

of the Home Owners' Loan Corporation. A corporation is a separate and distinct entity from that of its shareholders. The obligation on the bonds is that of the corporation created under federal law. In fact there is no direct obligation in connection with such bonds to the holder even after default in interest. The obligation authorized to be created on the part of the United States is that the Secretary of the Treasury of the United States will, in the event that the corporation is unable to pay the interest on its bonds as it shall mature or become due and payable, pay "to the Corporation the amount of such interest."

I am, therefore, unable to form the opinion that Home Owners' Loan Corporation bonds are obligations of the United States. It is self-evident that such bonds are not the bonds of the State of Ohio or of any of the other political subdivisions mentioned in Section 2976-21, General Code. Bearing in mind the limited powers of governmental agencies such as the Board of Sinking Fund Trustees, it appears to me that your inquiry must be answered in the negative.

Specifically answering your inquiry it is my opinion that:

(1) Bonds issued by the Home Owners' Loan Corporation, which corporation has been created by authority of Public Act No. 13 (73d Congress), as approved June 13, 1933, are not obligations of the United States.

(2) County boards of sinking fund trustees are granted no authority by Section 2976-21, General Code, to invest their funds in "Home Owners' Loan Corporation bonds."

Respectfully,

JOHN W. BRICKER,

Attorney General

2455.

APPROVAL—BONDS OF SHARON TOWNSHIP RURAL SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO, \$600.00.

COLUMBUS, OHIO, April 4, 1934.

Industrial Commission of Ohio, Columbus, Ohio.

2456.

BOARD OF ELECTION—MEMBER MAY CARRY OUT CONTRACT AS ARCHITECT FOR COUNTY TUBERCULOSIS HOSPITAL WHEN.

SYLLABUS:

A member of a board of elections of a county, who, shortly before the time of becoming such member had entered into a contract with the county commissioners of such county to perform architectural services in connection with the erection of an addition to the county tuberculosis hospital, may legally continue during his term of office to carry out his said contract.

COLUMBUS, OHIO, April 4, 1934.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“A few days ago, I appointed two members of the Board of Elections of Franklin County to serve for the ensuing term of four years, such term ending February 28, 1938.

My attention has just been called to the fact that one of the appointees is under contract with the Board of County Commissioners of Franklin County, to serve as architect for this board, and to perform all architectural duties in connection with the construction and erection of an addition to the Franklin County Tuberculosis Hospital.

I have secured a copy of the contract referred to, and there is a question in my mind as to whether the duties which the person concerned is thus called upon to perform as an architect, will conflict with the performance of the duties incumbent upon him as a member of the Board of Elections of Franklin County.

The duties of the members of a board of elections are quite comprehensive and are outlined in Section 4785-13 of the General Code. The responsibility for the performance of these duties, and for the proper conduct of all matters in connection with the elections of Columbus and Franklin County might, under certain circumstances, absorb all of the time of the members of the board of elections. The annual salary of a member of our board in Franklin County, justifies, when necessary, an undivided allotment of time on the part of the members to the work under their supervision.

In thus expressing to you my views on this subject, you will understand why I am asking you to render for this department your official opinion as to whether a member of the Board of Elections could, during the term of his office, legally fill the position of architect under the terms of the contract with the County Commissioners of Franklin County, copy of which is herewith enclosed. I am advised that additional contracts between said parties for like services are under contemplation.”

This office has held since the passage of the new election code in 1929 that a member of a board of elections of a county is a state officer. See Opinions of the Attorney General for 1930, volume II, page 889.

Having this fact in mind, an examination of the Ohio General Code reveals no general statutory provision which would expressly prevent a state officer from carrying out and executing a contract for personal services with another political subdivision while serving in such state office, unless section 12911, General Code, could be said to have application. Such section reads as follows:

“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."

It is to be noted that the foregoing section merely inhibits an officer from being interested in a contract for the sale of "*property, supplies, or fire insurance*" for the use of a political subdivision with which such officer is not connected.

It has been held by this office in numerous opinions that this section, being penal in nature and thus under the general principle of law requiring a strict construction, does not cover a contract for the sale of personal services of an officer. See Opinions of the Attorney General for 1932, volume II, page 741; Opinions of the Attorney General for 1928, volume III, page 2093; Opinions of the Attorney General for 1919, volume II, page 1475; Opinions of the Attorney General for 1918, volume II, page 1628; Opinions of the Attorney General for 1916, volume II, page 1924, and Opinions of the Attorney General for 1915, volume I, page 889.

Having established that there is no general statutory provision which would inhibit a state officer from executing a contract for personal services with a political subdivision while continuing to hold his office, the question is presented as to whether or not there is anything else in the general law which might legally prevent such practice.

A close study of the statutes discloses that the legislature has in many instances in creating offices expressly stated that the incumbents of such offices shall devote their entire time to the duties of the offices, and furthermore shall not engage in any occupation or business interfering with or inconsistent with their duties as officers. See, for example, sections 154-16, 486-3, 486-4, 491, 980, 1465-3, 2409, and 7181, General Code.

Obviously, the legislature in placing these provisions in the statutes has intimated that it would not ordinarily be improper or against public policy for a particular officer to engage in some occupation while performing duties of the office.

I am unable to find in the statutes any provision wherein the legislature has required a member of a board of elections to devote his entire time to the duties of the office or stipulated that such member shall not engage in any occupation or perform any public or private services outside the duties of the office, while acting as member of a county board of elections. The implication then is that the legislature does not consider such practice improper.

While there is no doubt that the duties of a member of a board of elections are very numerous and require a great amount of time for their proper execution, yet I do not feel, after observing the terms of the contract which you enclose in your letter, that it can be said as a matter of law that a carrying out of its terms will result in the improper discharge of the duties of such officer as a member of the board.

It is to be noted from an examination of the contract that the architect does not stipulate that he himself will personally perform all the work covered by the contract. For instance, paragraph 5 of the contract reads:

"The architect, or his authorized representative, will make visits to

the building for the purpose of superintendence of such frequency and duration as may be necessary to fully instruct the contractor, pass upon the merits of the workmanship and material, and maintain an effective working organization of the contractors engaged upon the work and shall make such other visits, inspection and superintendence as the board of county commissioners may from time to time require." (Italics mine.)

Thus it is conceivable that a great deal of the services to be performed by the contract can be delegated by the contractor to his representative, leaving himself reasonably sufficient time to perform his duties as member of the county board of elections.

My immediate predecessor in an opinion reported in Opinions of the Attorney General for 1932, volume II, page 741, referred to in a preceding paragraph, held, as disclosed by the syllabus:

"Membership in the state board of examiners of architects does not in any way affect the eligibility of each or any of such members for obtaining architectural commissions for professional services to be rendered in connection with the state owned projects."

The holding of the foregoing opinion appears to me to be directly in point on the question at hand and I am therefore of the opinion in specific answer to your question that the member of the Franklin County board of elections involved in your inquiry can legally, during his term of office, continue to carry out his contract with the board of county commissioners for architectural services in connection with the addition to the Franklin County tuberculosis hospital.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2457.

APPROVAL—ARTICLES OF INCORPORATION OF THE FLORISTS AND GARDENERS INSURANCE ASSOCIATION.

COLUMBUS, OHIO, April 5, 1934.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I have examined the amendment to the articles of incorporation of The Florists and Gardeners Insurance Association which you have submitted to me, and I find same not to be inconsistent with the laws and Constitution of the State of Ohio and of the United States, and I have therefore endorsed my approval upon the same.

Respectfully,

JOHN W. BRICKER,

Attorney General.