

2597.

TOWNSHIP TRUSTEE—WHERE HIS FIRM CONTRACTED TO FURNISH SUPPLIES TO COUNTY PRIOR TO HIS SERVICE AS TOWNSHIP TRUSTEE—NO VIOLATION OF SECTION 12911, G. C., EVEN THOUGH DELIVERY OF SUPPLIES CONTINUES.

SYLLABUS:

Where a township trustee entered into a contract to furnish supplies to the county before he became township trustee, and where the rights and obligations for all parties under the contract were entirely fixed and agreed upon before the person became a township trustee, no violation of Section 12911, General Code, is effected even though the said township trustee, after taking office, permits his firm to deliver supplies contracted for by the county.

COLUMBUS, OHIO, June 15, 1938.

HON. HAROLD J. ROSE, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR: This will acknowledge the receipt of your recent communication. Your letter quoted in part, reads as follows:

"A contract was entered into by and between a party and the Commissioners of this County on November 22nd, 1937, for the purchase of a quantity of timber. This same party at the November election was elected as a Trustee of a township in this County. There is no specified time for the delivery of the timber, however, I am informed that the party expected to deliver the timber a short time after the contract but was delayed due to adverse weather and also he was unable to secure machinery needed in cutting the timber. However, part of the timber was delivered prior to this party being qualified as a Township Trustee. After qualifying as a Township Trustee he continued to deliver timber under this contract and this continued until recently. The contract has not been fully completed.

The question arises whether or not the sale of the timber would be in contravention to Section 12911 of the General Code. * * *

Further, would it be your opinion, assuming that this contract is not in violation of the aforesaid Section, if the party should continue to fulfill the contract or as a matter of public policy should he stop any further deliveries of timber under the contract?

I am satisfied that the Township Trustee has acted in good faith in this matter and this is different than the usual situation we find concerning any question based upon the aforesaid Section of the General Code."

Section 12911, General Code, referred to in your letter provides 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."

You will note that this section expressly creates exceptions in cases where the amount of a contract does not exceed fifty dollars, and cases where contracts are let on bids after advertisement.

However, should the contract in question not come within the exceptions set forth in Section 12911, supra, there are surrounding it certain special circumstances which must be considered. All rights of the parties to this contract were fixed, agreed upon and accepted before the person in question became a township trustee and acquired status as an official. It may be contended, of course, that interest in a contract does not terminate until all obligations under it are ended and nothing remains to be done by either party. However, it is my view that the Code section in question was never intended to operate on contracts like the one before us, but was passed to discourage and prevent those holding offices of public trust from using such offices to further their personal financial interests. Such being the case, it is my view that Section 12911, supra, does not apply where persons having no official capacity to contract with public subdivisions, even though such persons may become officials before performance under the contract is completed.

It is therefore my opinion that, where a township trustee entered into a contract to furnish supplies to the county before he became township trustee, and where the rights and obligations for all parties under the contract were entirely fixed and agreed upon before the person became a township trustee, no violation of Section 12911, General Code, is

effected even though the said township trustee, after taking office, permits his firm to deliver supplies contracted for by the county.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2598.

COOPERATIVE TRADE ASSOCIATION — MEMBERSHIP
CARD—RIGHT TO PURCHASE CERTAIN DESCRIBED
MERCHANDISE—NOT “SECURITY”—APPLICATION OF
SECTIONS 10185, 10186, 8624-2 (2) AND 8624-3 (8) G. C.

SYLLABUS:

1. *A membership card issued by a cooperative trade association organized under Sections 10185 and 10186, General Code, which card gives the member a right to participate in purchasing certain described merchandise at cost is not a “security” within the meaning of that term as defined in Section 8624-2 (2), General Code.*

2. *A membership card issued by a cooperative trade association organized under Sections 10185 and 10186, General Code, is exempt under the provisions of Section 8624-3 (8), General Code.*

COLUMBUS, OHIO, June 15, 1938.

HON. DAN T. MOORE, *Chief, Division of Securities, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date requesting my opinion as to whether or not membership cards issued by a corporation organized pursuant to the provisions of Sections 10185 and 10186, General Code, are securities within the meaning of Section 8624-2, paragraph (2), General Code.

Cooperative trade associations may be organized in this state pursuant to the provisions of Section 10185, General Code, which reads as follows:

“An association incorporated for the purpose of purchasing, in quantity, grain, goods, groceries, fruits, vegetables, provisions, or any other articles of merchandise, and distributing them to consumers at the actual cost and expense of purchasing, holding, and distribution, may employ its capital and means in the purchase of such articles of