

1544.

APPROVAL, BONDS OF TRUMBULL COUNTY, \$95,000.00, TO IMPROVE SALEM WARREN ROAD, I. C. H. NO. 516.

COLUMBUS, OHIO, May 28, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1545.

APPROVAL, BONDS OF JACKSON TOWNSHIP FARMERSVILLE RURAL SCHOOL DISTRICT, MONTGOMERY COUNTY, \$25,000.00, TO MAKE CERTAIN IMPROVEMENTS.

COLUMBUS, OHIO, May 29, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1546.

APPROVAL, BONDS OF HOCKING COUNTY, \$48,700.00, TO CONSTRUCT SECTION "B" OF THE NELSONVILLE-NEW STRAITSVILLE ROAD— I. C. H. NO. 518.

COLUMBUS, OHIO, May 29, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1547.

OFFICES INCOMPATIBLE—PROSECUTING ATTORNEY AND MEMBER OF DISTRICT BOARD OF HEALTH—COUNTY AUDITOR AND DIRECTOR OF COUNTY AGRICULTURAL SOCIETY.

COLUMBUS, OHIO, May 29, 1924.

SYLLABUS:

1. *A prosecuting attorney may not be a member of the district board of health.*
2. *A county auditor may not be a director of the county agricultural society.*

HON. H. H. CRABBE, *Prosecuting Attorney, London, Ohio.*

Dear Sir:

I am in receipt of your recent communication as follows:

"E. P. H., Examiner for the Bureau of Inspection and Supervision of

Public Offices, in his report of examination of the Madison County District Board of Health, after citing sections 5649-3b and 1261-40 G. C., and the case of *State ex rel vs. Kebert*, 12 C. C. (n. s.) 264, holds that the Prosecuting Attorney of Madison County cannot serve as a member of the District Board of Health.

H. H. C. is the Prosecuting Attorney of Madison County and L. P. W. is the County Auditor of said county, and by virtue of their offices, both are members of the county budget commission. The county budget commission is required to make a levy for the District Board of Health and also to make a levy for the Madison County Fair Board. L. P. W., the county auditor, is a member and secretary of the Madison County Fair Board and draws a salary of \$500.00 per year as such Secretary.

Quare: Can H. H. C., the Prosecuting Attorney of Madison County, also be a member of the Madison County District Board of Health, and can L. P. W., the County Auditor, be a member of and draw salary as secretary of the Madison County Fair Board?"

I presume when you speak of members of the Fair Board you mean directors of the county agricultural society.

There is no statutory inhibition against the Prosecuting Attorney being a member of the district health board or against a county auditor being a director of the county agricultural society.

The common law rule of incompatibility is stated in *State ex rel vs. Gebbert*, 12 C. C. (n. s.) 274, as follows:

"Offices are considered incompatible when one is subordinate to or in any way a check upon the other, or when it is physically impossible for one person to discharge the duties of both."

It is believed that the latter element may be eliminated, as we may take cognizance of the fact that it is not physically impossible for one person to perform the duties of both offices. It therefore remains only to be seen if one office is in any way subordinate to or a check upon the other.

Section 1261-40, General Code, in part provides:

"The board of health of a general health district shall annually, on or before the first Monday of April, estimate in itemized form the amounts needed for the current expenses of such districts for the fiscal year beginning on the first day of January next ensuing. Such estimate shall be certified to the county auditor and by him submitted to the budget commissioners, which may reduce any item or items in such estimate but may not increase any item or the aggregate of all items."

It will be seen by this section that the board of health must annually certify their budget of the county auditor, said budget to be submitted by him to the budget commission, and that such commission may reduce or adjust same. Section 5649-3b, General Code, in part provides:

"There is hereby created in each county a board for the annual adjustment of the rates of taxation and fixing the amount of taxes to be levied therein, to be known as the budget commissioners. The county auditor, the county treasurer and the prosecuting attorney shall constitute such board."

This section makes the prosecuting attorney and the county auditor members of the budget commission and further gives such commission power to adjust or reduce all budgets.

Section 9887, General Code, provides :

“When a county society has purchased, or leased real estate whereon to hold fairs for a term of not less than twenty years, or the title to the grounds is vested in fee in the county, but the society has the control and management of the lands and buildings if they think it for the interests of the county, and society, the county commissioners may pay out of the county treasury the same amount of money for the purchase or lease and improvement of such site as is paid by such society or individuals for that purpose, and may levy a tax upon all the taxable property of the county sufficient to meet such payment.”

Section 9894, General Code, provides :

“When a county or county agricultural society, owns or holds under a lease, real estate used as a site whereon to hold fairs, and the county agricultural society therein has the control and management of such lands and buildings, for the purpose of encouraging agricultural fairs, the county commissioners shall on the request of the agricultural society annually levy taxes of not exceeding a tenth of one mill upon all taxable property of the county, but in no event to exceed the sum of two thousand dollars, or be less than fifteen hundred dollars, which sum shall be paid by the treasurer of the county to the treasurer of the agricultural society, upon an order from the county auditor duly issued therefor. Such commissioners shall pay out of the treasury any sum from money in the general fund not otherwise appropriated, in anticipation of such levy.”

These sections place the power in the hands of the directors of the agricultural society to say, subject to the limitations of statute, what levy shall be made for the purposes stated in the statute. . The budget commission may adjust or reduce such levy, subject to the limitations of statute.

Any person being a member of the board of health or a director in the county agricultural society, and at the same time a member of the budget commission, would as such budget commissioner pass upon his own acts as a member of the board of health or director of the agricultural society.

It is therefore my opinion that a prosecuting attorney may not be a member of the district board of health and that a county auditor may not be a director of the county agricultural society.

Respectfully,
C. C. CRABBE,
Attorney-General.