

It should further be pointed out that the inhibition in Section 710-11, *supra*, in reference to borrowing, relates to borrowing from a bank under the supervision of the Superintendent of Banks by the examiner, and does not undertake to prevent one who may owe a bank from being appointed to such a position. In other words, the evil intended to be prevented is the borrowing by the examiner during the time he is in the service of the department.

In an opinion of the Attorney General, found in the Report of the Attorney General for the year 1913, page 822, the then Attorney General held with reference to Section 717 of the General Code, which contained in substance the same provisions as those under consideration herein, that:

“House Bill No. 46 (103 O. L. 384) which provides that neither the Superintendent of Banks nor the examiner appointed by him shall be interested in any bank or other institution under the supervision of the Superintendent of Banks, or be engaged in the business of banking, does not apply to existing obligations at the time the law passed but would prevent the renewal of these obligations after the act becomes effective.

It is obvious that if an examiner, at the time of his appointment, was indebted to a state bank either directly or indirectly, this fact would in no wise decrease the value of the bank's claim against him. However, if he should undertake to borrow, either directly or indirectly, from a bank under the supervision of the department after said appointment, he is subject to removal under Section 710-7 of the General Code.

In view of the foregoing, it is my opinion that the statutes have not at yet gone so far as to inhibit one who is a director in a bona fide corporation, which borrows money in its ordinary course of business, from being appointed as a bank examiner.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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1347.

MUNICIPAL COURT—PORTSMOUTH—POWER TO APPOINT BAILIFF  
AND DEPUTY BAILIFF, CONSIDERED.

*SYLLABUS:*

*Power to appoint a bailiff and deputy bailiff of Municipal Court of the City of Portsmouth, provided for in Sections 1579-449 to 1579-496, inclusive, of the General Code, discussed.*

COLUMBUS, OHIO, December 30, 1929.

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

GENTLEMEN:—This acknowledges receipt of your letter of recent date, which reads as follows:

“Section 1579-485 G. C., (see Sec. 27 Portsmouth Municipal Court Act), reads:

‘The bailiff shall be a member of the city police force and he shall serve as such during the pleasure of the court. Every police officer of the city

of Portsmouth shall be ex-officio a deputy bailiff of the Municipal Court and the chief of police shall assign one or more such police officers, from time to time, to perform such duties in respect to cases within the jurisdiction of said court as may be required of them by said court or the clerk thereof.'

Section 1579-486 G. C., prescribes the duties of such bailiff. Section 4247 G. C. reads:

'Subject to the limitations prescribed in this subdivision such executive officers shall have exclusive right to appoint all officers, clerks and employes in their respective departments or offices, and likewise, subject to the limitations herein prescribed, shall have sole power to remove or suspend any of such officers, clerks or employes.'

The pertinent part of Section 4368 G. C. reads:

'Under the direction of the mayor, the director of public safety shall be the executive head of the police and fire departments.'

Section 4372 G. C. reads:

'The chief of police shall have exclusive control of the stationing and transfer of employes in the department, under such general rules and regulations as the director of public safety prescribes.'

Section 4374 G. C. reads:

'The police department of each city shall be composed of a chief of police and such inspectors, captains, lieutenants, sergeants, corporals, detectives, patrolmen, and other police court officers, station house keepers, drivers, and substitutes, as are provided by ordinance or resolution of council.'

Section 41 of the codified ordinances of the city of Portsmouth, reads:

'There shall be and there is hereby established the position of bailiff for the Municipal Court of the City of Portsmouth, Ohio. The person selected for such position shall be a member of the city police force and chosen in the same manner; he shall furnish bond and receive the same compensation as other policemen of said city; he shall be in addition to the number of policemen of the city now prescribed by ordinance; and shall be assigned and perform the duties as prescribed by law for the bailiff of the Municipal Court of the city of Portsmouth, Ohio.'

Question 1. In view of the above provisions, is it the duty of the Director of Public Safety to select a person for the office of bailiff of the Municipal Court?

Question 2. Would such bailiff be subject to the rules governing the police department with respect to hours of duty, days off, etc.?

Question 3. Would such bailiff be subject to assignment to duty by the chief of police on Saturday afternoons, Sundays and holidays, when his services are not needed in or for the Municipal Court?

Ordinance No. 4042 of the city of Portsmouth reads as follows:

'Creating the position of deputy bailiff of the Municipal Court of the city of Portsmouth, Ohio, and supplementing Section 41, of the Codified Ordinances of the city of Portsmouth to be known as Section 41-a of said Codified Ordinances.

BE IT ORDAINED by the council of the city of Portsmouth, State of Ohio, as follows:

SECTION I. That Section 41, of the Codified Ordinances of the city of Portsmouth, is hereby supplemented by the following to be known as Section 41-a of the Codified Ordinances of the city of Portsmouth:

SECTION II. Section 41-a. There shall be and there is hereby established the position of deputy bailiff for the Municipal Court of the city of Portsmouth, Ohio. Said deputy bailiff shall be appointed by the judge of

such court and hold office during the pleasure of the court, and may be removed at any time by the judge of the Municipal Court; he shall furnish bond and receive the same compensation as policemen of the city of Portsmouth, Ohio; and shall be assigned and perform the duties as prescribed by law for the bailiff of the Municipal Court of the city of Portsmouth, Ohio.'

Question 4. In view of the provisions of Section 1579-485 G. C., is Ordinance 4042 of any effect?"

It will be observed that Section 1579-486, General Code, which you quote, provides that the bailiff of the Municipal Court shall be a member of the city police force, but it does not give the judge of such court power to select the bailiff, vesting such power in the chief of police.

This enactment is consistent with the provisions of Section 4372, General Code, which you quote, giving the chief of police "exclusive control of the stationing and transferring of all patrolmen."

In answer to your first question, therefore, I am of the opinion that it is the duty of the chief of police to designate one of the members of the police force to serve as bailiff of the Municipal Court.

Coming now to your second question, I am of the opinion that such bailiff would be subject to the rules governing hours of duty, days off, etc., as would not be inconsistent with the orders of the judge or clerk of Municipal Court.

In answer to your third question, I believe that such bailiff would be subject to assignment by the chief of police to such duties on Saturday afternoons, Sundays and holidays as would not interfere with his duties as bailiff.

In answer to your fourth question, I am of the view that Ordinance No. 4042 of the city of Portsmouth is void and of no effect, being in conflict with Section 1579-485, *supra*, which makes all police officers of the city of Portsmouth *ex-officio* deputy bailiffs, and makes it mandatory that the chief of police shall assign one of his police officers as deputy bailiff, upon request of the judge or clerk of Municipal Court.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1348.

APPROVAL, LEASE TO MIAMI AND ERIE CANAL LAND IN CITY OF DELPHOS, VAN WERT COUNTY—WILL J. ALEXANDER.

COLUMBUS, OHIO, December 30, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain lease in triplicate executed by you as Superintendent of Public Works to one Will J. Alexander of Delphos, Ohio, by which there is leased and demised to said named lessee for a term of fifteen years, a certain parcel of abandoned Miami and Erie canal land in the city of Delphos, Van Wert County, Ohio, which parcel is more particularly described in said lease as follows:

"Beginning at a point in the northerly line of Third Street in said city of Delphos, that is 167.5 feet east of the westerly line of Canal Street in said