

458.

APPROVAL, BONDS OF GREENWICH VILLAGE SCHOOL DISTRICT,  
HURON COUNTY, OHIO—\$67,500.00.

COLUMBUS, OHIO, May 28, 1929.

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

459.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN  
HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, May 28, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

460.

APPROVAL, FINAL RESOLUTION COVERING EXTRA WORK ON BRIDGE  
IN PICKAWAY COUNTY, OHIO.

COLUMBUS, OHIO, May 29, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval supplemental final resolution with county auditor's certificate covering extra work on Section "A" (bridge) on I. C. H. No. 10, in Pickaway County Ohio.

Upon examination of said resolution, I find the same to be in proper legal form, and accordingly I have endorsed my approval thereon as to form and legality, and return it herewith to you.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

461.

OFFICES COMPATIBLE—VILLAGE SOLICITOR AND CLERK OF BOARD  
OF PUBLIC AFFAIRS—CONDITION NOTED.

SYLLABUS:

*An attorney employed as legal counsel for a village may also act as clerk of the*

*board of public affairs unless the duties required of the clerk by the board of public affairs are such as to make it physically impossible for such clerk to act as such legal counsel.*

COLUMBUS, OHIO, May 29, 1929.

HON. W. W. BADGER, *Prosecuting Attorney, Millersburg, Ohio.*

DEAR SIR:—Your recent communication reads:

“Please render your opinion on the following question:

May the village council employ legal counsel for said village and the clerk of the Board of Public Affairs who are one and the same person?

Ordinance Number 619, Section 5, reads as follows:

The Council of said village may employ legal counsel for said village who shall be the legal adviser of all the officers of said village according to law, for a period not exceeding two years at an annual salary not to exceed \$300.00 per annum payable quarterly.

#### Section 7.

The Board of Public Affairs of said village is hereby authorized to employ clerk, assistant clerk, superintendent of the waterworks, and an assistant superintendent of the waterworks, and such other labor as may be necessary to efficiently operate said waterworks. The clerk of said board shall receive a salary not to exceed \$600.00 per annum; the assistant clerk shall receive a salary not to exceed \$100.00 per annum.

G. C. 4220. When it deems it necessary, the village council may provide legal counsel for the village or any department or official thereof, for a period not to exceed two years, and provide compensation therefor.

G. C. 4360. The Board of Trustees of Public Affairs shall organize by electing one of its members president. It may elect a clerk who shall be known as the clerk of the Board of Trustees of Public Affairs.

#### FACTS.

The village has employed legal counsel under ordinance Number 619, Section 5, and have also employed the same person as clerk of the board of public affairs under Section 7 of the same ordinance.”.

There is no statutory inhibition against a village solicitor holding the position of clerk of the Board of Public Affairs. Therefore, the answer to your inquiry depends upon the question of whether or not the two positions are incompatible. The rule has frequently been established in Ohio to the effect that two positions are considered incompatible when one is subordinate to the other or when one is in any manner a check upon the other; and, further, when a condition exists wherein it is physically impossible for one person to discharge the duties of both positions.

Section 4220 of the General Code, as set out in your communication, authorizes the employment of legal counsel for the village or any department or official, etc. It has been held that a village solicitor is not an official. In an opinion of the Attorney General for the year 1915, page 412, it was held, as disclosed by the syllabus:

“The position of village solicitor is not an ‘office’ within the meaning of Section 5617, G. C.”

The section upon which said opinion was based provided in substance that a district assessor and certain other employes mentioned therein should not, during his term of office, hold any office of profit, etc. The opinion above quoted held that this did not preclude one of said persons from being city solicitor. The opinion of the then Attorney General was further based upon an opinion of the Attorney General, found in the Annual Reports of the Attorney General for the year 1912, page 487, which held:

"The village solicitor being appointed by contract, fulfilling only contractual duties, serving for an indefinite term and not being obligated to take oath or give bonds, is not an 'official' within the meaning of Section 4762, General Code, which stipulates that these duties shall fall upon any official serving in a similar capacity to that of prosecuting attorney or city solicitor."

In this connection, it will also be observed that the clerk of the Board of Public Affairs is not an officer. While Section 4360, General Code, authorizes such board to elect a clerk, there appears to be no independent duties which would clothe such person with the functions of an official. A clerk, unless there are specific statutory duties which make the position an office, is not regarded as an officer. In the performance of his duties he is under the supervision and control of the Board of Public Affairs. In view of the provisions of Section 4220 which requires legal counsel to be furnished the departments or officials, it would appear that it will not be necessary for the solicitor so employed to render legal advice to the clerk of the Board of Public Affairs. When he advises the department in which said clerk functions, theoretically speaking, at least, he advises the board which is charged with the responsibility of such department.

In view of the foregoing, it would seem that the positions which you mention are in nowise incompatible. Neither the Board of Public Affairs nor the village solicitor, in my opinion, would have any occasion to check upon the other. The only question, therefore, that might properly arise would be whether it is physically possible for one person to perform the duties of both positions. However, in view of the limited duties of both positions in a village, it is believed that this question need not be discussed. Of course, a situation could arise wherein, in view of the duties required of the clerk of the Board of Public Affairs, it would require his time to such an extent that he would have no time to devote to any legal matters. However, unless such a condition does exist, there would seem to be nothing to prevent him from holding both positions.

Based upon the foregoing, and in specific answer to your inquiry, you are advised that one employed as legal counsel for a village may also act as clerk of the Board of Public Affairs unless the duties required of the clerk by the Board of Public Affairs are such as to make it physically impossible for such clerk to act as such legal counsel.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*