

laws relating to the status of surety companies and the workmen's compensation have been complied with. A certificate of the Secretary of State shows that the contracting foreign corporation is admitted to do business in Ohio.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

4847.

OFFICES INCOMPATIBLE—JUSTICE OF PEACE AND VILLAGE COUNCILMAN—VILLAGE COUNCILMAN AND DEPUTY COMMISSIONER OF MOTOR VEHICLES—JUSTICE OF PEACE ACTING AS VILLAGE COUNCILMAN, BECOMES A DE FACTO COUNCILMAN.

*SYLLABUS:*

1. *When a justice of the peace is appointed to fill a vacancy in a village council, and does not resign from his office of justice of the peace, he becomes a de facto village councilman and his vote in council has legal effect.*

2. *When a situation such as is presented in paragraph 1 occurs, the village council may declare the office to which the justice of the peace was appointed vacant or ouster proceedings may be instituted in court.*

3. *A village councilman may not act as a deputy commissioner of motor vehicles at the same time.*

COLUMBUS, OHIO, December 30, 1932.

HON. FORREST E. ELY, *Prosecuting Attorney, Batavia, Ohio.*

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

“The following questions have been submitted to me seeking an opinion from your office.

A Justice of the Peace was appointed to fill a vacancy in a village council and he did not relinquish his other office. Is he a member of council and what effect would his vote have therein?

A Village Councilman proposes to sell automobile license tags. Can he legally do this?”

In connection with your first question, your attention is directed to Section 4219, General Code, which reads as follows:

“Each member of council shall have resided in the village one year next preceding his election, and shall be an elector thereof. No member of the council shall hold any other public office or employment, except that of notary public or member of the state militia, or be interested in any contract with the village. Any member who ceases to possess any of the qualifications herein required or removes from the village shall forfeit his office.”

In the case of *State ex rel., vs. Gard*, 8 O. C. C. (N. S.) 599 at page 607 it was stated, after quoting Section 120 of the then Municipal Code of Ohio (the language of which section was practically identical to that now contained in Section 4218, General Code), that:

“ \* \* the inhibition against persons holding public office or employment is not limited to office in or employment by the municipality, but extends to all public office and employment. This is evidenced by the exception of notaries public and members of the militia.”

The Supreme Court affirmed the judgment of the above case without opinion, in *State, ex rel., Shank vs. Gard*, 75 O. S. 606.

Also, a former Attorney General, in an opinion reported in *Opinions of the Attorney General for 1928*, Vol. II, page 1119, stated in the second paragraph of the syllabus:

“Under the provisions of Section 4218, General Code, no member of the council of a village may legally hold any other public office or employment, except that of notary public or member of the state militia. The inhibition contained in the provisions of this section is not limited to holding another office in, or employment by, such village, but such inhibition extends to all other public offices and employments.”

There is no doubt but that a justice of the peace is a township officer. See Section 1711-1, General Code.

This office, in 1913, was called upon to construe the aforementioned section (4218, General Code) in connection with a similar question to that which you propound. The syllabus of this 1913 opinion reported in the *Annual Reports of the Attorney General for 1913*, Vol. II, page 1666, reads:

“Under the provisions of section 4218, General Code, a person may not remain a member of council and at the same time hold any other public employment.”

Where a member of council is holding another public office, he is a *de facto* officer and all measures passed by his vote would be legal, but he may be ousted from his office at any time.”

In the body of said opinion it was stated:

“It has been universally ruled by this department that the section quoted by you (G. C. 4218) prohibits a person holding any other public office or employment and at the same time remaining a member of council. This prohibition undoubtedly extends to the offices held by individuals in each case presented by you (deputy county treasurer and deputy sheriff respectively). These members, while occupying the position of councilmen, would, of course, be *de facto* officers, and all measures passed by their vote would be legal. The council, itself, however, may at any time declare their offices vacant, whilst they attempt to exercise the duties of both offices; or proceedings may be instituted in court to oust them.” (Words in parenthesis and italics the writer’s.)

Under the holding of the above opinion it would appear that the justice of the peace under consideration is a de facto village councilman and that his vote would be legal. However, council may at any time declare his office vacant or a proceeding may be instituted in court to oust him from the office of councilman.

Coming now to your second question, it may be noted, as heretofore stated, that a village councilman may not hold any other office or employment while acting as councilman and that this is not limited to public office or employment held under the municipality.

Section 6291-1, General Code, provides as follows:

"The commissioner of motor vehicles shall designate the county auditor and one or more persons in each county to act as deputy commissioners, who shall accept applications for the annual license tax, and assign distinctive numbers in the same manner as the commissioner of motor vehicles. Such deputy commissioners shall be located in such cities or villages in the county as the commissioner sees fit. For the purpose of facilitating the distribution of license tags, the commissioner may provide for the establishment of branch offices in cities having a population of one hundred thousand or over according to the last federal census.

The commissioner shall assign to each deputy commissioner a series of numbers sufficient to supply the demand at all times in such community, and shall keep a record in his office of the numbers within the series so assigned. Each deputy commissioner shall be required to give bond, the form and amount of which shall be prescribed by the commissioner of motor vehicles.

The deputy commissioners shall keep a file of each application and register such motor vehicle with the name and address of the owner thereof."

From the provisions of the above section it will be seen that the village councilman, if he were to sell automobile license tags, would be holding other public employment, namely, the position of "deputy commissioner of motor vehicles."

I am therefore of the opinion, in specific answer to your second question, that a village councilman may not, while holding said office, legally sell automobile license tags.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*