

Note from the Attorney General's Office:

1927 Op. Att'y Gen. No. 27-1396 was overruled in part by 1989 Op. Att'y Gen. No. 89-069.

vote for some one to fill such office, he may do so by writing the name of the person for whom he desires to vote in the space underneath the heading or designation of such office, and make a cross mark in the circle at the head of the ticket, in which case the ballot shall be counted for the entire ticket, as though the name substituted had been originally printed thereon."

and also paragraph 6 of Section 5070, General Code, which is as follows:

"If the elector desires to vote for a person whose name does not appear on the ticket, he can substitute the name by writing it in black lead pencil or in black ink in the proper place, and making a cross mark in the blank space at the left of the name so written." o

The fact that the surnames of the candidates "Evans" are the same, and only the given names "Fred" and "Frank" are different, may have misled some electors. But the fact remains that the electors had the right to write in the name of the person for whom they desired to vote and were entitled to have it counted. It is also presumed that the electors intended to vote for the person shown to have received the vote. In the absence of a contest therefore, the election would be governed by the face of the returns.

Specifically answering your inquiry, it is therefore my opinion, that as shown by the detailed votes submitted in your letter, Mr. Hayslip, Mr. Price and Mr. Fred Evans should be declared elected on the board of township trustees.

In this connection, it may be well to invite your attention to the case of *Board of Elections vs. Henry*, in the Court of Appeals, Franklin County, Ohio, 25 Ohio Appellate ———, wherein it is held in the eighth branch of the syllabus, as follows:

"Ballots on which voters wrote H.'s name in pencil, but did not add cross mark, held properly counted for H."

This case was presented to the Supreme Court upon motion to certify, which was overruled November 2, 1927, 158 N. E. 94.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1396.

OFFICES INCOMPATIBLE—MEMBER OF VILLAGE COUNCIL WITH (1) ASSISTANT IN THE COUNTY SURVEYOR'S OFFICE (2) JANITOR OF PUBLIC SCHOOL (3) SCHOOL TEACHER.

SYLLABUS:

1. Under the provisions of Section 4218, General Code, a person holding the position of assistant in the county surveyor's office is ineligible to membership in a village council.

2. Under the provisions of Section 4218, General Code, a person holding the position of janitor of a public school is ineligible to membership in a village council.

3. *Under the provisions of Section 4218, General Code, a person holding the position of school teacher is ineligible to membership in a village council.*

COLUMBUS, OHIO, December 17, 1927.

HON. F. E. SLABAUGH, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion, as follows:

“As prosecuting attorney, there has been brought to my attention the matter of certain men who have been elected to the village council at -----, Ohio, and the question is whether under these circumstances they are entitled to serve under Sections 4218 and 4207 of the General Code. One member, T. C. C., is employed as an assistant in the county surveyor’s office of this county, and works most of the time for the surveyor, but not all the time. Another, L. H., is employed as janitor of the public schools and another, L. E. B., is employed to teach agriculture in the public schools at -----, Ohio. I am not inclined to think that the law will prohibit these men from serving as councilmen but these sections are pretty broad and I presume there may be a ruling in your department on the matter.

Let me hear from you.”

The sections mentioned in your letter are as follows:

Section 4207. “Councilmen at large shall have resided in their respective cities, and councilmen from wards shall have resided in their respective wards, for at least one year next preceding their election. Each member of council shall be an elector of the city, shall not hold any other public office or employment, except that of notary public or member of the state militia, and shall not be interested in any contract with the city. A member who ceases to possess any of the qualifications herein required, or removes from his ward, if elected from a ward, or from the city, if elected from the city at large, shall forthwith forfeit his office.”

Section 4218. “Each member of council shall have resided in the village one year next preceding his election, and shall be an elector thereof. 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. Any member who ceases to possess any of the qualifications herein required or removes from the village shall forfeit his office.”

In an opinion found in the *Annual Report of the Attorney General, 1912, Vol. II, page 1638*, the syllabus is as follows:

“A councilman by express provisions of statute may hold no other public office or employment, except that of notary public or member of the state militia, and therefore neither a principal of a high school nor a janitor in a public school building may hold the office of councilman.”

and again in the same volume at page 1908, the first branch of the syllabus of Opinion Number 19, is as follows:

“Section 4218, General Code, provides ‘No member of council shall hold any other public office or employment,’ and its terms extend to all public offices and employments.”

Also in an opinion found in Opinions of the Attorney General for 1918, Vol. I, page 636, the first and second branches of the syllabus are as follows:

"1. The inhibition found in Section 4207, G. C., against holding another public office is not limited to office in or appointment by the municipality, but extends to all public offices and employments.

2. Whenever a member of council accepts and holds any other public office or employment, he ipso facto forfeits his office of councilman."

In the case of *State ex rel. vs. Gard*, 8 O. C. C. (N. S.) 599, it was held:

"The inhibition against the holding of other public office or employment relating to the qualifications of councilmen, is not limited to other office or employment by the municipality but extends to all public office and employment."

This case was affirmed by the Supreme Court, without opinion, in 75 O. S. 606.

In the Annual Report of the Attorney General for 1913, Vol. II, page 1666, this department was called upon to consider whether or not a deputy sheriff and deputy treasurer might also act as members of a village council. The following language is found in that opinion:

"It has been universally ruled by this department that the section quoted above (4218, General Code) prohibits a person holding any other public office or employment and at the same time remaining a member of council. This prohibition undoubtedly extends to the offices held by the individuals in each case presented by you."

It is clear that the holding of any public office or employment disqualifies a person from membership on the village council. It is also apparent that each of the positions mentioned in your letter is at least one of "public employment."

Specifically answering your question, it is my opinion that the positions held by the persons mentioned in your letter are each and all within the prohibitions contained in Sections 4207 and 4218, *supra*.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1397.

APPROVAL, GAME REFUGE LEASES IN WASHINGTON, MONTGOMERY
AND MEDINA COUNTIES.

COLUMBUS, OHIO, December 19, 1927.

Department of Agriculture, Division of Fish and Game, Columbus, Ohio.

GENTLEMEN:—I have your letter of recent date in which you enclose the following game refuge leases, in duplicate, for my approval: