

OPINION NO. 71-040

Syllabus:

The office of councilman or the office of president of council of a city, each being elective offices, may not be held by one employed in the position of Safety Inspector II in the Department of Highways, such employee being inhibited by Section 143.41, Revised Code, from holding elective office.

To: John W. Weaver, Defiance County Pros. Atty., Defiance, Ohio
By: William J. Brown, Attorney General, July 26, 1971

I am in receipt of your request for my opinion which may be summarized as follows:

(1) Is the position of Member of City Council compatible with that of Safety Inspector II in the Department of Highways?

(2) Is the position of President of City Council compatible with that of Safety Inspector II in the Department of Highways?

I assume that the city to which you refer is one organized and operating pursuant to generally applicable law contained in Chapters 731 and 733, Revised Code, and not under charter or under a plan of government pursuant to Chapter 705, Revised Code. The two first named Chapters contain pertinent provisions respecting the offices of member and president of city council in Sections 731.02 and 733.09, Revised Code, respectively, as follows:

Section 731.02

"Members of the legislative authority at large shall have resided in their respective cities, and members from wards shall have resided in their respective wards, for at least one year next preceding their election. Each member of the legislative authority shall be an elector of the city, shall not hold any other public office, except that of notary public or member of the state militia, and shall not be interested in any contract with the city, and no such member may hold employment with said city. A member who ceases to possess any of such qualifications, or removes from his ward, if elected from a ward, or from the city, if elected from the city at large, shall forthwith forfeit his office."

Section 733.09

"The president of the legislative authority of a city shall be elected for a term of two years, commencing on the first day of January next after his election. He shall be an elector of the city, and shall preside at all regular and special meetings of such legislative authority, but he shall have no vote therein except in case of a tie."

The foregoing provisions are merely representative of the various means by which councilmen are chosen. Thus, my opinion must be addressed to the office of elective councilmanic officials, regardless of the statutory or charter provisions applicable.

The position of Safety Inspector II is established by Section 143.09, Revised Code, as classification number 7003 in pay range 19. It is a part of the civil service of the state as declared in Section 143.08, Revised Code, and not being of a class

described in Division (A) thereof, the unclassified service, is a position under Division (B), the classified service. The applicable provisions of that Section are as follows:

"The civil service of the state and the several counties, cities, city health districts, general health districts, and city school districts thereof shall be divided into the unclassified service and the classified service.

"* * * * *"

"(B) The classified service shall comprise all persons in the employ of the state and the several counties, cities, city health districts, general health districts, and city school districts thereof, not specifically included in the unclassified service, to be designated as the competitive class and the unskilled labor class.

"* * * * *"

While your questions are addressed to "compatibility", which usually refers to constitutional or statutory prohibitions respecting the holding of two types of offices or employments (e.g. Section 731.02, supra; see, also, Opinion No. 71-017, Opinions of the Attorney General for 1971); or common laws inconsistency (see Opinion No. 71-025, Opinions of the Attorney General for 1971 and Opinion No. 71-027, Opinions of the Attorney General for 1971), a statutory provision respecting the classified service is involved here. Section 143.41, Revised Code, forbids such type of employee from taking "part in politics". In pertinent part, this is as follows:

"* * * [N]or shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions."

This question has been ruled on frequently by my predecessors. I have reviewed their Opinions and found them uniform in deciding that one who holds an elective office, such as councilman and president of council, is "tak[ing] part in politics other than to vote as he pleases and to express freely his political opinions". A partial list of prior Opinions barring persons in the classified service from holding elective office includes such elective offices as: a county recorder, Opinion No. 69-115, Opinions of the Attorney General for 1969; a member of a village council, Opinion No. 66-046, Opinions of the Attorney General for 1966; a township trustee, Opinion No. 2879, Opinions of the Attorney General for 1962, Opinion No. 3005, Opinions of the Attorney General for 1962, Opinion No. 2310, Opinions of the Attorney General for 1961, Opinion No. 223, Opinions of the Attorney General for 1959, and Opinion No. 1014, Opinions of the Attorney General for 1951; a member of a local board of education, Opinion No. 3074, Opinions

of the Attorney General for 1958 and Opinion No. 4058, Opinions of the Attorney General for 1954; and a mayor of a village, Opinion No. 1285, Opinions of the Attorney General for 1929. It should be noted, however, that one of my predecessors has expressed the view that one simultaneously holding an elective office and a position in the classified service does not automatically forfeit one or the other but is subject to removal from the classified position. Opinion No. 4058, supra.

As to the substance of your question, it is almost superfluous for me to add any comment to the precedents cited, except to express my own conviction that those holdings are correct.

In specific answer to your question, it is my opinion and you are so advised that the office of councilman or the office of president of council of a city, each being elective offices, may not be held by one employed in the position of Safety Inspector II in the Department of Highways, such employee being inhibited by Section 143.41, Revised Code, from holding elective office.