

## OPINION NO. 69-039

## Syllabus:

One who is a state senator in Ohio may also hold the office of village solicitor whether the village be in his senate district or outside of the district.

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To: Joseph R. Grunda, Lorain County Pros. Atty., Elyria, Ohio  
By: Paul W. Brown, Attorney General, April 29, 1969

Your request for my opinion reads as follows:

"Whether or not it is compatible for a state senator in Ohio to also hold the positions of village solicitor for two villages, one village being situated within the senatorial district being represented by said senator, and the other village being outside of said district but within the same county as the other village. All three of the positions simultaneously held are salaried."

In response to your question it is necessary to refer to Article II, Section 4 of the Ohio Constitution. That provision is as follows:

"No person holding office under the authority of the United States, or any lucrative office under the authority of this state, shall be eligible to, or have seat in, the general assembly; but this provision shall not extend to township officers, justices of the peace, notaries public, or officers of the militia."

In construing this provision, Opinion No. 236, Opinions

of the Attorney General for 1913, states:

"This constitutional provision is one of several safeguards thrown about the legislative department to prevent undue influence in mental function of legislating for the state. There is a direct prohibition against a person holding office either under the authority of the United States, or a lucrative office under the authority of this state, being eligible to the general assembly. The section provides certain exceptions to this sweeping prohibition, namely: Township officers, justices of the peace, notaries public and officers of the militia. The holding of any and all other offices renders one both ineligible to, as well as causing the forfeiture of their seat in the general assembly."

Whether Article II, Section 4 of the Ohio Constitution applies to the present situation depends upon whether the position of village solicitor can be considered an "office" within the terms of the constitutional provision.

Section 733.48, Revised Code, states:

"When it deems it necessary, the legislative authority of a village may provide legal counsel for the village, or for any department or official thereof, for a period not to exceed two years, and provide compensation for such counsel."

You will note that the constitutional prohibition applies only to those who hold an "office". The Attorney General in Opinion No. 217, Opinions of the Attorney General for 1915, on page 412 states:

"The position of village solicitor is not an 'office'\* \* \*."

The Opinion further reads:

"The village solicitor being appointed by contract, fulfilling only contractual duties, serving for an indefinite term and not being obligated to take oath or give bonds, is not an 'official' within the meaning of section 4762, General Code, which stipulates that these duties shall fall upon any official serving in a similar capacity to that of prosecuting attorney or city solicitor."

Therefore, it is my opinion and you are accordingly advised that one who is a state senator in Ohio may also hold the office of village solicitor whether the village be in his senate district or outside of the district.