

vision of Public Offices, the bonds should be offered to the sinking fund trustees as provided in Section 2293-27, and in the event of rejection, they should be advertised and sold pursuant to the provisions of Sections 2293-28 and 2293-29, General Code, to the responsible bidder submitting the highest bid based upon the lowest rate of interest.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4017.

OFFICES INCOMPATIBLE—CLERK OF VILLAGE AND CLERK OF BOARD OF TRUSTEES OF PUBLIC AFFAIRS—EXCEPTION WHERE DUTIES OF TWO OFFICES HAVE BEEN MERGED BY VILLAGE COUNCIL UNDER SECTION 4281 G. C.

SYLLABUS:

The clerk of a village may not be employed as clerk of the board of trustees of public affairs where the duties of the two offices have not been merged by action of the village council as provided in section 4281, General Code, from which conclusion it necessarily follows that such clerk may not receive the compensation provided for each of said offices.

COLUMBUS, OHIO, February 1, 1932.

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

GENTLEMEN:—I am in receipt of your recent letter which reads as follows:

“We respectfully request your opinion on the following matter:

Branch two of opinion of the Attorney General found on page 20 of the 1914 Opinions, reads as follows:—

‘The village clerk may not be clerk of the board of trustees of public affairs and receive compensation therefor as these offices are incompatible.’ Sec. 4281 G. C., as amended in 113 O. L., 641 reads as follows:

‘The clerk shall keep the books of the village, exhibit accurate statements of all moneys received and expended of all the property owned by the village and the income derived therefrom and of all taxes and assessments, and the village council may by a majority vote merge the duties of the clerk of the board of trustees of public affairs with the duties of clerk of the village, allowing said clerk of the village such additional assistants in performing such additional duties as the council may determine, and such additional compensation for such additional duties as may be provided by the action of the council.’

In your Opinion No. 808, found on page 1241 of the 1929 Opinions, it is held in branch four as follows:—

‘When the duties of the clerk of the board of trustees of public affairs of a village are merged with the duties of the clerk of the village by authority of amended Section 4281 General Code, provision may be made by council for the payment to the said clerk of additional compensation during his term of office, and said additional compensation may lawfully be paid from water works funds.’

Question. May the clerk of a village be employed as clerk of the board of public affairs and receive the compensation provided for each of the offices if the two offices have not been merged by action of the village council as provided in Sec. 4281 G. C.?"

After the opinion of the Attorney General to which you first refer was rendered, section 4281, General Code, was amended permitting the council of a village to merge the duties of the clerk of the board of trustees of public affairs with the duties of the clerk of such village, which section, as amended, is quoted in your letter. Section 4360, General Code, was also amended and reads as follows:

"The board of trustees of public affairs shall organize by electing one of its members president. Unless the office of clerk of said board has been consolidated with the office of clerk of the village as authorized by section 4281 of the General Code, it may elect a clerk, who shall be known as the clerk of the board of trustees of public affairs."

These statutes, as they now read, give express permission to merge the duties of these two offices, provided the council of a village deems it advisable. In Opinions of the Attorney General for 1929, Vol. II, page 958, it is said:

"Prior to the amendment of these two sections * * * the law provided for a clerk for the council of a village and a clerk for the board of trustees of public affairs in the village, each with duties pertaining strictly to the affairs of the body or board for whom he acted.

The manifest purpose of the amendment, as above noted, is to permit one person to perform the duties of both positions, when the village council deems such action advisable."

Consequently, when the council of a village has not deemed such action advisable, the board of trustees of public affairs of such village may not elect the village clerk to the office of the clerk of such board, since these two offices have been held to be incompatible and, without statutory permission, may not be held by the same person at the same time. Section 4281, General Code, has given the authority to merge the duties of these two offices to the village council and not to the board of trustees of public affairs.

I am therefore of the opinion that the clerk of a village may not be employed as clerk of the board of trustees of public affairs where the duties of the two offices have not been merged by action of the village council as provided in section 4281, from which conclusion it necessarily follows that such clerk may not receive the compensation provided for each of said offices.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4018.

CONSERVATION COUNCIL—MAY NOT PROMULGATE RULE PERMITTING FEDERAL GOVERNMENT TO ESTABLISH FISH HATCHERIES IN OHIO—POWER RESTS WITH LEGISLATURE.

SYLLABUS:

The legislature of Ohio has not specifically granted to the United States Commissioner of Fisheries the right to establish and maintain fish hatcheries in