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CONTRACT, AMOUNT EXCEEDS FIFTY DOLLARS — TEACHER IN RURAL OR VILLAGE SCHOOLS, EMPLOYED BY BOARD OF EDUCATION — VIOLATION OF SECTION 12911 G.C. IF SUCH TEACHER INTERESTED IN SUCH CONTRACT FOR SALE OF BRIDGE LUMBER, OR OTHER PROPERTY, SUPPLIES OR FIRE INSURANCE TO COUNTY COMMISSIONERS — TEACHERS ARE APPOINTED AND EMPLOYED FOR TERMS NOT LESS THAN ONE NOR MORE THAN FOUR YEARS — CONTRACT ENTERED INTO WHEN SCHOOLS NOT IN SESSION, BETWEEN MAY AND SEPTEMBER DOES NOT AFFECT RULING.

SYLLABUS:

1. *It is a violation of Section 12911, General Code, for one employed as a teacher in the rural or village schools by a board of education to be interested in a contract for the sale of bridge lumber, or other property, supplies or fire insurance, to the county commissioners for the use of the county, if the amount of the contract exceeds the sum of fifty dollars, unless such contract is let on bids duly advertised as provided by law.*

2. *Under the facts stated in paragraph 1 above, the fact that the contract is entered into during the time the schools are not in session, that is, between the months of May and September, does not alter the above conclusion, since teachers are appointed and employed for terms of not less than one or more than four years (Sections 7691 and 7703, General Code).*

Columbus, Ohio, March 26, 1941.

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

Gentlemen:

I have your letter of recent date requesting my opinion which reads as follows:

“We respectfully request your opinion upon the following question:

Is it a violation of Section 12911, General Code, for a person who is employed as a teacher in the rural or village schools, to sell bridge lumber to the county commissioners, if the amount involved exceeds \$50.00?

If such transactions are prohibited by this section, would it make any difference if the order is given during the time schools are not in session, that is, between the months of May and September, although the lumber would not be delivered until during the school term, and such person had entered upon his duties as teacher?"

Section 12911, General Code, to which you refer, provides that:

"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."

In connection with your inquiries, it is also necessary to consider the provisions of Section 7691, General Code, as amended by the 93rd General Assembly (118 v. 668; eff. 9-6-39). This section, which supercedes old Section 7691, General Code, applying only "to boards of education other than village and rural school district boards," and old Section 7705, General Code, which when existing was limited in its application to boards of education of village and rural school districts (See State, ex rel. Wipert v. Board of Education, 45 O.A. 421, 187 N.E. 255 (1931) ), reads in part:

"No person shall be appointed as a teacher for a term longer than four years, nor for less than one year, except to fill an unexpired term, the term, except in the case of an unexpired term, to begin within six months of the date of the appointment. In making appointments teachers in the actual employ of the board shall be considered before new teachers are chosen in their stead. \* \* \* The board of education of each village and rural school district shall employ the teachers of the public schools of the district. Such local board shall employ no teacher, principal, or supervisor for any school unless each of such persons is nominated therefor by the county superintendent; provided, however, that, by a majority vote, such board may request additional nominations, subsequent to which by a major-

ity vote of its full membership it may employ a person not so nominated."

Section 7703, General Code, is also pertinent. This section, among other things, provides that upon the acceptance of his appointment as superintendent of the public schools of a city school district, as provided in Section 7702, General Code, "such superintendent, subject to the approval and confirmation of the board, may appoint all the teachers," Section 7703 further providing that "any city or exempted village board of education, upon a three-fourths vote of its full membership, may re-employ any teacher whom the superintendent refuses to appoint."

You will note from that part of Section 7691, above quoted, teachers in this state are appointed and employed on a *yearly* basis, "except in the case of an unexpired term." That is to say, it is explicit from the language of this statute that boards of education are only authorized to appoint and employ a teacher for a term of not "less than one year" or for a term of not "longer than four years," except as authorized in the statute. And it logically follows that teachers being employees for the in your letter be "given during the time schools are not in session, that is, entire year, it would make no difference whether the order referred to between the months of May and September," or when the schools are open, if a teacher comes within the provisions of Section 12911, *supra*.

Coming now to consider your first question, I am constrained to answer this inquiry in the affirmative. In the first place, there is no doubt but that members of boards of education are officers of trust within the meaning of Section 12911, General Code. As stated in 36 O.Jur. 169, "while not township, county, or city officers, members of a board of education are public officers, charged with the performance of important public duties." In the case of *Schwing v. McClure, et al., Trustees*, 120 O.S. 335 (1929), it was said as follows at page 340:

" \* \* \* A member of a school board, while he is not a township, county, or city officer, is a public officer, 35 Cyc., 899; *Ogden v. Raymond*, 22 Conn., 379, 58 Am. Dec., 429; *Morse v. Ashley*, 193 Mass., 294, 79 N.E., 481; *Cline v. Martin*, 94 Ohio St., 420, 115 N.E., 37; *Wogoman v. Board of Education of Rural School Dist. of Perry Twp.*, 95 Ohio St., 409, 116 N.E. 1087; *Leatherman v. Board of Education of Allen County*, 96 Ohio St., 596, 118 N.E. 1083. \* \* \*"

Nor can there be any question as to the fact that a teacher is the servant

or employe by appointment "of a board of such officers," that is, the appointee and employe of a board of officers of trust. Section 7691, supra, expressly provides for the appointment of teachers, and in this section the word "employ" is used four times. Likewise, in Section 7703, supra, the word "re-employ" is found. And see in this connection the case of Board of Education, et al. v. Talbott, Auditor, 261 Ky. 66, 72, 86 S.W. (2nd) 1059 (1935), in which it was held that all "teachers of the common schools of the commonwealth are state employes," that is *public employes*. From what has been said with reference to the character of the office of member of a board of education and the nature of a teacher's employment, I think it manifest that a teacher is an employe by appointment of a board of officers of trust and subject to the pains and penalties of Section 12911, General Code.

In connection with the conclusions above reached, your attention is invited to the Annual Report of the Attorney General, 1911-1912, Vol. I, p. 227, and Opinions, Attorney General, 1933, Vol. III, p. 1945, with which this opinion is in accordance, and in which the legislative history and the true meaning of the provisions of Section 12911, General Code, are ably discussed.

In view of the foregoing and in specific answer to your questions, it is my opinion that:

1. It is a violation of Section 12911, General Code, for one employed as a teacher in the rural or village schools by a board of education to be interested in a contract for the sale of bridge lumber, or other property, supplies or fire insurance, to the county commissioners for the use of the county, if the amount of the contract exceeds the sum of fifty dollars, unless such contract is let on bids duly advertised as provided by law.

2. Under the facts stated in paragraph 1 above, the fact that the contract is entered into during the time the schools are not in session, that is, between the months of May and September, does not alter the above conclusion, since teachers are appointed and employed for terms of not less than one or more than four years (Sections 7691 and 7703, General Code).

Respectfully,

THOMAS J. HERBERT,  
Attorney General.