

been amended since the rendition of the opinion, such amendments made in 1925 (111 Ohio Laws, 110-113) to sections 1546, 1547 and 1550, General Code, do not affect the reasoning of the opinion for the purposes of such question answered therein.

I am therefore of the opinion, in specific answer to your second question, that the prosecuting attorney may legally employ the official shorthand reporter of the common pleas court in his office, providing it is physically possible for the shorthand reporter to properly perform the duties of both positions.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3824.

SOLICITOR—ORDINANCE OF CITY PERMITTING SOLICITOR TO DETERMINE EXTRA COMPENSATION FOR HIMSELF FOR DEFENDING AND PROSECUTING CASES IN COURTS ILLEGAL.

SYLLABUS:

1. *An ordinance of a city which, after providing that a city solicitor shall receive as compensation for his services a definite sum per annum, payable semi-monthly, stipulates expressly that such salary does not cover his services in cases filed for or against the said city in the common pleas and higher courts and that he shall be paid extra for such services, but which does not definitely fix the amount to be paid for such services in the handling of cases in court or fix a rule by which the amount may be definitely determined, is not legally drawn.*

2. *Under such an ordinance as described in syllabus 1, the city solicitor cannot legally receive extra amounts which he determines for himself for prosecuting and defending cases in the common pleas and higher courts.*

COLUMBUS, OHIO, January 16, 1935.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads:

“A city in Ohio has an ordinance fixing the compensation of its city solicitor, which reads as follows:

‘The solicitor of the city of.....shall receive as compensation for his services the sum of Nine Hundred (\$900) Dollars per annum payable semi-monthly. The above salary does not cover cases filed for or against the city of.....in the court of Common Pleas of.....county, Ohio, or higher courts, and he shall be paid extra for all suits and actions at law for and on behalf of said city in said courts.’

While we do not seem to have any Attorney Generals' opinions relating thereto, our correspondence shows that this Department has always held that the salary ordinance for a city solicitor could include a definite extra amount for representing the city in court, but you will note that in the above ordinance no definite amount is fixed for such extra services.

Will you kindly advise this Department whether this ordinance is legally drawn and whether, under same, the city solicitor can receive extra amounts,

which he determines himself, for prosecuting cases for or against the city?"

A city solicitor is one of the several executive "officers" of a city. See section 4246, General Code.

Section 4303, General Code, provides that the solicitor shall serve for a term of two years and until his successor is elected and qualified.

Sections 4305, et seq., General Code, and other pertinent sections provide for the duties of the city solicitor. Section 4308, General Code, reads as follows:

"When required so to do by resolution of the council, the solicitor shall prosecute or defend, as the case may be, for and in behalf of the corporation, all complaints, suits and controversies in which the corporation is a party, and such other suits, matters and controversies as he shall, by resolution or ordinance, be directed to prosecute, but shall not be required to prosecute any action before the mayor for the violation of an ordinance without first advising such action."

Undoubtedly, the above statute makes it the duty of the city solicitor to prosecute and defend actions filed in the common pleas court or higher courts when city council by resolution or ordinance directs him to do so.

There is no specific section of the General Code setting forth that the city solicitor shall receive a definite salary to cover the performance of all his statutory duties, nor is there any specific section stating the manner of fixing his salary and compensation.

Section 4214, General Code, is a general section applicable to cities, under Title XII of the General Code, entitled "Municipal Corporations", which title also includes sections 4303 et seq., General Code. Such section 4214 reads:

"Except as otherwise provided in this title, council, by ordinance or resolution, shall determine the number of officers, clerks and employes in each department of the city government, and shall fix by ordinance or resolution their respective salaries and compensation, and the amount of bond to be given for each officer, clerk or employe in each department of the government, if any be required. Such bond shall be made by such officer, clerk or employe, with surety subject to the approval of the mayor."

It would seem that the foregoing section compels council of a city to fix the salary and compensation to be paid the city solicitor for the transaction of the duties of his office, since there is no other section of the General Code relating generally to the compensation and salary of city officers.

An argument may be made that section 4214, General Code, does not apply to the office of city solicitor because such office is not one to be determined by council, but rather is the creature of the state law. If, however, section 4214, General Code, with respect to salary and compensation, does not include the city solicitor, no statute whatever exists stipulating payment for all the duties of the office.

