

City to the State. However, it might be mentioned that in respect to the deed conveying a part of Lot No. 442, the ninety days have not expired since the ordinance authorizing said conveyance. In view of this situation, it is possible that a referendum might be held upon said action; but in view of all the circumstances this possibility seems to be very remote, and it is believed that it is not necessary for you to delay the acceptance of the deed on account thereof.

According to the terms of these deeds, it will be necessary for the State to erect an armory upon the premises within a period of three years (unless the time is further extended) to prevent the title to said premises reverting to said city.

The abstract and deeds are being returned herewith.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3627.

BOARD OF PARK COMMISSIONERS—CITY PLANNING COMMISSION—
 MAY JOIN IN EMPLOYING SERVICES OF AN ENGINEER.

The board of park commissioners and the city planning commission of a city may join in employing the services of an engineer who shall serve each of them as its engineer and executive officer.

COLUMBUS, OHIO, September 23, 1922.

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

GENTLEMEN:—The City Solicitor of Cincinnati has asked this department to advise him on a question which for personal reasons he is precluded from considering in his official capacity. The question is of a character similar to many which have been submitted from time to time by the Bureau to this department for opinion, and I am accordingly giving an opinion thereon to you.

The question submitted is as follows:

“The Board of Park Commissioners has an employe whom it designates as Engineer and Executive Officer, and pays him a salary of five thousand dollars a year. The City Planning Commission of Cincinnati is very anxious to obtain his services as its Engineer and Executive Secretary. The Board of Park Commissioners is willing, in fact anxious, that he assume the duties pertaining to both positions, as he is fully able and capable of handling the situation, and the duties of the two offices are such that there can be no conflict. In fact, it will be for the best interests of the City of Cincinnati that the two departments co-operate to the fullest extent. Arrangements are contemplated whereby the Board of Park Commissioners will pay about thirty-five hundred dollars per annum, out of its funds as salary, and thereby save about fifteen hundred dollars, and the Planning Commission will pay the balance.”

It would appear that this arrangement contemplates no increase of salary from the standpoint of the person affected thereby and virtually amounts to a division of his time between the board of park commissioners and the city planning commission. No copy of the charter of the city of Cincinnati is available in this office and no question arising under such charter has been considered. It is assumed that the city planning commission and the board of park commissioners are both organized under the general law of this state which has been adopted by the charter of the City of Cincinnati for the government of that municipality. The following are the provisions of the General Code applicable to the question:

"Sec. 4057. The board of park commissioners shall have the control and management of parks, * * * boulevards and connecting viaducts and subways, children's playgrounds, public baths and stations of public comfort located in such parks, of all improvements thereon and the acquisition, construction, repair and maintenance thereof. The board shall exercise exclusively all the powers and perform all the duties, in regard to such property, vested in and imposed upon the director of public service."

"Sec. 4058. The board shall have the expenditure of all moneys appropriated by the city council or received from any other source whatever, for the purchase, acquisition, improvement, * * * or enjoyment of all such property * * *."

"Sec. 4060. The board may establish or extend parks, parkways, boulevards * * * within such city or territory contiguous to such city * * *."

"Sec. 4061. The board may employ a secretary, general superintendent, engineer, clerks and such other necessary employes for carrying into effect the purposes of its creation, and shall fix the rate of compensation and term of service of its employes."

"Sec. 4366-1. The council of each municipality may establish a city planning commission, consisting of seven members, the mayor, the service director, the president of the board of park commissioners, and four citizens * * *."

"Sec. 4366-2. The powers and duties of the commission shall be to make plans and maps of the whole or any portion of such municipality, and of any land outside of the municipality, which in the opinion of the commission bears relation to the planning of the municipality, and to make changes in such plans or maps when it deems same advisable. Such maps or plans shall show the commissions' recommendations for new streets, alleys, ways, viaducts, bridges, subways, parkways, parks, playgrounds, or any other public grounds or public improvements; and the removal, relocation, widening or extension of such public works then existing. With a view to the systematic planning of the municipalities, the commission may make recommendations to the mayor, council and department heads concerning the location of streets, transportation and communication facilities, public buildings and grounds. The commission shall have the power to control, preserve and care for historical land marks; to control in the manner provided by ordinance the design and location of statuary and other works of art, which are or may become the property of the munic-

