struction of a bridge on a given site connecting two state or county roads, it may thereafter lay out and acquire a road on such site, and then construct the bridge within the limitations of the authorization."

In the opinion after quoting Sections 2421 and 7557, supra, the court speaking through Judge Robinson, said as follows:

"It is conceded by counsel for the board of county commissioners that these sections do not authorize the board to build bridges other than 'over streams and public canals on state and county roads, free turnpikes, improved roads,' and over 'transferred and abandoned turnpikes and plank roads, which are of general and public utility,' whether within or without a municipality; but it is the contention of the defendant in error that the site of the proposed Huron-Lorain bridge is substantially upon two state roads, in that the western terminus of the bridge will rest upon such a road and the eastern terminus will rest near another such road, * * *.

That the Legislature has the power to authorize the board of county commissioners to so connect two distinct or county roads, and to do so without the formality of first creating a state or county road, making such connection with proper provision for compensation and damages for property taken or depreciated, must be conceded; but the Legislature does not appear to have done so, for it has provided that the commissioners shall construct and keep in repair necessary bridges over streams and public canals on state and county roads and that 'the county commissioners shall cause to be constructed and kept in repair * * * bridges in villages and cities * * * on all state and county roads.' Beyond that it has not gone.

This contemplated bridge cannot, by any stretch of the imagination, be held to be on either a county road or on two county roads, but the most that can be said for it is that it is to be between two county roads, where no connecting road theretofore existed. * * *"

Specifically answering your second question, upon the authorities above referred to, it is my opinion that the county commissioners are without authority to expend county funds in building bridges upon a street within the limits of a municipal corporation, unless such street be a continuation of a state or county road extending into or through such municipal corporation or forms a continuous road improvement.

Respectfully
EDWARD C. TURNER,
Attorney General.

1148.

GENERAL ASSEMBLY—NO MEMBER HAS RIGHT TO REPRESENT PRIVATE CLIENT FOR HIRE IN ANY MATTER THAT MAY LEGALLY COME BEFORE LEGISLATURE—MONEY PAID UNDER ILLEGAL CONTRACT MAY NOT BE RECOVERED.

SYLLABUS:

1. *No member of the legislature has the right to represent a private client for hire in any matter that might legally come before the legislature.*

2. *Where a contract for employment of an attorney to pursue a claim against the State of Ohio does not make provision for the unconditional payment of a definite sum for services but makes the amount of the compensation dependent upon any contingency whatever, such as the amount of recovery, such contract is invalid under Section* 6256-3, *G. C.*

3. *Money paid under an illegal contract may not be recovered in the absence of an enabling statute.*

COLUMBUS, OHIO, October 14, 1927.

HON. VIC DONAHEY, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—This will acknowledge receipt of your letter of recent date reading as follows:

"House Bill No. 509 of the 87th General Assembly, making sundry appropriations, contains the following appropriation:

'Clarence M. Waddell, Highland, Ohio, settlement in full for all injuries sustained in July, 1921, by reason of inoculation and vaccination while a member of Company G, 147 Infantry, O. N. G.....$6,500.00.'

The vaccination referred to took place during the 1921 summer encampment of the Ohio National Guard at Camp Perry. A year later the father of the soldier, namely, John G. Waddell, Highland, Ohio, employed Attorney Clarence H. Hallman, Cincinnati, in an effort to obtain damages or compensation for the son. He signed a contract, dated October 12, 1922, agreeing to pay Hallman a retainer of $75.00, expenses, and in addition a reasonable fee, the amount of which was to be determined and agreed upon after damages had been obtained.

Attorney Hallman failed in his efforts to obtain damages for his client from the 85th General Assembly in 1923 or the 86th in 1925. Subsequently he was elected to the Senate of the 87th General Assembly and was instrumental, as a member, along with other members, in having the above mentioned appropriation made for Clarence M. Waddell.

