

Miller, his wife, who thereby releases all of her right of dower in and to this property.

I further find that the form of this deed is such that the same is legally sufficient to convey the above described parcel of land to the State of Ohio by fee simple title with a covenant of warranty therein contained that this property is free and clear of all encumbrances whatsoever.

On examination of contract encumbrance record No. 1637, which has been submitted as a part of the files relating to the purchase of this property, I find that the same has been properly executed and that there is shown thereby a sufficient balance in the appropriation account to the credit of your department, to pay the purchase price of this property, which purchase price is the sum of \$800.00.

It further appears by appropriate recital in this contract encumbrance record, as well as by a certificate over the signature of the President of the Controlling Board, that said Board has approved the purchase of this property under the authority of the act making the appropriation for the purchase of said property.

I am herewith returning to you said corrected abstract of title, corrected warranty deed, contract encumbrance record No. 1637, Controlling Board certificate and other files which have been submitted to me for my approval.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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2772.

CHARTER CITY—LANGUAGE “ANY OTHER PUBLIC OFFICE OR EMPLOYMENT” IN SECTION 4207 G. C. EXTENDS TO ALL PUBLIC OFFICES AND EMPLOYMENT—ACTING COUNCILMAN MAY NOT BE INVESTIGATOR OF DIVISION OF AID FOR THE AGED OF COUNTY.

**SYLLABUS:**

*The language “any other public office or employment” as contained in Section 4207, General Code, and likewise in the charter of a charter city that has similar provisions, is not limited to other office or employ-*

*ment by the municipality but extends to all public office and employment and therefore prohibits the employment of an acting councilman as investigator of the Division of Aid for the Aged of the county.*

COLUMBUS, OHIO, July 28, 1938.

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

GENTLEMEN: I am in receipt of your letter of recent date requesting my opinion as to whether or not Mr. K., who is now a councilman of a charter city, may be appointed and hold the position of investigator of the Division of Aid for the Aged of a county.

From a reading of the letter attached to your request it is apparent that Mr. K. has been duly elected a member of the council of the City of P. and is now acting in that capacity.

The question of common law compatibility and incompatibility of certain offices is not involved until due consideration has been given to Section 4207 of the General Code, which 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 public office or employment*, except that of notary public or member of 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 forthwith forfeit his office.” (Italics the writer’s.)

From a reading of the aforesaid section, it is imperative that an interpretation be placed upon the language “any other public office or employment.” I direct your attention to the case of *State, ex rel. vs. Gard*, 8 O. C. C. (N. S.) 599. The first branch of the syllabus reads as follows:

“The inhibition against the holding of other public office or employment, found in Section 120 of the Municipal Code (Revised Statutes, Section 1536-613), relating to the qualifications of councilmen, is not limited to other office or employment by the municipality, but extends to all public office and employment.”

This case was affirmed without opinion in *State, ex rel. vs. Gard*, 75 O. S. 606.

Another case pertinent to this question is the case of *State, ex rel. Paul A. Baden vs. Walter Gibbons*, 40 O. L. R. 285. This case was decided by the Court of Appeals of Butler County in May, 1934. I direct your attention to the eighth branch of the syllabus, which reads as follows:

"The inhibition against the holding of other public office or employment, found in Section 4207, General Code, relating to the qualifications of councilmen, is not limited to other office or employment by the municipality, but extends to all public office and employment."

Sections 1359-1, et seq., General Code, being the Old Age Pension Law, provide for the payment of certain pensions to the aged and likewise provide for the machinery by which such pensions are distributed, and to my mind employment in the carrying out of the benefits of the aforesaid sections is public employment.

Section 3 of the charter of the City of P. reads as follows:

"Except as otherwise provided in this charter all legislative powers of the city shall be vested in a council of five members nominated and elected from the city at large in the manner hereinafter provided. The term of members of the council shall be for four years and shall begin on the first Monday in January next following their election, excepting that the two members elected at the first election held under this charter by the lowest vote shall hold office for the term of two years only. If a vacancy occurs in the council, except as the result of a recall election, some eligible person shall be chosen within ten (10) days by a majority vote of the members of the Sinking Fund Commission for the unexpired term. The clerk of the Sinking Fund Commission shall cause his certificate of their action to be entered on the journal of the council. Each member of the council, for at least five years immediately preceding his election, shall have been, and during his term of office shall continue to be, a resident of the City of P., Ohio, and shall have the qualifications of an elector therein. He shall not hold any other public office, position, or employment except that of notary public or member of the state militia."

It is to be observed that Section 3 of the charter of the City of P. is not in conflict with the provisions of Section 4207, General Code, but, in fact, is similar and drafted in accordance with the language of the

general statute. For that reason, the interpretation placed on the language "shall not hold any other public office or employment" as provided in Section 4207 will be pertinent to the like language contained in Section 3 of the charter of P.

Having already interpreted the provisions of Section 4207, and in so doing it has been found that such councilman may not hold other public employment, it is unnecessary to consider the question of common law compatibility and incompatibility of offices.

In specific answer, therefore, to your inquiry, I am of the opinion that the language "any other public office or employment" as contained in Section 4207, General Code, and likewise in Section 3 of the charter of the City of P., is not limited to other office or employment by the municipality but extends to all public office and employment and therefore prohibits the employment of an acting councilman as investigator of the Division of Aid for the Aged of the county.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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2773.

APPROVAL—CONTRACT AND BOND, STATE OF OHIO.  
THROUGH SUPERINTENDENT, DEPARTMENT OF PUBLIC WORKS, WITH GEIS CONSTRUCTION COMPANY, ERECTING SPILLWAY AND OTHER WORK, KISER LAKE, JOHNSON TOWNSHIP, CHAMPAIGN COUNTY, OHIO, TOTAL EXPENDITURE, \$6,364.61.

COLUMBUS, OHIO, July 28, 1938.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval a contract by and between Geis Constructoin Company and the State of Ohio, acting by the Department of Public Works, for the Department of Agriculture, Division of Conservation, for erecting Spillway, erecting Walls, erecting Outlet, Excavating, etc., at Kiser Lake, Sections 22 and 28, Johnson Township, Champaign County, Ohio, which contract calls for the total expenditure of six thousand three hundred and sixty-four and 61/100 dollars (\$6,364.61).

You have also submitted the following papers and documents in this connection: Encumbrance estimate No. 22, the estimate of cost, proof of