

"Trustees shall be full time regular members of such department as distinguished from volunteer members except in municipalities where there are less than five full time members.

This act shall be construed as preserving to volunteer, or part time firemen all rights to receive the pension provided for under existing laws relating to the firemen's pension fund."

While it seems somewhat inconsistent to have a pension fund in the case of volunteer members, yet the act seems to expressly recognize that such members may receive pensions.

Section 4600, supra, expressly provides that in any corporation having a fire department supported in whole or in part at public expense, the council may provide for the establishment of a firemen's pension fund. There is no inhibition in said section against a municipality establishing a pension fund for volunteer firemen. The phrase "supported in whole or in part at public expense" is broad enough to include a volunteer fire department which is receiving support from the municipality. While, of course, there are other provisions of the Code which relate to a firemen's indemnity fund under the provisions of Section 4647-1, et seq., General Code, and it might be argued that in Section 4600-1, supra, the legislature was referring to benefits established under that act, it is not believed that Amended Senate Bill No. 79 necessarily makes such limitations. Section 4647-1 makes mandatory the creation of an indemnity fund in all municipalities having no pension fund and which have "a fire department supported in whole or in part at public expense." It has been held that one properly employed as a volunteer fireman is a member of a fire department in contemplation of said section. Opinions of the Attorney General, 1927, p. 6. Inasmuch as practically the same language was under consideration in the said opinion as is considered herein, the holding of said opinion, by analogy, is applicable to your question.

In conclusion, it may be stated that Amended Senate Bill No. 79 authorizes the creation of a firemen's pension fund in any municipality where the fire department is supported in whole or in part at public expense and does not inhibit creating such a fund in a municipality wherein the members of the fire department are volunteers. In fact, the statutes contemplate the establishment of volunteer fire departments and the employment of volunteer firemen. (See Section 4390, General Code.)

You are therefore specifically advised that it is my opinion that, under the provisions of Amended Senate Bill No. 79, enacted by the 88th General Assembly, a municipality having a volunteer fire department which is supported in whole or in part at public expense, may establish a firemen's pension fund, for the benefit of volunteer firemen properly employed by such municipality.

Respectfully,
GILBERT BETTMAN,
Attorney General.

626.

OFFICES INCOMPATIBLE—DEPUTY STATE FIRE MARSHAL AND
MUNICIPAL COUNCILMAN.

SYLLABUS:

Under the provisions of Section 4207, General Code, a deputy state fire marshal may not legally hold the office of member of a city council while he is acting in such capacity. However, under the statutes, there is no inhibition against a state fire marshal

being a candidate for the office of city councilman, but, if elected thereto, it would be necessary for him to give up one or the other of the positions.

COLUMBUS, OHIO, July 17, 1929.

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

GENTLEMEN:—Acknowledgment is made of your communication, which reads:

“Section 4207, G. C., provides that members of a city council shall not hold any other public office or employment except that of notary public or member of the state militia, etc.

Question: May a deputy state fire marshal legally hold the office of member of a city council at the same time if he is elected to such body while serving as such deputy state fire marshal?”

As suggested in your communication, Section 4207, General Code, expressly provides that a member of city council shall not hold any other public office or employment except that of notary public or member of the state militia. The section further provides that a member who ceases to possess any of the qualifications required, shall forthwith forfeit his office.

The section which you mention was under consideration in my Opinion No. 552, issued under date of June 24, 1929, to Hon. Marion F. Graven, prosecuting attorney, Wooster, Ohio, in connection with the question as to whether a high school teacher could legally be a candidate for the office of councilman.

In that opinion the case of *State ex rel. vs. Gard*, 8 O. C. C. (N. S.) 599, was quoted from, which held:

“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.”

Also a former opinion of the Attorney General, reported in Opinions of the Attorney General for 1928, page 1119, was considered. In said opinion among other things it was held that under the provisions of Section 4218, General Code, no member of the council of a village may hold any other public office or employment, except that of notary public or member of the state militia. It was further held that the inhibition contained in the provisions of said section is not limited to holding another office in, or employment by such village, but that such inhibition is applicable to all other public offices and employments.

In my said opinion above referred to, it was stated:

“There could be no objection to a teacher employed in the public schools running for the office of councilman, but if elected thereto it would be necessary for him to give up one or the other of the positions.”

It is believed that the opinion hereinbefore referred to is precisely in point in connection with your inquiry.

For the purposes of this opinion, it is unnecessary to consider the question as to whether a deputy state fire marshal is an officer or employe. Obviously he is one or the other, and inasmuch as Section 4207, General Code, relates both to officers and employes such a deputy is included in whatever capacity he may technically be serving. It must, therefore, be concluded that a deputy state fire marshal cannot legally hold the office of member of the city council and a position as deputy state fire marshal

at the same time. However, it is not believed that the fact he was a deputy state fire marshal at the time he was a candidate for the office of councilman would in any wise affect the situation. He necessarily would have to sever his connection with the state before he could legally take the office of councilman. There are some instances wherein one who is a candidate for an office under certain conditions forfeits the office, if elected. The case under consideration, however, does not come within such class. The inhibition in Section 4207 is against a member of council holding any other public office or employment excepting notary public or member of the state militia.

You are therefore specifically advised that under the provisions of Section 4207, General Code, a deputy state fire marshal may not legally hold the office of member of a city council while he is acting in such capacity. However, under the statutes, there is no inhibition against a state fire marshal being a candidate for the office of city councilman, but, if elected thereto, it would be necessary for him to give up one or the other of the positions.

Respectfully,
GILBERT BETTMAN,
Attorney General.

627.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTORS--W. McCROBA, HAROLD Z. HAKES, ALBERT L. ALLEN.

COLUMBUS, OHIO, July 17, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:--You have submitted for my consideration three bonds, each in the sum of five thousand dollars, and conditioned for the faithful performance of the duties of the principal as Resident District Deputy Director, as follows:

W. McCroba.....	Meigs County.....	Fidelity and Deposit Co. of Maryland.
Harold Z. Hakes.....	Seneca County.....	Fidelity and Deposit Co. of Maryland
Albert L. Allen.....	Richland County	Aetna Casualty & Surety Company

These bonds were heretofore submitted and returned without my approval for the reasons specifically mentioned in my Opinion No. 611, under date of July 12, 1929. It now appears that the objections noted in said opinion have now been corrected, and I have therefore noted my approval on said bonds as to form and legality, and return the same herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.