In due course the Auditor of State issued a warrant for $6.500.00 to Clarence M. Waddell. Senator Hallman induced Waddell the payee, to endorse the warrant, which was cashed and paid into the hands of Senator Hallman in the presence of the Waddells, father and son, by the cashier of the state treasury.

According to affidavits by the Waddells, and not denied by Senator Hallman, the latter retained $1,230.00, as his fee, against the protests of the Waddells, and handed the remainder, $5,270.00, to Clarence M. Waddell.

My interest in the matter is that of the commander-in-chief of the Ohio National Guard, the welfare of whose members I am in duty bound and sworn to protect as far as possible.

Questions:

1. Was it proper on the part of Mr. Hallman to charge and collect fee for services which failed in his private capacity as attorney but which were successful in his public capacity as a member of the Ohio Senate?

2. If not, what procedure would you advise to recover for the benefit of Clarence M. Waddell?"

With the specific understanding that he waived any immunity by submitting same, I have received from Senator Hallman, upon my request a statement of facts reading as follows:

"John G. Waddell retained me in 1922 to represent his son, Clarence. Clarence Waddell had been inoculated and vaccinated in July of 1921, just prior to going to Camp Perry with the National Guards. He told me that shortly after the inoculation his son became very ill and unable to move, and that at that time his son was still entirely helpless.

He informed me further that this case had been handled by another lawyer and that he had been advised that there was no possible chance to secure damages for his son. I at that time told him that I would investigate the case, and entered into a contract with him providing for a reasonable fee to be determined later.

Thereupon I made two trips to Hillsboro, called upon and interviewed four or five of the physicians from that city, and secured from them their statements with reference to the case. I also called upon the captain of the Hillsboro Company, and after a complete investigation I decided that there was no possibility of a claim for damages being made against the physicians who had performed the inoculation and vaccination for malpractice. I did, however come to the conclusion that this was a meritorious case, and that the boy was entitled to recovery either from the State or from the Federal Government.

During this investigation I took this case up with several other physicians and interviewed them with reference to it, and secured data, and spent a great deal of time in the library going over works on medicine which might have had a bearing upon this case. I found several authorities wherein inoculations and vaccinations caused death or helplessness such as in the case which I was considering.

I found that the case had been presented to the National Guards and had been rejected.

I took it up with the Adjutant General at Columbus, and made a trip to see him, interviewing General Florence. I made several trips after that to see Mr. Henderson, the present Adjutant General, and as a result a board of army surgeons was appointed to make a complete examination of Clarence Waddell and to take testimony with reference to the case. I appeared before that board on behalf of my client with witnesses, and presented this case to them. They then suggested that Clarence Waddell be sent to the Walter Reed Hospital for examination and observation. This was done. The hospital discharged him and gave as their belief that he must have had a case of poliomyelitis or infantile paralysis at or about the time of the vaccination. This was the only explanation which they could offer contrary to the theory that his condition was caused by the inoculation and vaccination, and this on their part was only a suggestion with nothing in the history of the case to sustain it.

Frank D. Henderson, Adjutant General, finally stated that he was not in a position to agree with me in this matter on account of the reports of the doctors of the Walter Reed Hospital and the army surgeons, but on March 20, 1925, he made the suggestion that this matter be submitted to the Sundry Claims Board for their judgment.

This was too late for presentation to the 1925 Sundry Claims Board, and a year prior to the time when I first considered even running for State Senator.

As the attorney for Clarence Waddell, and with no misrepresentations of that fact, I appeared before the Board of Sundry Claims together with witnesses and a physician, and as attorney I presented my client's side of the case to the board and the Adjutant General presented theirs. I cited to the

board the authorities that I had in the case, and the cases which I had collected of a similar nature. The board thereupon granted the award.

I appeared before no other committees in this matter. This award appeared in the Sundry Claims Bill, introduced in the House after having been approved by the Board of Sundry Claims. I did not speak to any legislator or Senator asking him to vote for or support the Sundry Claims Bill. I appeared before no committee of the House or the Senate with reference to it. I myself did not vote, nor did I take any part in the matter.

