

Accordingly, by way of specific answer to your inquiry, I am of the opinion that the Conservation Council may expend any funds available for the artificial propagation of bobwhite or quail.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4868.

APPROVAL, BONDS OF WADSWORTH TOWNSHIP RURAL SCHOOL DISTRICT, MEDINA COUNTY, OHIO, \$3,530.00.

COLUMBUS, OHIO, January 6, 1933.

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

4869.

OFFICES COMPATIBLE—PROSECUTING ATTORNEY AND CITY SOLICITOR—MAY BE COMPENSATED IN ACCORDANCE WITH SECTION 4307, G. C.

SYLLABUS:

A prosecuting attorney may be appointed as city solicitor of a city within the county, and, in accordance with the provisions of section 4307, General Code, be compensated in part from the county treasury for his services as prosecuting attorney to the police or mayor's court.

COLUMBUS, OHIO, January 6, 1933.

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

GENTLEMEN:—This will acknowledge receipt of your request for an opinion from this office which reads:

“May the Prosecuting Attorney of a County be appointed as City Solicitor of a City within the County, and be assigned as Prosecuting Attorney to the Police or Mayor's Court in accordance with the provisions of Section 4307 of the General Code, and receive compensation out of the County Treasury for his services in addition to this compensation as Prosecuting Attorney of the County.”

Section 4306, General Code, to which you refer, reads as follows:

“The solicitor shall also be prosecuting attorney of the police or mayor's court. When council allows an assistant or assistants to the solicitor, he may designate an assistant or assistants to act as prosecuting attorney or attorneys of the police or mayor's court. The person thus designated shall be subject to the approval of the city council.”

Section 4307, General Code, is pertinent to your inquiry, and reads as follows:

"The prosecuting attorney of the police or mayor's court shall prosecute all cases brought before such court, and perform the same duties, as far as they are applicable thereto, as required of the prosecuting attorney of the county. The city solicitor or the assistant or assistants whom he may designate to act as prosecuting attorney or attorneys of the police or mayor's court shall receive for this service such compensation as council may prescribe, and such additional compensation as the county commissioners shall allow."

From a subsequent communication, I understand that the situation about which you inquire exists in Painesville. The pertinent section of the act relating to the prosecuting attorney of said municipal court is section 1579-1071, General Code, and reads in part as follows:

"The city solicitor of the city of Painesville shall also be the prosecuting attorney of the municipal court. He may designate such number of assistant prosecutors as the council of the city of Painesville may authorize. The persons thus appointed shall receive for their services in city cases such salaries as the council may prescribe and such further salary as the commissioners of Lake county may prescribe. The prosecuting attorney of the municipal court shall prosecute all cases of a criminal nature brought before such court and perform the same duties insofar as they are applicable thereto as are required of the prosecuting attorney of the county. * * *"

In an opinion found in Opinions of the Attorney General for 1912, page 1874, the then Attorney General, after exhaustive comment on the various sections of the General Code pertaining to the duties of the prosecuting attorney and a city solicitor, held, as disclosed by the syllabus:

"There is not express statutory inhibition against one person holding both the office of prosecuting attorney and city solicitor at the same time.

And, inasmuch as the duties of the office do not conflict as to come within the common law rule of incompatibility, one individual may simultaneously hold both offices."

Since the rendition of this opinion, there has been no material change in the statutes which would adversely affect the holding in such opinion. The question of whether or not the prosecuting attorney's position as a member of the budget commission would disqualify him from holding the office of city solicitor, was discussed in full. The then Attorney General stated:

"The duties of a member of the budget commission are separate and distinct from the duties of a city solicitor and also from the duties of a prosecuting attorney as such. These offices are not a check one upon another, and none of them are subordinate to the other."

While the statute authorizing the establishment of the budget commission has been changed in some respects, its change does not materially affect the conclusion.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that a prosecuting attorney may be appointed as city solicitor of a city within the county, and, in accordance with the provisions of section 4307, General Code, be compensated in part from the county treasury for his services as prosecuting attorney to the police or mayor's court.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4870.

TRANSPORTATION—INMATES OF PUBLIC OR SEMI-PUBLIC HOME—
 PROPER ITEM IN DETERMINING COST OF EDUCATING TO BE
 CHARGED TO DISTRICT OF RESIDENCE.

1. *The cost of transporting pupils should be taken into consideration in determining the cost of educating inmates of public or semi-public children's homes where circumstances are such that the cost of that education is charged back to the district of the former residence of such inmates.*

2. *The proper and only rule authorized by law for computing the cost of educating inmates of public, semi-public and district children's homes, for the purpose of charging back to the school district of their former residence, before admission to the home, the cost of their education, is that set forth in Section 7677, General Code, which by analogy, may be extended to apply to high schools as well as elementary schools that is, "the average per capita cost except for improvement and repairs," of maintaining the schools of the district.*

3. *To determine the average per capita cost of maintaining a public school, consideration should be given to all items of expense of conducting the school, including the cost of transporting pupils.*

COLUMBUS, OHIO, January 6, 1933.

HON. ALVIN F. WEICHEL, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

"I am attaching herewith a letter from the Auditor of Erie County, which is self-explanatory. It seems under the ruling from the Prosecuting Attorney of Cuyahoga County the Auditor of Cuyahoga County has refused to pay the transportation charge for educating children who are under the supervision of the Cleveland Humane Society and Cuyahoga County Welfare Association, who are being educated in Erie County. The Cuyahoga County Auditor claims the charge for transportation under Section 7681 is illegal.

Will you kindly advise as to whether or not Erie County is entitled to a payment for such transportation. If the payment for transportation as part of the costs of education outside of the County is not proper, I see no reason why Erie County should be educating children belonging to Cuyahoga County at the expense of Erie County."