

1413.

VILLAGE COUNCIL—DIRECTOR OF LOCAL BANK BEING COUNCIL-  
MAN NO BAR TO SELECTION OF SUCH BANK AS DEPOSITORY.

*SYLLABUS:*

*A village council may select and use a local bank as a depository even though one or more members of the village council are also members of the board of directors of such bank.*

COLUMBUS, OHIO, December 22, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your communication which reads as follows:

“Section 4218, G. C., provides that no member of council shall hold any other public office or be interested in any contract with the village.

Question: May a village select and use a local bank as a depository when two members of the village council are also members of the board of directors of such bank?

Section 12912 and Opinion No. 255, page 1246 of the Opinions of 1912 may be pertinent.”

Sections 4218, 12912 and 4295, General Code, read in part as follows:

Sec. 4218. “\* \* \* No member of the council shall hold any other public office or employment, except that of notary public or member of the state militia, or be interested in any contract with the village. \* \* \*”

Sec. 12912. “Whoever, being an officer of a municipal corporation or member of the council thereof or the trustee of a township, is interested in the profits of a contract, job, work \* \* \* shall be fined not less than fifty dollars nor more than one thousand dollars or imprisoned not less than thirty days nor more than six months, or both, and forfeit his office.”

Sec. 4295. “The council may provide by ordinance for the deposit of all public monies coming into the hands of the treasurer, in such bank or banks, situated within the municipality or county, as offer, at competitive bidding, the highest rate of interest and give a good and sufficient bond \* \* \*.”

In the opinion of the Attorney General to which you refer, found in the Annual Report of the Attorney General for 1912, Vol. II, page 1246, questions relating to the deposit of the funds of a board of education in banks wherein members of the board of education were stockholders and officers were considered.

A statute prohibiting members of boards of education from making contracts in which they were pecuniarily interested, with provisions similar to those of Sections 4218 and 12912, supra, was then, as now, in force. This statute (Section 12932, General Code), reads as follows:

“Whoever, being a \* \* \* member of a board of education \* \* \* acts in a matter in which he or she is pecuniarily interested, shall be fined not less than twenty-five dollars nor more than five hundred dollars or imprisoned not more than six months, or both.”

The syllabus of the 1912 opinion, *supra*, reads:

"Inasmuch as it is mandatory upon the board of education to place the deposits in the bank offering the highest rate of interest for the same, members of the board who are stockholders in, or officers of the bank making the best bid, are not criminally liable for making such bank the depository."

On page 1248 of the above opinion it is said:

"The awarding of the deposits by the board to the bank, being the highest bidder is a valid contract."

In the course of the opinion Attorney General Hogan refers to the case of *Richardson vs. The Board of Trustees*, 6 O. N. P. (N. S.) 505. Suit was there brought seeking to enjoin the township trustees of Sycamore Township in Hancock County from depositing the funds of the township with a certain bank located in the township, which had offered the highest rate of interest for said funds, for the reason that one of the trustees for said township was a director and stockholder in said bank.

Section 6976, Revised Statutes, was then in force. This statute was later codified as Section 12912, General Code. So far as pertinent the provisions of Section 6976, Revised Statutes, were at that time the same as the present provisions of Section 12912, *supra*.

In the Richardson case the court held:

"The fact that one of the township trustees is a stockholder and director in a bank situated within the township which has submitted the highest bid for the usage of the township's funds and to act as depository under the provisions of Section 1513 does not under the provisions of Section 6976, disqualify the bank from so acting and injunction will not lie to prevent the award."

The same question came to the attention of the Attorney General in 1906. (See Annual Report of the Attorney General for 1906, page 287.) At that time Section 3974, Revised Statutes, read:

"That no member of a board of education shall have any pecuniary interest either directly or indirectly in any contract of the board."

In that case one member of the board of education was cashier and stockholder of one bank, another member was assistant cashier and stockholder of a second bank, while a third member was an assistant cashier and not a stockholder of a third bank. The Attorney General, in holding that Section 3974, Revised Statutes, did not prohibit a board of education from accepting the bid of a bank in which the members of the board of education were stockholders and officers, made this observation:

"If Section 3974 is applicable at all, it would render voidable all contracts between a bank and a school board on which there was a single member who was also a stockholder in a bank, regardless of whether his vote was necessary to pass the resolution.

“That rule applied to the present case would render two of the three banks of the district clearly ineligible, and as a necessary consequence would prevent the letting of the contract to the third bank unless banks outside of the district were also permitted to bid, since there could be no competitive bidding within the district if only one bank therein was eligible.”

In view of the foregoing, I am of the opinion that a village council may select and use a local bank as a depository even though one or more members of the village council are also members of the board of directors of such bank.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1414.

APPROVAL, FORMS FOR TRANSFER OF LEASES TO DAYTON CANAL LANDS.

COLUMBUS, OHIO, December 22, 1927.

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

DEAR SIR:—Receipt is acknowledged of your communication of recent date, submitting for my approval two forms for the transfer of existing leases on certain abandoned Miami and Erie canal lands situated within the city of Dayton, Ohio, and certain of said abandoned canal lands lying contiguous to said city. The assignment of said leases is being made pursuant to the provisions of House Bill No. 162 passed by the 86th General Assembly on the 25th day of March, 1925, and found in 111 O. L. at pages 208 to 214, both inclusive.

The assignment of the various individual leases is also being made pursuant to leases Numbers 1 and 2 which are general in their nature and refer to all leases now existing on the abandoned canal lands aforesaid. Said leases Numbers 1 and 2 are dated November 1, 1927, and are recorded in Volume No. 619, pages 25 and 33, respectively, of the deed records of Montgomery County, Ohio.

I have prepared two forms for the assignment of the leases contained in the schedule of leases in 1 and 2, as hereinbefore referred to in this opinion, and I am enclosing them herewith.

If the assignments of said leases are made upon the forms herein submitted, I will formally approve each of the various transfers of leases as soon as they are submitted to me.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1415.

BOARD OF EDUCATION—ISSUANCE OF BONDS AFTER JULY 6, 1927—  
PUBLICATION OF NOTICE OF ELECTION FOR LESS THAN STATU-  
TORY PERIOD—ELECTION INVALID WHERE BOND MATURITIES  
EXCEED LIMITS OF SECTION 2293-9, GENERAL CODE.

SYLLABUS:

1. *Where proceedings for an issue of bonds by a board of education were begun on July 6, 1927, such proceedings must conform to the provisions of House Bill No. 1*