I made approximately twenty trips to Columbus and elsewhere in respect to this claim. The Waddells called upon me at my office on numerous occasions, their interviews lasting sometimes for four or five hours. I have had a great deal of correspondence in this matter, and I have drawn quite a few affidavits bearing upon the case. This fee that I charged was agreed to by the Waddells at the time when paid, and it was agreed that I should pay my expenses out of that fee.

In closing I wish to say this: My entire actions in this matter were those of a lawyer representing his client. I appeared before the Sundry Claims Board, the Sundry Claims Board knowing that I appeared as a lawyer representing my client before it. I took no part in any proceeding in this matter as a legislator, and lobbied before no legislative committee, and asked no legislator for his vote. Governor Donahey saw fit to summon me to meet him in this matter. While not recognizing any authority of the Governor of the State of Ohio to interfere in any way in this matter between myself and my client, yet as a courtesy to the office of the Governor of Ohio I appeared at the time and the place he had requested. At that time I found that he did not have any intention of showing like courtesy to me, and did not appear, for reasons known only to himself.

The check for the award was received from the Auditor and endorsed and presented to the State Treasurer, and we received from the State Treasurer the currency. They expressed a desire to settle my fee at once, and offered a totally inadequate sum. After some discussion we agreed upon $1,230.00 as the amount, which was to cover my expenses, pay an unpaid doctor bill and my fee, and this sum was counted out of the money received.

They have never since expressed to me any dissatisfaction with the amount that was agreed upon and paid.

I am perfectly willing to make this statement to you, and waive any immunity that the making of this statement might perchance be giving me."

I have also received from Senator Hallman a copy of the contract under which he was employed by John G. Waddell, which is as follows:

"October 12, 1922.

In consideration of the services to be performed by Clarence H. Hallman in the claim of John G. Waddell against Dr. W. G. Rhoten or the State of Ohio, or the Government of the United States, it is agreed that Clarence H. Hallman shall receive for his services such sum as shall be fair and equitable, the same to be agreed upon after recovery is had.

It is further agreed that said Clarence H. Hallman is to be reimbursed for whatever his expenses may be, and to receive as a retainer in said matter the sum of $75.00."

I have further been furnished with the files of the Adjutant General's office containing all of the correspondence relative to the claim of Clarence M. Waddell. The Adjutant General's files show that through the efforts of Attorney Hallman the Adjutant

General's department of the State of Ohio sent Clarence Waddell to the Walter Reed Hospital in Washington for examination.

On September 12, 1923, A. H. Nylen, Personnel Adjutant, on behalf of the commanding officer at Walter Reed Hospital, wrote Mr. Hallman:

> "In reply it is not believed that the condition of Pvt. Clarence Waddell of the National Guard is traceable to vaccinations and inoculations said to have been given in July, 1921."

On the same date, Adjutant Nylen sent to the Adjutant General of Ohio a copy of the letter to Mr. Hallman, together with the technical finding absolving the inoculation as the cause of Waddell's condition.

The Adjutant General's files show that Attorney Hallman persisted in following up the claim of Clarence Waddell with the Adjutant General's department.

On February 28, 1923, the Adjutant General's department caused an examination to be made of Clarence Waddell, and on March 20, 1925, Lt. Col. D. V. Burkett, Chief Surgeon, O. N. G., made a report to the Adjutant General of Ohio, in which it is said:

> "The three members of this board concurred in the diagnosis of acute poliomyelitis, or infantile paralysis, believing there was no connection between the development of this condition and the inoculation with typhoid serum, but that the condition of infantile paralysis was merely a coincidence and would have developed had the man not been inoculated."

The Adjutant General's files further show that after this report, Attorney Hallman still persisted in behalf of his client and caused examinations to be made by physicians not connected with either the Army or the National Guard.

