pany, relating to property easements for highway purposes and grade crossing changes in Scioto County.

After examination, it is my opinion that said agreement is in proper legal form and when it is properly executed by the parties, will constitute a binding contract. Said agreement is being returned herewith.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2469.

APPROVAL, BONDS OF JACKSON TOWNSHIP RURAL SCHOOL DISTRICT, WOOD COUNTY, OHIO—$4,000.00.

COLUMBUS, OHIO, April 7, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2470.

APPROVAL, BONDS OF CLEVELAND CITY SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO—$6,000.00.

COLUMBUS, OHIO, April 7, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2471.

OFFICES COMPATIBLE—MEMBER OF COUNTY BOARD OF ELECTIONS AND CLERK OF CITY COUNCIL AND EMPLOYE OF COUNTY AUDITOR'S OFFICE WHEN.

SYLLABUS:

A member of a county board of elections may at the same time hold the position of clerk of a city council and that of employe in the County Auditor's office, as distinguished from a deputy in the Coounty Auditor's office, if, as an employe in the County Auditor's office, he is not in the classified civil service and if it is physically possible to perform the duties of all three positions.

COLUMBUS, OHIO, April 7, 1934.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent request for my opinion which reads as follows:

"I have been informed that a member of one of our county boards of elections is, in addition to such office, serving as clerk of a city council at a salary of $350.00 a year, and is also employed in the office of the county auditor at an annual salary of $1350.00.

Protest has been presented to me against this person serving as a member of the board of elections under such circumstances.

I will thank you for your opinion as to whether one person can hold the office of member of a board of elections, and at the same time serve as clerk of a city council and as an employe in the office of the county auditor."

In your letter you do not state whether or not the employe in the County Auditor's office is in the classified civil service. Section 486-8, General Code, reads in part as follows:

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

(a) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required in this act.

* * * * * * * * *

(8) Three secretaries, assistants or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistants or clerks and one personal stenographer for other elective officers and each of the principal appointive executive officers, boards or commissions, except civil service commissions, authorized by law to appoint such secretary, assistant or clerk and stenographer.

* * * * * * * * *

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

Section 2981, General Code, authorizes the county auditor to appoint and employ "necessary deputies, assistants, clerks, bookkeepers and other employes." You do not state in your letter whether or not the employe in the County Auditor's office is exempt under clause 8 of sub-section (a) of section 486-8, General Code, supra. If the employe has not been so exempted and he has been placed in the classified civil service, he is amenable to the provisions of section 486-23, General Code. This section provides in part as follows:

"No officer, employe, or subordinate in the classified service of the state * * * shall take part in politics other than to vote as he pleases and to express freely his political opinions."

This office has in numerous opinions declared that holding public office, elective or appointive, is "taking part in politics" within the inhibition of the foregoing section. See Opinions of the Attorney General for 1927, Volume I, page 462; Opinions of the Attorney General for 1928, Volume II, page 1119;

Opinions of the Attorney General for 1929, Volume II, page 837; Opinions of the Attorney General for 1929, Vol. III, page 1904; Opinions of the Attorney General for 1931, Volume II, page 922; Opinion No. 1926, rendered November 29, 1933.

An examination of the statutes relative to county boards of elections convinces me that a member of such board is clearly an officer within the inhibition of section 486-23, as construed by the above opinions. Thus, if the employe in the County Auditor's office is in the classified civil service, he may not hold the positions in question since he would be taking part in politics as a member of the county board of elections.

The clerk of the city council in question is not subject to the provisions of section 486-23, General Code, since he is in the unclassified civil service of the city. See Opinions of the Attorney General for 1927, Volume I, page 558. This opinion was based on the fact that he was placed in the unclassified civil service by virtue of clause 5 of sub-section (a) of section 486-8, General Code, which reads as follows:

> "All officers and employes elected or appointed by either or both branches of the general assembly, and such employes of the city council as are engaged in legislative duties."

In your letter you refer to the fact that he is an employe of the County Auditor. I therefore assume that he is not a deputy county auditor. If he were a deputy county auditor, he could not at the same time be a member of the county board of elections. See Opinion No. 860, rendered May 23, 1933.

Assuming that the employe in the County Auditor's office is not a deputy county auditor, and that he is not in the classified civil service of the county, the question still remains as to whether any further statutory provisions, or the common law rule of incompatibility, renders the holding of these three positions inconsistent. Public offices are said to be incompatible when they are made so by statute, or when by reason of the common law rule of incompatibilty they are rendered incompatible. The best definition of the common law rule of incompatibility to be found in Ohio is the one stated by the court in the case of *State, ex rel.,* vs. *Gebert,* 12 O. C. C. (N. S.) 274 at page 275, as follows:

> "Offices are considered incompatible when one is subordinate to, or in any way a check upon, the other; or when it is physically impossible for one person to discharge the duties of both."

After an examination of the statutes and the duties of these positions, it would appear that there is nothing to prevent one and the same person from holding the three positions in question at the same time if it is physically possible to perform the duties of the three positions. This office has in numerous opinions held that the question of physical possibility to discharge the duties of various positions is a question of fact rather than of law. A few of the recent opinions of this office to this effect are as follows: Opinion No. 338, rendered March 23, 1933; Opinion No. 860, rendered May 23, 1933; Opinion No. 1354, rendered August 8, 1933; Opinion No. 2289, rendered February 16, 1934.

Without further extending this discussion, it is my opinion, in specific answer to your question that a member of a county board of elections may at the same

time hold the position of clerk of a city council and that of employe in the County Auditor's office, as distinguished from a deputy in the County Auditor's office, if, as an employe in the County Auditor's office, he is not in the classified civil service and if it is physically possible to perform the duties of all three positions.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2472.

CORPORATION STOCK—IN COMPUTING INCOME YIELD FOR TAXATION PURPOSES FEDERAL DIVIDEND TAXES PAID BY OWNER MAY NOT BE DEDUCTED FROM AMOUNT OF DIVIDENDS RECEIVED.

SYLLABUS:

In ascertaining the income yield of shares of stock for the purpose of determining the tax to be paid upon such stock for the year 1934, *under the Intangible Tax Law of this state, no deduction of federal dividend taxes paid by the owner of such stock can be made by him from the amount of dividends received by him on such stock.*

COLUMBUS, OHIO, April 7, 1934.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication which reads as follows:

> "The County Auditor has requested us to ask the benefit of your opinion as to the proper interpretation of the intangible tax law.
>
> During the last half of the year 1933, the federal government levied a tax of 5% of each dividend on investments in corporate stocks. In computing the gross income from such investments for the purpose of filing a return under the intangible tax law and computing the state tax thereon, may the taxpayer deduct from the dividend rate the amount paid to the federal government or must the return show the full amount of dividend paid by the corporation including the five per cent. paid to the federal government?
>
> Your early reply is requested, due to the short period of time before such schedules must be filed and the first installment of the tax paid."

The federal tax referred to in your communication is that imposed by section 213 (a) of the National Industrial Recovery Act, approved June 16, 1933. This section provides as follows:

> "There is hereby imposed upon the receipt of dividends (required