTITUTE SENATE BILL NO. 346 WHEN—CLASS C AND CLASS D PERMITTEE NOT PROHIBITED FROM PURCHASING AND SELLING BEER WHEN—SAME PERSON STOCKHOLDER OF BREWERY COMPANY AND REALTY COMPANY.

SYLLABUS:

1. *A stockholder in a realty company who is likewise a stockholder in a brewery company which supplies beer to a Class C or Class D permittee, who occupies and sells such beer on property belonging to the realty company, is a person interested in the manufacture of beer within the meaning of that phrase as contained in Section* 12 *of Amended Substitute Senate Bill No.* 346.

2. *There is no provision in Amended Substitute Senate Bill No.* 346 *which prohibits a Class C or Class D permittee from purchasing and selling beer of a*

brewery company on property belonging to a realty company merely because there is a stockholder of the brewery company who is also a stockholder of the realty company.

COLUMBUS, OHIO, May 17, 1933.

HON. EDWIN S. DIEHL, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date which reads as follows:

> "There has been a request made to me as to the interpretation of the Ackerman Bill recently passed in the Ohio State Legislature.
>
> 'A' who is a stockholder of a brewing company and also a stockholder in a Realty Company owning property in which the tenants desire to dispense 3.2 beer desires to determine the legality of the tenants in these properties to dispense this beverage.
>
> Your opinion in this regard will be greatly appreciated."

Section 12 of Amended Substitute Senate Bill No. 346 recently enacted by the Ninetieth General Assembly, is pertinent to your inquiry and reads as follows:

> "No person, firm or corporation having an interest in the manufacture or wholesale distribution of beer shall be permitted either directly or indirectly, to be connected with or have an interest in the ownership of a Class C or Class D Permit, or the premises whereon such permit is exercised."

The first question raised by your inqquiry is whether a stockholder of an incorporated brewery has an interest in the manufacture of beer, within the meaning of Section 12. It is a general rule of law that the legal title to corporate property is in the corporation but the beneficial interest belongs to the stockholder. See *State Ex Rel Campbell* vs. *Brinkop,* 143 S. W. 444 (Mo.). It also has been held that the beneficial interest of a stockholder in the property and business of a corporation is sufficient to constitute such stockholder as a person having an interest within the meaning of statutes similar to Section 12. This conclusion finds support in 14 Corpus Juris 63, wherein it is stated that:

> "While the title and ownership of property and business of a private business corporation is vested in the corporation as a distinct legal entity and artificial person, the stockholders or members are nevertheless 'interested' therein, within the meaning of statutes and rules of law, since the beneficial interest is in them."

To the same effect is the case of *United States* vs. *Wolters et al.,* 46 Federal 509, wherein it was held that:

> "The stockholders of a corporation engaged in operating a distillery are 'persons interested in the use of the distillery,' within the meaning of Rev. St. U. S. Sec. 3251, which declares that every proprietor and possessor, 'and every person in any manner interested in the use, of' a

distillery, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom."

The following statement by Ross, J., in the course of his opinion, is pertinent and reads:

> "The holder of stock in a corporation organized for and engaged in the business of distilling spirits, if not the proprietor or possessor of the distillery within the meaning of the statute, is certainly 'interested in the use of' the distillery operated by the corporation of which he is a stockholder. He has a direct, pecuniary interest in the business of distilling,—the purpose for which the distillery is used,—as well as in the property itself. The amount of such interest, whether large or small, is of no consequence."

The language of Section 12, in my opinion, is broad enough to include a stockholder of a corporation engaged in the business of making beer, and in view of the authorities cited herein, it follows that a stockholder in a corporation manufacturing beer would be a person having an interest in the manufacture of beer within the meaning of that phrase as contained in Section 12.

Section 12 also expressly provides that no person having an interest in the manufacture of beer shall be permitted either directly or indirectly to have an interest in the ownership of the premises whereon the privilege granted by a Class C or Class D permit is exercised. It is apparent that a stockholder in a realty company owning the premises occupied by a Class C or D permittee, is at least indirectly, if not directly interested in the ownership of such premises. Such a stockholder, who is likewise a stockholder in a brewery company which supplies beer to a Class C or D permittee, who occupies such premises, is amenable to the provisions of Section 12, which makes it unlawful for any person having an interest in the manufacture of beer to be directly or indirectly interested in the ownership of any premises wherein a Class C or D permittee sells beer A person who violates the provisions of Section 12 is subject to the provisions of Section 23 contained in the same Act, which reads in part as follows:

> "Any person, firm, or corporation, or his or its employee, or agent, who violates any of the provisions of this act, * * * * shall be guilty of a misdemeanor and upon conviction shall forfeit any permit granted to him, or it, by the Commission and shall be fined not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) or be imprisoned not less than thirty (30) days nor more than six (6) months or both."

There is no provision in Amended Substitute Senate Bill No. 346 penalizing a Class C or D permittee, who sells beer on property belonging to an incorporated realty company, in which a stockholder thereof is also a stockholder in the brewery company which supplies the beer to such Class C or D permittee. Moreover, there is no statute in the Ackerman-Lawrence Bill which prohibits a Class C or D permittee from purchasing and selling beer of a brewery company on property belonging to a realty company merely because there is a stockholder in the brewery company who is also a stockholder in the realty company. However,

the stockholder, common to both the brewery and realty companies, would be subject to the provisions of Section 23 of Amended Substitute Senate Bill No. 346.

In specific answer to your inquiry, I am of the opinion that:

1. A stockholder in a realty company who is likewise a stockholder in a brewery company which supplies beer to a Class C or D permittee, who occupies and sells such beer on property belonging to the realty company, is a person interested in the manufacture of beer within the meaning of that phrase as contained in Section 12 of Amended Substitute Senate Bill No. 346.

2. There is no provision in Amended Substitute Senate Bill No. 346 which prohibits a Class C or D permittee from purchasing and selling beer of a brewery company on property belonging to a realty company merely because there is a stockholder of the brewery company who is also a stockholder of the realty company.

Respectfully,
JOHN W. BRICKER,
Attorney General.

835.

APPROVAL, DEED TO LAND IN NEWARK TOWNSHIP, LICKING COUNTY, OHIO—LEO T. DAVIS.

COLUMBUS, OHIO, May 18, 1933.

The Ohio State Archaeological and Historical Society, Ohio State University, Columbus, Ohio.

GENTLEMEN:—You have submitted for my examination and approval a certain deed executed by one Leo T. Davis, as trustee, by which there is conveyed to the Ohio State Archaeological and Historical Society four certain parcels of real estate situated in Newark Township, Licking County, Ohio, the same being in the aggregate 125.01 acres.

Upon examination of this deed, I find that the same has been properly executed, and that the form of the deed is such that it is legally sufficient to convey the property therein described to the Ohio State Archaeological and Historical Society by fee simple title, subject to the conditions subsequent therein provided for that the grantee will hold and preserve said premises as an archaeological and historical site for the use, benefit and enjoyment of the public.

It likewise appears from recitals contained in the deed, as well as from certain files submitted to me by the Prosecuting Attorney of Licking County, that this deed has been executed by the above named grantor by proper legal authority; and, inasmuch as it appears that the lands and premises here in question are the site of an extensive system of prehistoric mounds and earthworks, the authority of the Ohio State Archaeological and Historical Society to accept the conveyance of this property is provided for by section 10198-1, General Code.

Upon the considerations above noted, this deed is approved by me as to legality and form as is evidenced by my approval endorsed upon said deed which is herewith returned.

Respectfully,
JOHN W. BRICKER,
Attorney General.