On February 23, 1927, the Adjutant General of Ohio sent the following communication to the Sundry Claims Board:

> "At the request of Senator Hallman there is submitted herewith all correspondence in the case of Clarence M. Waddell, a former enlisted man in Company G, 147th Infantry, Ohio National Guard. Pvt. Waddell was given the inoculation with typhoid serum in 1921 in conformity with existing orders issued by the War Department. A short time after this inoculation, Pvt. Waddell developed a permanent physical disability amounting to a condition of paralysis and has been permanently disabled since.
>
> The case was brought to the attention of this department in 1923 with the claim that disability was the result of the typhoid inoculation referred to above. Pvt. Waddell was brought before a Medical Board composed of National Guard Officers and on June 7, 1923, was sent to Walter Reed Hospital, the Army medicinal center for diagnosis and treatment. He remained at this hospital until September 1, 1923. All expenses such as transportation, hospital bills, etc., were paid by the State of Ohio assuming that the State was responsible until it was established whether or not his disability was a result of the military service.
>
> In the correspondence hereto attached is a copy of a letter from A. H. Nylen, Personnel Adjutant of Walter Reed Hospital under date of September 12, 1923, which following statement appears:
>
> 'In reply it is not believed that the condition of Pvt. Clarence Waddell of the National Guard is traceable to vaccinations and inoculations said to have been given in July, 1921.'

Attention is also invited to a letter from Lt. Col. D. V. Burkett, Chief Surgeon of the Ohio National Guard dated March 20, 1925, containing a statement of findings of the Board of Medical Officers who examined Pvt. Waddell as follows:

(Extract)

'The three members of this Board concurred in the diagnosis of acute poliomyelitis, or infantile paralysis, believing there was no connection between the development of this condition and the inoculation with typhoid serum, but that the condition of infantile paralysis was merely a coincidence and would have developed had the man not been inoculated.'

It will be noted that both of the opinions diagnose the case as infantile paralysis and directly state that the case is not attributable to the inoculation.

Attention is also invited to the affidavit hereto attached, signed by Dr. Joseph H. Frame, a practicing physician of the State of Ohio, in which he directly attributes the disability of Pvt. Waddell to the inoculations and vaccinations received by Pvt. Waddell in July, 1921. A similar statement from another practicing physician is in the hands of Senator Hallman.

It will be noted that I have cited the statement of army medical officers that Pvt. Waddell's condition is not attributable to inoculations, whereas the testimony of civilian physicians is directly opposite. The Adjutant General of Ohio by virtue of his official position, feels it necessary to refrain from taking a position at variance from that of the military physicians. It would seem that the Sundries Claims Board should determine which of the opinions should be approved in determining whether compensation should be awarded or not.

It is fully realized that the family of Pvt. Waddell has been put to great expense and financial sacrifice by reason of his illness, and if there is a reasonable belief that the man in question would not now be disabled had he not received the inoculations referred to, the awarding of a just compensation could well be given consideration.

It is requested that all correspondence attached hereto be returned to this office when it has served its purpose."

Section 6256-3 of the General Code of Ohio provides:

"No person, firm, corporation or association shall be employed with respect to any matter pending or that might legally come before the general assembly or either house thereof, or before a committee of the general assembly or either house thereof for a compensation dependent in any manner upon the passage, defeat, or amendment of any such matter, or upon any other contingency whatever in connection therewith."

Section 6256-5 of the General Code of Ohio provides:

"The provisions of this act (G. C. Secs. 6256-1 to 6256-8) shall not be construed as affecting professional services in drafting bills, preparing arguments thereon, or in advising clients and rendering opinions as to the construction and the effect of proposed or pending legislation where such professional services are not otherwise connected with legislative action."

Unless it could be shown that Clarence M. Waddell had been emancipated by his father, John G. Waddell, the father, would have a claim for the loss of his minor son's services. So far as the contract of October 12, 1922, above quoted, is concerned, it refers on its face only to the claim of John G. Waddell and not to the claim of Clarence

M. Waddell. Said contract is ambiguous in failing to outline or describe the services to be performed. Reliance must be had upon what actually was done in pursuance of the contract to ascertain whether that work came within the exceptions set forth in Section 6256-5, supra.

