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COUNTY COMMISSIONERS—SUBJECT TO PROSECUTION—
IF INTERESTED IN CONTRACT FOR SALE OF SUPPLIES TO
LOCAL BOARD OF EDUCATION—WHERE AMOUNT EX-
CEEDS \$50.00 AND CONTRACT LET ON COMPETITIVE BIDS
AFTER ADVERTISEMENT—ADVERTISING FOR BIDS NOT
REQUIRED BY LAW.

SYLLABUS:

A county commissioner would be subject to prosecution under provisions of Section 12911, General Code, if interested in a contract for the sale of supplies to a local board of education when the amount exceeds \$50.00 and let on competitive bids after advertisement, when the advertising for bids is not required by law.

Columbus, Ohio, April 8, 1949

Hon. Stanley N. Husted, Prosecuting Attorney
Clark County, Springfield, Ohio

Dear Sir:

This will acknowledge your letter of recent date, wherein you request my opinion, which reads as follows:

“Would a County Commissioner be subjecting himself to prosecution under Section 12911 of the General Code of Ohio if he were interested in a contract for the sale of supplies to a local board of education when the amount exceeds \$50.00 and is let on competitive bids after advertisement, although it is not mandatory for the board of education to advertise for bids in the purchase of such supplies?”

The primary question which you ask, is whether a county commissioner would be subject to the provisions of Section 12911 of the General Code, who is interested as a seller in a contract in his capacity as a county commissioner.

Many opinions have been given by the various Attorneys General, involving this section of the General Code, in reference to its application to different employes and officials.

Since your question relates to the prohibition of public officers being interested in contracts of this kind I quote Section 12911, General Code, mentioned in your letter:

“Whoever, holding an office of trust or profit, by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education or a public institution with which he is not connected, and the amount of such contract exceeds the sum of fifty dollars, unless such contract is let on bids duly advertised as provided by law, shall be imprisoned in the penitentiary not less than one year nor more than ten years.”

Also pertinent to your question is Section 12910, General Code, which provides:

“Whoever, holding an office of trust or profit by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education or a public institution with which he is connected, shall be imprisoned in the penitentiary not less than one year nor more than ten years.”

It is to be noted that these above quoted sections provide that whoever holding an office of trust or profit, by election or appointment, or as agent, servant or employe of such officer or of a board of such officers is interested in a contract for the purchase of property, supplies or fire insur-

ance for the use of the county, shall be subject to the penalties provided, unless it may be shown that the purchase of the property is for the use of a county, with which he is not connected, or that the terms and conditions of the saving clause, in Section 12911, supra, have been complied with, when required.

However, Section 12910, supra, by its terms, contains in part, the same provisions as Section 12911, supra, in that each prohibits interests in public contract by:

1. Whoever, holding an office of trust or profit, by election or appointment.
2. Is interested in a contract.
3. For the purchase of property, supplies * * *.

In one of its clauses, Section 12910, supra, further recites:

“for the use of the county with which he is connected.”

Whereas, Section 12911, supra, with similar wordage, reads:

“for the use of the county with which he is not connected.”

In my Opinion No. 972, Opinions of the Attorney General for 1937, Vol. II, page 1705, I stated:

“* * * There are officers as set up by the constitution of Ohio and also officers set up by statute. * * *

“* * * It is elementary that any public office is an office of trust. * * *”

Inasmuch as a county commissioner is one holding an office of trust or profit, either by election or appointment, it therefore follows that in consideration of these sections of the General Code, supra, a county commissioner is subject to their provisions.

There is no doubt but that the clear intendment of these provisions of the General Code, supra, is to prohibit such persons as defined therein from having an interest in contracts as described, and particularly, where such interest is of a pecuniary nature.

In my Opinion No. 2854, Opinions of the Attorney General for 1938, Vol. II, page 1597, I stated:

“The code sections in question employ clear and definite language. They are, moreover, so drawn as to include by their

words practically all officers and all types of contracts. In applying these sections this office has been faced with many hard situations. However, where legislative intent is clearly and definitely expressed, this office is bound to give effect to it and cannot, however liberal it may wish to be, nullify, change or amend by its rulings the express provisions of a statute."

Your inquiry on the subject also suggests that the contract exceeds the sum of \$50.00 and is let on competitive bids after advertisement, although it is not mandatory for the board of education to advertise for bids in the purchase of supplies.

In Opinion No. 2341, Opinions of the Attorney General for 1934, Vol. I, page 263, it was stated:

"* * * if there is no provision in the law requiring advertisement and competitive bidding for the particular 'supplies,' then it would be illegal for a senator or representative to be interested in a contract for the purchase of 'supplies' over \$50.00 for the use of the county from which he was elected, even if advertisement and competitive bidding was had before the contract was let."

In my Opinion No. 2854, *supra*, I concluded that:

"A company whose local manager is also a member of the board of education cannot submit sealed bids for contracts to furnish supplies to the boards of education when competitive bidding on such contract is not required by law, as a contract made under such circumstances comes within the provisions set forth in Sections 4757 and 12910, General Code."

Since no provision of law requires the advertising for bids before a letting of the contract, for the kind of property or supplies involved in your question, provisions of the saving clause of Section 12911, *supra*, will not be available to the officer interested in the contract. The contract if let after advertisement for bids, although not required by law, being beyond the scope of the intent of this section of the Code, would not then be let in accordance with provisions of the law.

The fact that requests for bids had been advertised, there being no provision in the law for this procedure, does not affect the question, for on the facts stated by you, Section 12911, *supra*, prohibits an officer from having an interest in such contracts. Under the saving clause of Section 12911, General Code, if provision be made for advertisement by law, the officer may be interested, legally, in such contracts, but if advertisement

is not provided for or required by law, the officer is prohibited from having any interest in such contracts.

By virtue of consistency and the clear intendment of Section 12911, supra, it is my opinion that a county commissioner holding an office of trust or profit, would be subject to prosecution under provisions of Section 12911, General Code, if he were interested in a contract for the sale of supplies to a local board of education, when the amount exceeds \$50.00 and is let on competitive bids after advertisement, when the advertisement for bids is not required by law.

Respectfully,

HERBERT S. DUFFY,
Attorney General.