

Therefore it is believed that after January 1, 1924, boards of education can no longer borrow money under the provisions of this section.

With reference to funds due to a board of education from the August settlement, 1923, such funds should be collected at once so as to obviate any necessity for borrowing.

Respectfully,
C. C. CRABBE,
Attorney-General.

947.

OFFICES COMPATIBLE—CLERK OF COUNCIL MAY BE APPOINTED
ASSISTANT CITY SOLICITOR.

SYLLABUS:

The clerk of council may be appointed assistant city solicitor to act as prosecutor and receive the compensation fixed for each position.

COLUMBUS, OHIO, December 1, 1923.

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

GENTLEMEN:—This will acknowledge receipt of your letter of October 20, 1923 reading as follows:

“Section 3803 G. C., provides in part:

‘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. * * *’

“Section 4213 G. C., provides that:

‘The salary of any officer, clerk or employe shall not be increased or diminished during the term for which he was elected or appointed, and except as otherwise provided in this title, all fees pertaining to any office shall be paid into the city treasury.’”

“Question: In view of the above provisions, could the clerk of council also be appointed as assistant city solicitor for the purpose of enforcing the prohibition laws, and legally receive compensation for such additional services in addition to his salary as clerk of council?”

The rule of incompatibility in office is stated by Dustin, J., in the case of *State v. Gebert*, 12 Ohio Cir. Ct., (N. S.) 274, on page 275 of the report, where he says:

“Offices are incompatible when one is subordinate to, or in any way a check upon, the other; or when it is physically impossible for one person to discharge the duties of both.”

In the case you present, it is physically possible for one person to perform the duties of both offices. In Vol. I, page 353, of the 1912 Opinions of the Attorney General, we find the following:

"The clerk of council of a city has certain statutory duties and in addition thereto council may prescribe other duties, by virtue of section 4210, General Code, which reads:

'Within ten days from the commencement of their term, the members of council shall elect a president pro tem, a clerk, and such other employes of council as may be necessary, and fix their duties, bonds and compensation. The officers and employes of council shall serve for two years, but may be removed at any time for cause, at a regular meeting by a vote of two-thirds of the members elected to council.'

The statutory duties of a clerk of council pertain principally to the authentication of ordinances, the certification of their publication, the serving of notices of public improvements, the certification of special assessments to the county auditor, and to the recording of the proceedings of council. None of these duties are incompatible with the duties of the office of city auditor.

"When the duties of a clerk of council of a city do not require him to handle funds or to keep an account of the same, or to certify an indebtedness for payment to the auditor, the positions of clerk of council and of city auditor may then be occupied by the same person, and he would be entitled to receive the compensation provided for each office."

Section 4214 is as follows:

"Except as otherwise provided in this title, council, by ordinance or resolution, shall determine the number of officers, clerks and employes in each department of the city government, and shall fix by ordinance or resolution their respective salaries, and compensation, and the amount of bond to be given for each officer, clerk or employe in each department of the government, if any be required. Such bond shall be made by such officer, clerk or employe, with surety subject to the approval of the mayor."

Section 4304 reads as follows:

"No person shall be eligible to the office of solicitor of a municipal corporation who is not an attorney and consellor at law, duly admitted to practice in this state."

Section 4306 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 reads as follows:

"The prosecuting attorney of the police or mayor's court shall prosecute all cases brought before such court, and perform the 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."

There is nothing in these sections making one of these offices a check upon the other, and unless the duties of the clerk as laid down by the council would bring them within the rule as given by Dustin, J., in the case above cited, the two positions mentioned in your communication would not be incompatible and the same person may fill both positions at the same time and receive the compensation fixed for each position.

Respectfully,
C. C. CRABBE,
Attorney-General.

948.

APPROVAL, BONDS OF HARDIN COUNTY, \$16,900.00, TO CREATE FUNDS TO PAY THE COST OF CERTAIN BRIDGE IMPROVEMENTS IN UPPER SCIOTO DRAINAGE AND CONSERVANCY DISTRICT, HARDIN COUNTY.

COLUMBUS, OHIO, December 1, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

949.

APPROVAL, BONDS OF VILLAGE OF WADSWORTH, MEDINA COUNTY, \$5,225.62, TO IMPROVE GRANDVIEW AVENUE

COLUMBUS, OHIO, December 1, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.