

permanent care by private families.

Sections 3139 to 3147, inclusive, General Code, indicate that the cost for institutional care of indigent tubercular patients is to be granted by the county commissioners. With reference to this aspect of the case, I call your attention to my opinion No. 1518, rendered September 6, 1933, which held as disclosed by the first branch of the syllabus:

“The county commissioners and not the township trustees should render tubercular relief for a person requiring such relief in a sanatorium.”

However, in the particular inquiry you present, the commitment to such approved private home was evidently temporary and since the poor laws should be construed liberally, it is my opinion that by implication from the statutes for the care of tubercular indigents, the county commissioners could pay for their care and support in such approved private families pending commitment to an institution for tubercular patients.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2389.

OFFICES INCOMPATIBLE—CITY TREASURER AND SECRETARY OF
CITY SINKING FUND TRUSTEES IF COMPENSATED AS SECRETARY.

SYLLABUS:

A city treasurer may not at the same time hold the position of secretary of the sinking fund trustees of the same city if he is receiving any compensation as such secretary.

COLUMBUS, OHIO, March 21, 1934.

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

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

“On January 9, the question was presented to this Department of whether a city treasurer could also act as secretary of the sinking fund trustees, by Mr. Lloyd G. Davis, City Solicitor of Conneaut. We took the position that these two offices were incompatible, and could not be held by one person, and our reply follows:

“We are in receipt of your letter of the 9th inst., inquiring as to the compatibility of the offices of city treasurer and secretary of the city sinking fund trustees.

We have no direct opinion of the Attorney General upon this question, but we call your attention to his opinion No. 3855, found on page 1477 of the 1931 Opinions, the syllabus of which reads as follows:

“Concurrent employment of a village clerk by the village council

as caretaker of parks, and by the village board of trustees of public affairs as superintendent of the water department and as assistant superintendent of the light department, is in violation of section 3808 of the General Code."

While this opinion refers to a village and to the office of clerk of a village, the holding is based upon the provisions of section 3808 G. C., which applies to officers of all municipalities, and the word "city" could be substituted for the word "village" and the name of the office "city treasurer" could be substituted for the word "village clerk", without changing the conclusion reached in the opinion.

We are therefore compelled to hold that the offices of city treasurer and secretary of the sinking fund trustees are incompatible and cannot be legally held by one person.

If, after reading the full text of the opinion above referred to, you cannot agree with our holding, we shall be glad to submit the question to the Attorney General for an opinion, upon your request.'

Mr. Davis has taken exception to our ruling and requests an opinion from you. A copy of his reply is inclosed.

Will you, therefore, kindly render an opinion to this office as to whether the offices of city treasurer and secretary of the sinking fund trustees in the same city, may be legally held by one person."

Section 3808, General Code, referred to in your letter, reads as follows:

"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."

There is no doubt but that the city treasurer is an officer within the meaning of section 3808, *supra*. Sections 4293, et seq., General Code, cover the duties of the city treasurer. He is elected, he has a definite term, he is required to give a bond, and he has independent statutory duties.

Section 4509, General Code, which provides for the appointment of the secretary of the sinking fund trustees of a city, reads as follows:

"The trustees of the sinking fund, immediately after their appointment and qualification, shall elect one of their number as president and another as vice-president, who, in the absence or disability of the president, shall perform his duties and exercise his powers, and such secretary, clerks or employes as council may provide by an ordinance which shall fix their duties, bonds and compensation. Where no clerks or secretary is authorized, the auditor of the city or clerk of the village shall act as secretary of the board."

It is obvious that the city treasurer, being an officer of the city, and if permitted to hold the position of secretary of the sinking fund trustees of the same city, would be interested in the expenditure of money by the city other than his fixed compensation as city treasurer. In this opinion I assume that the secretary

of the sinking fund trustees is receiving a compensation by virtue of section 4509, supra. I also assume that the salary of the city treasurer has been fixed by the city council, pursuant to the provisions of section 4214.

The 1931 opinion quoted in your letter is in my opinion dispositive of your present inquiry. From this opinion, I quote the following language which appears at page 1478:

“* * * It follows that in this instance the clerk of the village in question would have an interest in the expenditure of money by the village other than his fixed compensation, namely, the amount allowed him by the council as caretaker of the parks, and, therefore, such employment would be in violation of section 3808, General Code.”

Also at page 1479:

“* * * It therefore follows that compensation paid by a board of trustees of public affairs of a village to a village clerk, for services as superintendent of the water department and assistant superintendent of the light department of the village, would establish an interest on the part of such clerk in an expenditure of the corporation other than his fixed compensation, which would be in violation of section 3808, General Code.”

The substance of the argument of the enclosed letter by the city solicitor is that section 3808 merely refers to officers entering into contracts with municipalities. While the 1931 opinion did not discuss this point, it is nevertheless significant to note that where the legislature has in various sections of the Code forbidden public officers from entering into contracts it has specifically made use of the word “contract.” Section 3808 does not use the word “contract.”

Section 2420, General Code, dealing with county commissioners, reads in part as follows:

“No commissioner shall be concerned, directly or indirectly, in any *contract* for work to be done, or material to be furnished for the county.” (Italics, the writer’s.)

Section 4207, General Code, dealing with city councilmen, reads in part as follows:

“* * * 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.” (Italics, the writer’s.)

Section 4218, General Code, dealing with village councilmen, reads in part as follows:

“* * * 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.” (Italics, the writer’s.)

Section 4757, General Code, dealing with boards of education, reads in part as follows:

“* * * No member of the board shall have directly or indirectly any pecuniary interest in any *contract* of the board or be employed in any manner for compensation by the board of which he is a member except as clerk or treasurer.” (Italics, the writer’s.)

In the rendition of this opinion, I am mindful of the fact that the legislature in section 4509, *supra*, expressly permits the city auditor or the village clerk to act as secretary of the sinking fund trustees where no secretary has been appointed by the trustees. I am also aware that an argument might be advanced that if the city auditor is permitted to serve as secretary of the sinking fund trustees, and receives compensation as such secretary, that the legislature has taken the position of secretary of the sinking fund trustees out of the operation of section 3808, General Code, *supra*. However, this office has taken the position that where the city auditor acts as such secretary, he does not receive any compensation as secretary.

In an opinion to be found in Opinions of the Attorney General for 1916, Volume I, page 549, it was held as disclosed by the syllabus:

“Under the provisions of section 4509, G. C., it is the duty of the city auditor to act, without additional compensation, as secretary of the trustees of the sinking fund of a city, unless council by ordinance provides for the appointment of a secretary by such trustees, and fixes the compensation, etc., as provided in said section, and in such event the city auditor cannot be appointed as such secretary.”

From the opinion at page 550, I quote the following language:

“The result of the foregoing is that when the auditor acts as secretary of the trustees of the sinking fund, he does so merely in the performance of a duty conferred upon him by statute, for which no additional compensation is fixed, and it is well settled that in such cases he is not entitled to such compensation. *Jones vs. Commissioners*, 57 O. S. 189, and cases there cited.”

This opinion was approved in Opinions of the Attorney General for 1918, Volume I, page 596.

Without further extending this discussion, it is my opinion in specific answer to your question, that a city treasurer may not at the same time hold the position of secretary of the sinking fund trustees of the same city if he is receiving any compensation as such secretary.

Respectfully,
JOHN W. BRICKER,
Attorney General.