

Ohio, is not clothed with sufficient authority to enable it to establish branches throughout Erie County nor to permit it to aid and assist financially or otherwise other libraries in the county.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

833.

CITY COUNCIL—MEMBER MAY NOT SERVE AS TRUSTEE OF COUNTY CHILDREN'S HOME—ACCEPTANCE OF LATTER AUTOMATICALLY TERMINATES FORMER—OPINION NO. 1187, Vol. 1, page 636—1918 OPINIONS OF ATTORNEY GENERAL AFFIRMED AND FOLLOWED—PUBLIC OFFICE AND PUBLIC EMPLOYMENT DISTINGUISHED.

SYLLABUS:

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

2. *A member of a city council who accepts the public employment of trustee of a county children's home, ipso facto forfeits his office of city councilman. Second paragraph of syllabus of Opinion No. 1187, rendered May 4, 1918, reported in Opinions of the Attorney General for 1918, volume 1, page 636, affirmed and followed.*

COLUMBUS, OHIO, May 17, 1933.

HON. PAUL V. WADDELL, *Prosecuting Attorney, St. Clairsville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows:

“As Prosecuting Attorney there has been brought to my attention the matter of the appointment of a member of a city council being appointed as a member of the board of trustees of the County Children's Home.

May I have an opinion from you as to whether or not the holding of these two offices is incompatible under section 4207? Would also like to have your opinion as to whether or not the acceptance of the job as member of the board of trustees of the County Children's Home automatically forfeits the office of city councilman to which he was duly elected. The position of trustee of the County Children's Home pays no salary.

P. S. We note that township trustee and trustee of County Children's Home are compatible. Ohio Attorney General Opinions, Vol. 1, 1930, page 650. This seems very similar to our situation.”

I shall assume that the city involved in your request has no charter. Section 4207, General Code, mentioned in your communication, reads as follows:

"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 forfeit his office.*" (Italics the writer's.)

In the case of *State ex rel. vs. Gard*, 8 C. C. (N. S.) 599, the old circuit court of Butler County had before it for consideration the following provision of Revised Statutes 1536-613 (section 120 of the Municipal Code in force at that time) :

"Every 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."

The foregoing language of Revised Statutes 1536-613, is now almost identically the same as the underscored language of section 4207, supra.

The Circuit Court stated in the opinion at page 607, as follows:

"We are of the opinion that the inhibition against persons holding public office or employment is not limited to office in or employment by the municipality, but extends to all public office and employment. This is evidenced by the exception of notaries public and members of the militia."

This case was affirmed by the Supreme Court, without report, on December 4, 1906. See 75 O. S. 606.

The construction given to the foregoing language of section 4207, General Code,—that is, a city councilman is prohibited from holding any public office or employment at the same time even though such office or employment is not held under the city—has been followed by this office in a number of opinions. See Opinions of the Attorney General for 1918, volume I, page 636, and the latest opinion to be found in Opinions of the Attorney General for 1928, volume II, page 1119, where similar language set out in section 4218, General Code, is construed.

Now a trustee of a county children's home is appointed by the county commissioners under provisions of section 3081, General Code. While such section in the next to the last line refers to the position of trustee as an "office", and there is language in section 3082, General Code, to the same effect, nevertheless, since Article X, sections 1 and 2, Ohio Constitution, provide that all county officers must be elected, and it is to be presumed that the legislature in passing laws has all pertinent constitutional provisions in mind, I am of the opinion that the position of trustee of a county children's home is public employment, instead of a public office.

It is true that section 3087, General Code, provides that trustees of a children's

home "shall not receive any compensation for their services," but the same section provides that they (the trustees) "shall be allowed their necessary expenses while on duty." The language of section 4207, General Code, does not read "remunerative public employment." Hence, I am of the view that under section 4207, General Code, a city councilman cannot hold the public employment of trustee of a county children's home at the same time.

Coming now to your second question, I may refer you to an opinion of this office appearing in Opinions of the Attorney General for 1918, volume I, page 636. The first two paragraphs of the syllabus of said opinion read 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 by other public office or employment, he ipso facto forfeits his office of councilman."

This opinion refers to many preceding opinions of former Attorneys General. I concur with the holding of the second paragraph of the syllabus of such opinion. Consequently, in specific answer to your second question, I am of the opinion that the acceptance by a city councilman of the public employment of member of the board of trustees of a children's home automatically forfeits the office of city councilman.

I am mindful of the reference which you make in your postscript to the opinion of my immediate predecessor, reported in Opinions of the Attorney General for 1930, volume I, page 650. In that opinion there were no statutory inhibitions against the holding of the office of township trustee and position of member of the board of trustees of a county children's home, and said offices were not found to be incompatible under the common law rule. In this opinion, however, there exists a statutory inhibition, which cannot be circumvented.

Respectfully,

JOHN W. BRICKER,
Attorney General.

834.

BEER—STOCKHOLDER INTERESTED IN MANUFACTURE OF BEER WITHIN MEANING OF SECTION 12 OF AMENDED SUBSTITUTE SENATE BILL NO. 346 WHEN—CLASS C AND CLASS D PERMITTEE NOT PROHIBITED FROM PURCHASING AND SELLING BEER WHEN—SAME PERSON STOCKHOLDER OF BREWERY COMPANY AND REALTY COMPANY.

SYLLABUS:

1. *A stockholder in a realty company who is likewise a stockholder in a brewery company which supplies beer to a Class C or Class D permittee, who occupies and sells such beer on property belonging to the realty company, is a person interested in the manufacture of beer within the meaning of that phrase as contained in Section 12 of Amended Substitute Senate Bill No. 346.*

2. *There is no provision in Amended Substitute Senate Bill No. 346 which prohibits a Class C or Class D permittee from purchasing and selling beer of a*