

and maintain such roads and drives in, around, upon and to such lands and waters as shall make them conveniently accessible and useful to the public.

By Section 1438-3, General Code, it is provided, among other things, that "the unexpended balances of the appropriations of the division of public works for service, improvement or maintenance of state reservoir parks transferred to the Division of Conservation are appropriated to and made available to the Division of Conservation hereby created."

From the above noted statutory provisions contained in Amended Senate Bill No. 131, it is quite clear that Buckeye Lake, as a public park of the State, together with the property and improvements therein is now under the jurisdiction and control of the Conservation Division provided for by said act, and that the construction and maintenance of the improvements therein, so far as they have relation to the use of the lands and waters of said lake for park purposes are likewise under the jurisdiction and control of said Conservation Division.

The purpose for which the causeway and bridge referred to in your communication were constructed was to make Lieb's Island accessible to the public and if the Conservation Council determines that it will serve the public interest by repairing said causeway and otherwise maintaining the same for public use, said body has, in my opinion, ample authority to repair said property and provide for the maintenance of the same out of public funds available therefor. I do not deem it necessary to express any opinion as to how the work necessary for the repair of said causeway and bridge shall be carried on, whether by contract or otherwise; but addressing myself to the questions presented in your communication, I am of the opinion that the causeway and bridge referred to in said communication are the property of the State of Ohio, and that the Conservation Division of the Department of Agriculture, acting through the Conservation Council, is authorized to repair and otherwise maintain said improvement.

I am herewith returning to you the lease executed to Mr. Herbert C. Sherman under date of August 4, 1922, and also the lease executed to Lakewood Park, Inc., under date of September 3, 1926, both of which are referred to in your communication.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1522.

BOARD OF TRUSTEES OF FIREMEN'S PENSION FUND—COUNCIL-
MANIC REPRESENTATIVES NOT HOLDING ANOTHER PUBLIC
OFFICE WITHIN INHIBITION OF CITY CHARTER PROVISION.

SYLLABUS:

A councilman, who is chosen to act as one of council's representatives on the board of trustees of the firemen's pension fund, is not holding another public office or employment within the meaning of the charter provision that members of council shall not hold any other public office or employment except that of notary public or member of the state militia.

COLUMBUS, OHIO, February 14, 1930.

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

GENTLEMEN:—Your recent communication reads:

"The charters of several cities in Ohio have a provision that members

of council shall not hold any other public office or employment, except that of notary public or member of the state militia.

"Section 4600, G. C., provides that a board of firemen's pension fund trustees shall consist of six members, two to be chosen by the city or village council from among its own members.

"Question. May members of council in a city whose charter contains the above inhibition, legally be members of the board of trustees of a firemen's pension fund?"

As you state, the provisions of law covering firemen's pension funds clearly require that two members of the board of trustees shall be selected from members of council. It may be conceded that members of such board are in a certain sense officials of the city, but it is not so clear that the inhibition of the charter provision which you mention would apply in the case concerning which you inquire.

If it were to be held that this inhibition applies, then it would be necessary to determine whether the charter provision overrides the specific requirement of the statute. My predecessor, in an opinion found in the Opinions of the Attorney General for 1927, page 1495, held as disclosed by the syllabus:

"Where, by charter provision all powers of local self government are reserved to a municipality, and the legislative powers incident thereto are vested in the council of such municipality, such council is authorized to adopt by ordinance a method of selecting the board of trustees of the firemen's pension fund at variance with that prescribed by general law."

Said opinion was based upon the following cases: *State ex rel. vs. Edwards*, 90 O. S. 305; *State ex rel. Hile vs. Baker, et al.*, 92 O. S. 506; and *Hile vs. Cleveland*, 107 O. S. 144. All of these cases, and the opinion referred to, are based upon the home rule power of a municipality. I am of the view that the conclusion of my predecessor is sound, but it does not necessarily follow that the power of the municipality to choose a different method of selecting a board of trustees still exists. At the time that opinion was rendered the statute authorizing firemen's pension funds was permissive in character and there was no levy for the purposes of a firemen's pension fund made mandatory. The last Legislature has now made the levy mandatory and thereby indicated that the maintenance of this fund is a matter of state wide concern. It might well be argued that the provision relative to the fund is now a police regulation which, under the provisions of the constitution, may not be altered by municipal provisions inconsistent therewith. However this may be, it is believed that a decision on this point is unnecessary.

The charter provisions here in question do not, of course, specifically prohibit the councilman serving as one of the trustees. The prohibition, if any, rests in the fact that a trustee is holding public office within the meaning of the provisions of the charters. It is very questionable, however, whether the members of council designated to act as trustees are, in fact, holding separate and distinct offices.

In a recent opinion addressed to you, being No. 1399, dated January 13, 1930, it was clearly indicated that the board of trustees of the firemen's pension fund, under the recently enacted provisions of law, is intended to be a representative body composed of two members of the police department, two councilmen, and two additional members who shall be neither councilmen nor members of the police department. The members chosen from council were held in that opinion to be trustees only by reason of the fact that they are councilmen, and the right to be trustees terminates as soon as their term in council expires. Substantially, there-

fore, the functions which the councilman performs are additional functions placed upon him as a councilman and are not those of a separate and distinct office.

A somewhat similar situation was before the Supreme Court of Alabama in the case of *Taylor vs. Davis, et al.*, 212 Ala. 282; 102 So. 433. In that case the Legislature had created a budget commission, composed of the Governor, the Attorney General and the State Auditor, and the question was raised as to whether this was giving a separate office to those officers within the inhibition of the constitution of Alabama which prohibits any one holding two offices of profit. These officers were given additional compensation for their services as members of the budget commission. In disposing of the contention made, the Supreme Court said:

"The members of the budget commission are not holding two offices of profit within the meaning of Section 280 of the Constitution. When, in the exigencies of government, it is necessary to create and define new duties, the legislative department has the discretion to determine whether additional offices shall be created, or these duties shall be attached to and become *ex officio* duties of existing offices. The power extends to the consolidation of offices resulting in abolishing one and attaching its powers and duties to the other. It matters not that the name commission or board is given to the body created. The officers named in the budget bill could be called the Governor's counsel or cabinet when engaged in the joint duties imposed upon them by virtue of their respective offices."

Applying this principle to the situation you present, it seems to me that the councilmen are performing additional duties required by law of them as councilmen, when they serve as members of the board of trustees of the firemen's pension fund. It follows that they are not occupying another public office or employment within the meaning of the charter provision.

In view of what has been said, I am of the opinion that a councilman, who is chosen to act as one of council's representatives on the board of trustees of the firemen's pension fund, is not holding another public office or employment within the meaning of the charter provision that members of council shall not hold any public office or employment except that of notary public or member of the state militia.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1523.

APPROVAL, BONDS OF VILLAGE OF CROOKSVILLE, PERRY COUNTY
—\$24,000.00.

COLUMBUS, OHIO, February 14, 1930.

Industrial Commission of Ohio, Columbus, Ohio.