A portion of the subject matter of what is at the present time section 4214, General Code, was originally passed in 1902, as section 126 of an act providing for the organization of cities and incorporated villages, 96 O. L. 20, 61. Such section 126 read:

"(Salaries of municipal officers, clerks and employes)

Council shall fix the salaries of all officers, clerks and employes in the city government, except as otherwise provided in this act, * * *

This subject matter of section 126 was later carried into the General Code of 1910 as section 4214. Hence, it follows that section 4214 makes it the duty of a city council to fix the salary and compensation of a city solicitor, by ordinance or resolution.

That the legislature contemplated that all of a city solicitor's salary and compensation should be definitely fixed by council, by ordinance or resolution, before his term began seems clear when the provisions of section 3808, General Code, are considered. Section 3808 provides:

"No member of the council, board, officer or commissioner of the corporation, shall have any interest in the expenditure of money on the part of the corporation other than his fixed compensation. A violation of any provision of this or the preceding two sections shall disqualify the party violating it from holding any office of trust or profit in the corporation, and shall render him liable to the corporation for all sums of money or other thing he may receive contrary to the provisions of such sections, and if in office he shall be dismissed therefrom."

This section is very broad and appears to have been enacted to prevent municipal officers from having any possible pecuniary interest in expenditures of the corporation during their term of office other than their stated and fixed compensation.

What is now section 3808, General Code, was first passed as part of section 45 of the Municipal Code of 1902 (96 O. L. 37) reading:

"* * * nor shall any member of the council, board, officer or commissioner of the corporation, have any interest in the expenditure of money on the part of the corporation other than his fixed compensation. * * *"

Obviously, the legislature must have intended that the compensation of all officers be fixed in advance of the beginning of their term, since it is provided in section 3808 that no officer could have any interest in any expenditure on the part of the corporation other than his fixed compensation. If payments were to be allowed for extra services of the city solicitor in the case you present, the solicitor would be having an interest in an expenditure on the part of the corporation other than his fixed compensation, in violation of section 3808, General Code.

A reference to sections 4761 and 4762, General Code, will show the intention of the legislature that city council must fix in advance the compensation of the city solicitor for his duties in prosecuting and defending cases in common pleas and higher courts. Such sections read as follows:

"Sec. 4761. Except in city school districts, the prosecuting attorney of the county shall be the legal adviser of all boards of education of the county in which he is serving. He shall prosecute all actions against a member or officer of a board of education for malfeasance or misfeasance in office, and he shall be the legal counsel of such boards or the officers thereof in all civil actions brought by or against them and shall conduct such actions in his official capacity. When such civil action is between two or more boards of education in the same county, the prosecuting attorney shall not be required to act for

either of them. In city school districts, the city solicitor shall be the legal adviser and attorney for the board of education thereof, and shall perform the same services for such board as herein required of the prosecuting attorney for other boards of education of the county."

"Sec. 4762. The duties prescribed by the preceding section shall devolve upon any official serving in a capacity similar to that of prosecuting attorney or city solicitor for the territory wherein a school district is situated, regardless of his official designation. No prosecuting attorney, city solicitor or other official acting in a similar capacity shall be a member of the board of education. No compensation in addition to such officer's regular salary shall be allowed for such services."

Section 4761, General Code, makes it the duty of a city solicitor to appear in court actions for the city board of education. The last sentence of section 4762, General Code, states that for the duty under section 4761, the city solicitor shall receive no additional compensation, other than his "regular salary." Obviously, the legislature has shown that the duty to defend and prosecute court actions is to be taken into consideration by the city council in advance in fixing the solicitor's stated salary and compensation for his term of office.

As stated in the first portion of this opinion, there is nothing in the General Code to regulate just how the salary and compensation shall be fixed by council. Council may make a flat salary to cover all the duties of the city solicitor, or it may provide a regular salary plus a flat amount for each case in common pleas court and higher courts, or a definite amount per hour or per diem for services rendered in such cases. In other words, the yardstick for compensation must be fixed in advance of his term of office.

In view of the foregoing, and in specific answer to your questions, I am of the opinion that, first, the ordinance under consideration is not legally drawn, and, second, the city solicitor may not legally receive extra amounts, which he determines himself, for prosecuting cases for or against the city in common pleas and higher courts.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3825.

APPROVAL, TRANSCRIPTS OF PROCEEDINGS RELATING TO REDUCTION OF RENT ON CANAL LAND LEASES—CITY OF AKRON, CITY VIEW STORAGE COMPANY, E. D. BESST, MARY C. COLE, EMMA E. DOLL, RUTH DOLL.

COLUMBUS, OHIO, January 16, 1935.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a number of transcripts of your proceedings upon applications filed with you by the owners of canal land leases, for a reduction in the current and/or delinquent rentals provided for and accrued under such leases.

The applications here in question, which are covered by the transcripts above