The practical interpretation of said contract of October 12, 1922, by both Clarence H. Hallman and John G. Waddell shows that John G. Waddell was acting on behalf of Clarence M. Waddell, that is, in his capacity of father of a minor and for the minor.

I am of the opinion that so far as the contract of October 12, 1922, pertains to the pursuit of a claim against the State of Ohio, it is invalid because of its provision for the determination after recovery is had of a fair and equitable fee. This provision makes the compensation dependent upon the successful outcome of legislative action, and construed in the light of what was done under the contract, renders the contract void.

As said contract was entered into long before Mr. Hallman became a candidate for the legislature, his later status as a member of the legislature could have no effect upon the inception of the contract.

Assuming for the purpose of argument that the contract was valid, which would be the case in the absence of Section 6256-3 of the General Code, I am of the opinion that Senator Hallman had no right to continue to represent either of the Waddells in any claim against the State of Ohio for the reason that Attorney Hallman's duty to his client or clients was incompatible with Senator Hallman's duty to his state and he therefore had no right to attempt to discharge both conflicting duties.

Even assuming the contract of October 12, 1922, to be valid, Mr. Hallman could not have recovered for any services performed in the Waddell case after he became a member of the legislature.

Assuming said contract to be valid and assuming that Senator Hallman had a right to do what he did, I am satisfied that a court and jury having before it the evidence now before me would say that where an attorney after five years of effort and some expense had succeeded in recovering for his client $6,500.00 after both the Army and the Ohio National Guard had made findings that the cause of Clarence Waddell's trouble was not due to the inoculation, the sum of $1,230.00 to cover the attorney's fee alone in the absence of any expense would be held to be reasonable.

It is a well recognized rule of law that where an illegal agreement has been fully executed, as is the case here, the courts will not lend their assistance by allowing the recovery back of any money paid in pursuance of such illegal contract.

Specifically answering your second question: I am of the opinion that there is no procedure under which the money paid to Clarence H. Hallman, or any part thereof, may be recovered back for or on behalf of Clarence M. Waddell.

Coming now to your first question and answering it specifically: It is not proper for a member of the legislature to charge and collect a fee for services which failed in his private capacity as attorney but which were successful in his public capacity as a member of the Ohio Senate.

Your question and my answer thereto requires me, in my capacity as your legal adviser, to go further and ascertain what laws, if any, have been violated, together with the probable outcome of any prosecution.

As I have before indicated, I have no hesitancy in saying that Senator Hallman had no right to proceed under said contract against the State of Ohio, even if it had been legal, after he became a State Senator.

The fact that Senator Halman did not vote or did not talk to any other member of the legislature does not cure the situation. He had no right to be the paid advocate of anyone or any interest other than the State of Ohio in respect of matters which might legally come before the legislature. The state had a right to have him free to vote and free to give his advice to his fellow legislators.

On behalf of Senator Hallman, it has been claimed that the specific thing prohibited by Section 6256-2 of the General Code is the appearance before a committee

of the general assembly or either house thereof and that the sundry claims board is not such a committee. The answer to this contention is that I am not depending in this opinion upon the provisions of Section 6256-2 but upon the provisions of Section 6256-3, which provides that:

> "No person, firm, corporation or association shall be *employed* with respect to any matter pending or that might legally come before the general assembly or either house thereof, * * * *for a compensation dependent in any manner upon the passage, defeat, or amendment of any such matter, or upon any other contingency whatever in connection therewith.*"

Neither do I agree with the contention made on behalf of Senator Hallman that it is impossible for a member of the legislative body to commit the offense of lobbying before it. However, there is no evidence before me that Senator Hallman did any lobbying with members of the legislature or any committee thereof. He did appear before the sundry claims board.

It is further claimed on behalf of Senator Hallman that a member of the legislature may accept any employment not forbidden by Section 15 of the General Code, this under the rule of "expressio unius est exclusio alterius." Such a claim ignores a fundamental principle of law that no man may at the same time serve two masters. The duties of a member of the Ohio legislature are not compatible with the duties of an attorney to a client with a claim against the State of Ohio.

