

An examination of the abstract of title submitted shows that Journey Anderson and Zephyr Anderson, as tenants in common, have a good and indefeasible fee simple title to the above described lot, subject to the following exceptions:

1. On November 17, 1924, the said Journey Anderson and Zephyr Anderson executed to the Dollar Building & Loan Company a mortgage on the above described premises for the sum of \$600.00. This mortgage is not satisfied of record and the same to the amount unpaid thereon is a lien on said premises.

2. The undetermined taxes for the year 1929 on said lot are unpaid and are a lien. Encumbrance estimate No. 5628 relating to the purchase of the above described lot has been properly signed, and the same show that there are sufficient balances in the proper appropriation account to pay the purchase price of said property.

From the certificate of the Controlling Board on file in the office of the Director of Finance, I am advised that of the appropriation in the sum of \$55,000.00, under the heading "Additions and Betterments-Lands" made to the Ohio State University by House Bill No. 510, the sum of \$25,000.00, including the purchase price of the lot here under investigation, has been released by the Board of Control.

No warranty deed of said Journey Anderson and Zephyr Anderson conveying this property to the State of Ohio was submitted with the abstract of title and other files above referred to. This deed should, of course, be prepared and submitted to this department for approval before the transaction relating to the purchase of this property is closed.

I am herewith returning to you said abstract of title and encumbrance estimate.

Respectfully,

GILBERT BETTMAN,
Attorney General.

761.

MEMBER OF GENERAL ASSEMBLY—MAY BE CURATOR OF MEMORIAL
BUILDING AT CAMPUS MARTIUS.

SYLLABUS:

A member of the present General Assembly may be legally employed as curator of the memorial building at Campus Martius and receive compensation for such employment without affecting his status as a legislator.

COLUMBUS, OHIO, August 19, 1929.

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

GENTLEMEN:— Your recent communication reads as follows:

"You are respectfully requested to render this department your written opinion upon the following:

The Legislature in House Bill No. 506, 111 O. L., 109, made an appropriation of \$35,000 for the purpose of paying the cost of the erection of a suitable memorial building to commemorate the founding of Marietta and since that time appropriations have been made for the care and custody of this building, which includes or houses a museum.

May a person who is a member of the Legislature be legally employed as curator of such museum and receive his compensation out of the state treasury under such appropriation?"

House Bill No. 506, as enacted by the 86th General Assembly in 111 O. L., 109, was entitled "An Act to provide for the erection of a suitable memorial building to commemorate the historical importance of Campus Martius, the pioneer fort at Marietta," and, as you state, appropriated \$35,000 for such purpose. The act further authorized the Governor to appoint a commission to contract for the erection of a memorial building, etc. Among other things the act provides that the said memorial building shall be so constructed to provide a suitable meeting place for patriotic organizations and be suitable as a historical museum for the housing of relics. The act in no wise provides for the supervision of such building after its erection and provides for no employes or officials. It will be observed that there is no provision in the statutes expressly creating the Ohio Archaeological and Historical Society. However, from time to time the Legislature has appropriated money to be expended by such society. In other instances laws have expressly provided that certain property shall be under the control and management of said society.

Section 154-55 of the General Code provides in substance that the Director of Education shall be a member of the board of trustees of such society in addition to the members constituting such board "under the other laws and regulations pertaining to the membership thereof." This section further provides that no moneys appropriated for the use and support of such society shall be withdrawn from the state treasury until the board of trustees of such society shall consent to the provisions of said section making the Director of Education a member thereof and file duplicate certificates of such consent in the office of the secretary and auditor of state.

It may be further noted that Section 154-59, enacted by the 87th General Assembly in 112 O. L., p. 108, provided that any department, commission, board, officer or other administrative agency of the state government, having charge of documents, books, manuscripts, records or papers, may transfer the same, in whole or in part, to the custody of said society upon the conditions and limitations mentioned therein.

It has been noted that the 87th General Assembly, in the general appropriation bill, makes an appropriation for personal service, maintenance, additions and betterments to the Ohio Archaeological and Historical Society, under a sub-head "Division of Campus Martius." This appropriation is in accord with legislative policy in appropriating to such Archaeological and Historical Society for the various memorial buildings and parks owned by the state.

From the foregoing, it would seem that if a curator is employed in connection with Campus Martius, it is not in pursuance of any specific statutory authority creating such an office, and therefore, such position must be considered as an employment as contradistinguished from a public office.

Your question arises, undoubtedly, by reason of the provisions of Section 19 of Article II of the Ohio Constitution and Section 15 of the General Code. Said constitutional provision reads:

"No senator or representative shall, during the term for which he shall have been elected, or for one year thereafter, be appointed to any civil office under this state, which shall be created or the emoluments of which shall have been increased during the term of which he shall have been elected."

Section 15 of the General Code provides:

"No member of either house of the General Assembly except in compliance with the provisions of this act (G. C. §15) shall:

1—Be appointed as trustee or manager of a benevolent, educational, penal or reformatory institution of the state, supported in whole or in part by funds from the state treasury;

2—Serve on any committee or commission authorized or created by the General Assembly, which provides other compensation than actual and necessary expenses;

3—Accept any appointment, employment or office from any committee or commission authorized or created by the General Assembly, or from any executive, or administrative branch or department of the state, which provides other compensation than actual and necessary expenses.

Any such appointee, officer or employee who accepts a certificate of election to either house shall forthwith resign as such appointee, officer or employee and in case he fails or refuses to do so, his seat in the General Assembly shall be deemed vacant. Any member of the General Assembly who accepts any such appointment, office or employment, shall forthwith resign from the General Assembly and in case he fails or refuses to do so, his seat in the General Assembly shall be deemed vacant. But the provisions of this section shall not apply to school teachers, township officers, justices of the peace, notaries public or officers of the militia."

The above constitutional provision and Section 15, *supra*, were under consideration by the Attorney General in an exhaustive opinion rendered under date of August 10, 1927, found in the Opinions of the Attorney General for said year, at page 1504. The syllabus of this opinion reads:

"1. Under the holding of the authorities that an employment is not an 'office', a member of the present General Assembly may be appointed as special institutional examiner in the office of the Auditor of State, providing said member upon, or prior to, the acceptance of the appointment, resigns as member of the General Assembly. In case such an appointment be made and the member of the General Assembly does not resign, such officer's seat in the General Assembly shall be vacant.

2. While a member of the Eighty-seventh General Assembly may be appointed special institutional examiner, yet if such a member accepts such employment, thus vacating his seat in the General Assembly, it will be the duty of such member to return to the state his salary of one thousand dollars paid to him for his services as such member for the year 1928."

Obviously the constitutional provision hereinbefore mentioned can have no application to your question for the reason that the position of curator is an employment and not an office.

It is further evident that Section 15, *supra*, can have no application for the reason that the Ohio Archaeological and Historical Society cannot be said to come within any of the classifications set forth in said section. It is true that it has a very close association with the executive department of the state government. However, it is a private corporation which the state has seen fit to aid and employ for certain purposes, and, strictly speaking, it cannot be said to be an executive or administrative branch of the government. The facts under consideration in the opinion of the Attorney General, above referred to, are clearly distinguishable from the case you present. In that case a member of the Legislature was employed in the state auditor's office and, of course, the auditor's office is an administrative branch in the fullest sense of the term.

You are advised, therefore, that it is my opinion that a member of the present General Assembly may be legally employed as curator of the memorial building at Campus Martius and receive compensation for such employment without affecting his status as a legislator.

Respectfully,
 GILBERT BETTMAN,
Attorney General.