

Note from the Attorney General's Office:

1930 Op. Att'y Gen. No. 30-2165 was overruled by
1995 Op. Att'y Gen. No. 95-040.

2165.

COUNCILMAN—BEACHWOOD VILLAGE—MAY NOT BE EMPLOYED AS
SCHOOL BUS DRIVER.*SYLLABUS:*

A member of council of the village of Beachwood may not be legally employed as the driver of a school bus by the board of education.

COLUMBUS, OHIO, July 28, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication which reads:

“The charter of the village of Beachwood, Ohio, copy of which is enclosed herewith, makes no provision for the qualifications of members of council, but Section 2, of said Charter, reads:

‘All powers of the village shall be exercised in the manner provided in this charter when so provided; if not so provided, then in the manner provided by ordinance of the council; and if not so provided then in the manner provided by the laws of Ohio, the term “laws” as used in this charter, embracing both the constitution of Ohio and the enactments of the legislature of Ohio.’

Question. May a member of the council of the village of Beachwood be employed as a driver of the school bus, by the local board of education during the term for which he was elected, and is a member of the village council?”

Your question, of course, arises by reason of the provisions of Section 4218 of the General Code of Ohio which, among other things, provides with respect to a member of a village council that “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.” From the foregoing, it clearly appears that if the general law has any application to the question a member of council may not be employed by a board of education in the capacity which you mention.

In addition to Section 2 of the charter, which you quote, it has been observed that Section 4 of said charter reads:

“The mayor, clerk, treasurer, marshal, and councilmen shall exercise the powers and perform the duties prescribed in this charter, and by ordinance, and, in addition thereto, all other powers and duties now or hereafter prescribed by general law in so far as not inconsistent therewith.”

While the above sections do not expressly state that officers shall be governed by the general law, with reference to their conduct and qualifications, it must be conceded that there is a strong intimation in the language hereinbefore used that such was the intention; that is to say, in order to perform the duties prescribed by general law it could be argued that one of the duties of members of council would be to refrain from engaging in employments prohibited by the general law.

While Section 3 of Article XVIII of the Ohio Constitution grants to municipalities the power “to adopt and enforce within their limits such local police, sanitary and

other similar regulations, as are not in conflict with general laws," it is not easy to determine just what is and what is not in conflict. As was stated in *State ex rel. vs. Cooper*, 97 O. S. 86, the provisions of said section are hazy and ambiguous. However, it may be said that the village laws referred to in said section are those which relate to police, sanitary and other similar regulations. If a municipality should undertake to expressly authorize a member of council to engage in employment which is in conflict with the general law it could be argued that such action is in conflict with the general laws for the reason that inhibitions such as are mentioned in Section 4218 of the General Code are police regulations in the interest of the public generally. Such a construction probably is too far-fetched but it is unnecessary to decide that point for the purposes of this opinion. It is believed, however, that where the charter is silent upon a given subject and the general law is clear, except for the fact that there is a charter, the general law will have application. In the case under consideration, as hereinbefore mentioned, there is a suggestion in the charter itself that the general law is to be followed in such matters when the charter is silent.

Based upon the foregoing and in specific answer to your inquiry, it is my opinion that a member of council of the village of Beachwood may not be legally employed as the driver of a school bus by the board of education.

Respectfully,

GILBERT BETTMAN,

Attorney General.

2166.

APPROVAL, BONDS OF VILLAGE OF CRESTLINE, CRAWFORD COUNTY,
OHIO—\$10,000.00.

COLUMBUS, OHIO, July 28, 1930.

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

2167.

APPROVAL, BONDS OF CITY OF SALEM, COLUMBIANA COUNTY, OHIO
—\$19,700.00.

COLUMBUS, OHIO, July 28, 1930.

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