

There is no provision in the above section requiring competitive bidding and I know of no other statutory provision making such requirement with reference to the contract provided for in section 2546. It is significant that, prior to the amendment of this statute in 108 O. L. Pt. 1, 269, this statute did require competitive bidding by this provision: "Such contract shall be given to the lowest competent bidder, the county commissioners reserving the right to reject any or all bids." It is the general rule that where a statute is amended it is presumed that the legislature intended to change the operation and effect of the law to the extent of the change in the language. *Board of Education vs. Boehn*, 102 O. S. 292; *Board of Education vs. Board of Education*, 112 O. S. 108. Applying this rule of construction, it is clear that by the elimination of this provision the legislature intended to eliminate this requirement.

I am therefore of the opinion that county commissioners may, but are not required to, advertise for bids before contracting for the furnishing of medical relief and medicines as provided by section 2546 of the General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1999.

OFFICES INCOMPATIBLE—COUNCILMAN UNDER CITY MANAGER
PLAN AND TRUSTEE OF COUNTY CHILDREN'S HOME—ELIGIBLE
AS COUNCILMAN UPON RESIGNATION AS TRUSTEE.
SYLLABUS:

1. *A councilman of a city operating under the city manager plan of government may not hold the public employment of trustee of a county children's home at the same time. First paragraph of syllabus of Opinion No. 833, rendered May 17, 1933, approved and followed.*

2. *Where a person serving as trustee of a county children's home at the time of his election as councilman of a city operating under a city manager plan of government, resigns such public employment prior to the beginning of his term as such councilman, he becomes eligible to take his seat in the council of such city. Opinions of the Attorney General for 1929, volume III, page 1980, approved and followed.*

COLUMBUS, OHIO, December 13, 1933.

HON. WAYNE L. ELKINS, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

"I should like to have your opinion on whether or not a person who is serving as a member of the board of trustees of the Children's Home, which is a county office, without compensation, who has been elected as a member of city council, may serve in both offices. If not, whether or not his being a member of the board of trustees of the Children's Home at the time he was elected member of the city council makes him

ineligible to serve on the city council, if he should resign as member of the board of trustees of the Children's Home before qualifying for member of the city council.

Under section 3515-31 of the General Code it is provided that a member of council shall not hold any other public office or employ except notary public or member of the state militia. So far as I can see there is no incompatibility between the office of trustee of the Children's Home and member of the city council, yet the statute seems to forbid a member of council holding any other office except the ones mentioned."

In my opinion, No. 833, rendered May 17, 1933, to the Prosecuting Attorney of Belmont County, I held, as disclosed by the first paragraph of the syllabus:

"A city councilman may not hold the public employment of trustee of a county children's home at the same time."

This opinion was based on the provisions of section 4207, General Code, which state that "each member of council (of a city) shall * * * not hold any other public office or employment except that of notary public or member of the state militia."

I assume from the fact that you mention section 3515-51, General Code, in your communication, that the city of Ironton, operated under the city manager plan of government under authority of sections 3515-19 to 3515-28, General Code, is the city involved in your communication.

As you indicate, section 3515-51, General Code, a section under Title XII, Division I, Chapter 1-1 (Plans of Government), sections 3515-1 to 3515-71, General Code, is applicable to the city council of a city operating under the city manager plan of government. Sections 3515-19 to 3515-28, General Code, relating to the city manager plan of government, appear under Article IV of Chapter 1-1 (Plans of Government) and section 3515-51, General Code, appears under Article VI of the same chapter, which article is entitled "General Provisions—Applicable to Each Plan."

Section 3515-51, General Code, provides, so far as pertinent here:

"Members of council shall be electors of the municipality. They shall not hold any other public office or employment except that of notary public or member of the state militia * * * Any member who shall cease to possess any of the qualifications herein required shall forthwith forfeit his office * * *"

Obviously, the reasoning of my opinion No. 833, hereinbefore mentioned, is equally applicable here, as section 3515-51, General Code, contains almost identically the same language as is set forth in section 4207, General Code.

Hence, I am of the opinion, in specific answer to your first question that a member of the council of a city operating under a city manager plan of government may not hold the public employment of trustee of a county children's home at the same time. I am enclosing herewith a copy of Opinion No. 833 so that you can examine the reasoning on which it is based.

As for your second question, I may call your attention to an opinion of my immediate predecessor in office, which opinion is reported in Opinions of the Attorney General for 1929, volume III, page 1980. The syllabus of such opinion reads:

"1. The inhibition against a councilman holding other public office or employment found in Section 4207 of the General Code, relates to his term as councilman and not to some office or employment he held at the time of his election which was relinquished before he took office as councilman.

2. Where a person serving as member of a municipal civil service commission at the time of his election as councilman, resigns such position prior to the beginning of his term as councilman, he becomes eligible to take his seat in council."

The foregoing opinion is directly in point on your question, and the conclusions therein expressed lead me to conclude that if the member of the board of trustees of the county children's home involved in your inquiry should resign from his employment before the time arrives for qualification for the office of councilman, he would be eligible to serve as councilman during the term for which he was elected.

I am therefore of the opinion, in specific answer to your second question, that where a person serving as trustee of a county children's home at the time of his election as councilman of a city operating under a city manager plan of government, resigns such public employment prior to the beginning of his term as such councilman, he becomes eligible to take his seat in the council of such city.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2000.

APPROVAL, NOTES OF REYNOLDSBURG VILLAGE SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO—\$2,109.00.

COLUMBUS, OHIO, December 13, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2001.

APPROVAL, NOTES OF HARPERSFIELD RURAL SCHOOL DISTRICT, ASHTABULA COUNTY, OHIO—\$3,934.00.

COLUMBUS, OHIO, December 13, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.