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COMPATIBLE — INCOMPATIBLE — PRESIDENT OF CITY COUNCIL—ELECTED PURSUANT TO SECTION 4272 GC—NOT A MEMBER OF CITY COUNCIL WITHIN PURVIEW OF SECTION 4207 GC—PUBLIC SCHOOL TEACHER—SECTION FORBIDS MEMBER OF CITY COUNCIL TO HOLD ANY OTHER PUBLIC OFFICE OR EMPLOYMENT—EXCEPTION, NOTARY PUBLIC OR MEMBER OF STATE MILITIA—OAG 1946, OPINION 744, PAGE 68, APPROVED.

SYLLABUS:

The president of a city council, elected pursuant to Section 4272, General Code, is not a *member* of the city council within the purview of Section 4207, General Code, which forbids a *member* of city council from holding any other public office or employment except that of notary public or member of the state militia. Opinion No. 744, Opinions of the Attorney General for 1946, page 68, approved.

Columbus, Ohio, March 13, 1953

Hon. Myron A. Rosentreter, Prosecuting Attorney  
Ottawa County, Port Clinton, Ohio

Dear Sir:

I have before me your request for my opinion as to whether an individual may fill the position of a public school teacher and at the same time hold the elective office of president of a city council.

You call my attention to Opinion No. 744, Opinions of the Attorney

General for 1946, page 68, wherein this specific question was determined by one of my predecessors. It was held in such opinion that the president of a city council, elected pursuant to Section 4272, General Code, is not, under any circumstances, a member of a city council and hence the provisions of Section 4207, General Code, forbidding a member of a city council from holding any other public office or employment except that of notary public or member of the state militia does not apply to such president of council.

Your letter, in effect, requests that I reconsider the holding of this 1946 opinion in view of the fact that Section 4272, General Code, authorizes the president of a city council to cast a vote in case of a tie.

In the 1946 opinion, relying upon the case of *Wuebker v. Hopkins*, 29 Ohio App., 386, the then Attorney General expressed the opinion that the president of council could not vote on an ordinance or resolution which, by the terms of the statute, requires for its passage a majority of all the elected members of council.

Since that time the Supreme Court of Ohio, in the case of *State, ex rel. Roberts v. Snyder*, 149 Ohio St. 333, has held that under the provisions of Section 4272, General Code, a duly elected president of a city council is empowered to vote in case of *any* tie. In the opinion of the court it was held that Section 4272 authorizes the president of a city council to cast a vote in case of a tie irrespective of whether he may be regarded as a *member* of council.

While some of the reasoning of the 1946 opinion has since been rejected by the decision of the Supreme Court in the *Roberts* case, I do not believe that this would have the effect of overruling the conclusion of the 1946 opinion that a president of a city council is not a *member* of the council within the purview of Section 4207, General Code. You will note that Section 4207 provides for two types of council members, councilmen at large and councilmen from wards. It would seem clear, therefore, that any reference in this section to "members of council" must mean those members of council described in the same section.

Under the provisions of Section 4255, General Code, the mayor of a village is the president of council and is authorized to vote in case of a tie. In other words, the mayor of a village to this extent occupies exactly the same position as the president of a city council. Certainly it could not be

asserted that the mayor of a village is a *member* of the council merely by virtue of his power to vote in case of a tie. The same may be said for the Lieutenant Governor who may vote in case of a tie but is not a *member* of the State Senate, and the Vice President of the United States who may vote in case of a tie but is not a *member* of the United States Senate.

In your letter you make reference to Opinion No. 2555, Opinions of the Attorney General for 1927. There is no 1927 opinion bearing this number and I presume you have reference to Opinion No. 1386, Opinions of the Attorney General for 1927, page 2555. I have examined this opinion which merely holds that under the provisions of Section 4218, General Code, a person holding the position of a school teacher is ineligible to membership in a village council. The question of the applicability of Section 4207 to the president of a city council in no way was involved.

In specific answer to your question, it is my opinion that the president of a city council, elected pursuant to Section 4272, General Code, is not a *member* of the city council within the purview of Section 4207, General Code, which forbids a member of a city council from holding any other public office or employment except that of notary public or member of the state militia. Opinion No. 744, Opinions of the Attorney General for 1946, page 68, approved.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General