ipality; and the removal, relocation and alteration of any such works belonging to the municipality; and the design of harbors, bridges, viaducts, street fixtures and other public structures and appurtenances. Whenever the commission shall have made a plan of the municipality, or any portion thereof, no public building, street, boulevard, parkway, park, playground, public ground, canal, river front, harbor, dock, wharf, bridge, viaduct, tunnel, utility (whether publicly or privately owned) or part thereof shall be constructed or authorized to be constructed in the municipality until and unless the location thereof shall be approved by the commission; provided that in case of disapproval the commission shall communicate its reasons for disapproval to council, and the department head of the department which has control of the construction of the proposed improvement or utility; and council, by a vote of not less than two-thirds of its members and such department head shall together have the power to overrule such disapproval. The narrowing, ornamentation, vacation or change in the use of streets and other public ways, grounds and places shall be subject to similar approval, and disapproval may be similarly overruled. The commission may make recommendations to any public authorities or to any corporations or individuals in such municipality or the territory contiguous thereto, concerning the location of any buildings, structures or works to be erected or constructed by them."

"Sec. 4366-5. The commission shall have power to control, appoint or employ such architects, engineers and other professional service, and to appoint such clerks, draughtsmen and other subordinates as it shall deem necessary for the performance of its functions; the expenditures for such service and employments to be within the amounts appropriated for such persons by the council of the municipality; and council shall provide for the expenses and accommodations necessary for the work of the commission."

There is no statutory prohibition against the holding of the two positions in question by the same person; and the absence of any provision of the charter of the city of Cincinnati to that effect has been assumed.

This leaves as the only question in the case that of the common law incompatibility of the two positions. The principles governing such a question have been stated so frequently in other opinions to the Bureau that they need not be repeated. Are the two positions, namely, engineer and executive officer of the board of park commissioners and engineer and executive secretary of the city planning commission, in any wise checks upon or adversary to each other, or is it physically possible for the respective duties to be performed by one person at the same time?

The second of these two questions seems to be answered as a matter of fact by the solicitor's communication. That is to say, the duties as established by the board of park commissioners on the one hand and the city planning commission on the other are not such as to make it physically impossible for one person to discharge the functions of both positions.

In a sense, the board of park commissioners and the city planning commission as such sustain an adversary relation to each other in that the city planning commission may require the relocation of parks and parkways to conform to its plan for the development of the city, subject, however, to the federal authority of the council and the board of park commissioners, council acting by vote of two-thirds of its members.

However, that this adversary relation is more technical than real appears from the fact that the president of the board of park commissioners is an ex officio member of the city planning commission. It is apparent upon an examination of all the sections that co-operation rather than a system of checks and balances is the aim of the law relating to the city planning commission. Its function is rather advisory, to be exercised by way of recommendation than anything else.

However this may be, and though there may be some degree of incompatibility between the position of member of the city planning commission and the position of any member of the board of park commissioners, save the president thereof, yet the same degree of incompatibility, if any, can scarcely be said to carry through to the subordinates of the board and the commission respectively. The positions which it is designed to combine in one person are not really offices at all. Neither position has any independent functions by virtue of statute and the incumbent of neither can exercise any powers, nor is he charged with any duties as a result of direct grant or imposition by the law of the state. So the function of an engineer of the board of park commissioners on the one hand and the engineer and executive secretary of the city planning commission on the other hand is to carry out the instruction of a superior. Really the doctrine of incompatibility of offices does not apply at all because no offices are involved.

No reason appears, therefore, for holding the positions legally incompatible. The arrangement is purely one which is to exist at the will of the respective employing authorities. As such it is one which in the opinion of this department each of them is authorized to make.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3628.

INHERITANCE TAX LAW—WHERE A DEVISED ALL OF HIS ESTATE TO HIS WIDOW FOR LIFE, REMAINDER TO HIS CHILDREN, WIDOW TO HAVE POWER OF SALE AND IN EVENT OF ITS EXERCISE SHE WOULD TAKE ONLY HER DOWER IN REAL ESTATE AND DISTRIBUTIVE SHARE OF PERSONALTY AND REMAINDERS OF CHILDREN TO VEST IMMEDIATELY—TAX DETERMINED UPON LIFE ESTATE IN WIDOW WITH REMAINDERS TO CHILDREN.

A devised and bequeathed all of his estate to his widow for life, the remainder to his children, but provided that his widow should have a power of sale with respect to any of the property, and in the event of its exercise she was to take instead of such life estate, her dower in the real estate and distributive share of the personalty, and the remainders of the children were immediately to vest.

HELD, section 5344 of the General Code governs the appraisement of the successions for inheritance tax purposes, and the contingency with respect to the exercise of the power of sale is to be ignored for such purposes.