There is no evidence before me of any corrupt promise, offer or solicitation by either the Waddells or Senator Hallman. Therefore, I shall not comment on the feature of possible bribery other than to say that if a member of the legislature were guilty of accepting a bribe, the man who gave it would be equally guilty and there could be no recovery back of any money thus paid.

Section 6256-6 of the General Code of Ohio provides:

> "Any person who violates any of the provisions of this act (G. C. Secs. 6256-1 to 6256-8), whether acting either individually or as an officer, agent, employe or counsel of a person, firm, corporation or association, or any person, whether acting individually, as an officer, employe, agent or counsel of a firm, corporation or association, who causes or participates in any violation of the provisions of this act, shall upon conviction be fined not less than two hundred dollars nor more than five thousand dollars or be imprisoned in the penitentiary for a term of not less than one year nor more than two years, or both. Any association or corporation which violates, or causes or participates in any violation of any of the provisions of this act shall for each offense be fined not less than two hundred dollars nor more than five thousand dollars.
>
> The prosecution of one or more of the officers or employes of such corporation or association shall not be a bar to the prosecution and conviction of the corporation or association for such offense."

The evidence now before me convinces me that Senator Hallman's employment was contrary to the provisions of Section 6256-3, supra.

Notwithstanding this conclusion, I am of the opinion that a prosecution would wholly fail even though the court were to hold the provisions of Section 6256-3 constitutional, and that the employment of Clarence H. Hallman violated such section. In the first place, both of the Waddells would be equally guilty with Mr. Hallman and the fact that they were accessories would injure the credibility of their testimony,

Unless it could be shown that the Waddell claim was fraudulent, the sympathy of the jury would certainly be with the attorney who, over a five-year period and for a family that was unable to pay him the $75.00 retainer promised, had recovered for this injured boy the net sum of $5,270.00 after the officials of both the Army and the Ohio National Guard had turned down the claim. The fact that Senator Hallman may have violated the ethics of a senator in pursuing this claim on behalf of his client would have short shrift before a jury looking at the helpless boy and the fight necessarily made for him.

To say that a poor man may not employ an attorney on a contingent fee or that an attorney may not base his fee on the results of such a case is equal in practice to saying that a poor man could not have the advantage of an attorney's services in such a case, which situation would hardly be overlooked by the jury in connection with the other facts.

Summarizing my conclusions:

I am of the opinion that no recovery may be had for the benefit of Clarence M. Waddell of any part of the $1,230.00 retained by Senator Hallman as his fee.

I am of the further opinion that no member of the legislature has the right to represent a private client for hire in any matter that might legally come before the legislature.

I am of the further opinion that under the facts of this particular case no prosecution under the anti-lobbying law or any other law of the state would be successful.

There is nothing so far as I have been able to find which would raise the suspicion that Senator Hallman had done anything corrupt or intentionally wrong. Senator Hallman contends that he had a right to appear before the sundry claims board so long as he did not himself vote on the measure and did not attempt to influence the vote of any other member of the legislature. His mistake is one of law. But it is a mistake nevertheless and one that has been made by others.

In Opinion No. 951, rendered by this department under date of September 3, 1927, the facts show that a village in this state had made a contract with an attorney for the purpose of obtaining an allowance by the general assembly of a claim and in the contract of employment payment of the services had been made contingent upon the allowance of such a claim. The second branch of the syllabus of that opinion reads as follows:

> "A contract of employment by a village with an attorney at law, for the purpose of obtaining an allowance by the general assembly of a claim, in which contract the payment for the services rendered is contingent upon the allowance of such claim, is void under the anti-lobby law."

Respectfully,
EDWARD C. TURNER,
Attorney General.

1149

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN THE VILLAGE OF POINT PLEASANT, CLERMONT COUNTY, OHIO

COLUMBUS, OHIO, October 14, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted an abstract of title, certified under date of