

either directly or indirectly. Public policy requires, and the law upon that subject, as I say, is as old as courts of equity, that the agent shall not deal with or for himself directly or indirectly, and all such contracts made by an agent are voidable as against his principal. This salutary principle of the law applies as well to public as to private agents, and public officials, who are the agents of the public, will not be permitted to put themselves in a position antagonistic to the public interests which are represented and which it is their duty to protect. Mechem, Public Officers, Section 840.

As agent of a surety company which executes bonds to secure contracts let by a city, a councilman in said city, could not help but be interested in any forfeitures of such bonds, and in the carrying out of the contracts so that there would be no liability on the bond. If defaults occur on the part of the contractors whose contracts are secured by bonds executed by a councilman as agent of a surety company, the councilman surely is interested in the liability under the bond and in any settlement of such liability. This must necessarily be so, else he does not faithfully represent his principal, the surety company. In such a situation, a councilman would find himself representing two masters whose interests were antagonistic, and in direct conflict. Again, if it should become necessary to enforce liability on any such bonds by action in court, the city council is clothed with sufficient powers with respect thereto as would cause a member of such council to have conflicting obligations.

Sections 4240 and 4308, General Code, provide as follows:

Sec. 4240. "The council shall have the management and control of the finances and property of the corporation, except as may be otherwise provided, and have such other powers and perform such other duties as may be conferred by law."

Sec. 4308. "When required so to do by resolution of the council, the solicitor shall prosecute or defend, as the case may be, for and in behalf of the corporation, all complaints, suits and controversies in which the corporation is a party, and such other suits, matters and controversies as he shall, by resolution or ordinance, be directed to prosecute, but shall not be required to prosecute any action before the mayor for the violation of an ordinance without first advising such action."

For the reasons hereinbefore discussed, I am of the opinion, in specific answer to your question, that it is unlawful for a member of a city council who is also agent for a surety company, to execute bonds on behalf of such surety company to secure the performance of contracts entered into with the city upon whose council he serves.

Respectfully,

GILBERT BETTMAN,
Attorney General.

976.

SCHOOL DISTRICT—TRANSFER OF TERRITORY FROM RURAL TO CITY—ACCEPTANCE BY LATTER DISCRETIONARY.

SYLLABUS:

It is discretionary with a city board of education whether or not it will accept the transfer of the territory of a contiguous rural school district made to it by the county board of education.

COLUMBUS, OHIO, October 3, 1929.

HON. GEORGE E. SCHROTH, JR., *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent communication, requesting my opinion as follows:

“A petition bearing the signature of seventy-five per cent of the electors in a rural school district contiguous to the Tiffin school district has been filed. The statute seems to indicate that the county school board must make such a transfer. In so far as it is the desire of the petitioners of that school district to transfer the pupils to the city school district, the question arises: Must the city school board accept the transfer? In other words, is the statute mandatory or discretionary on the part of the city school district to accept the transfer?”

I assume from your inquiry that the rural school district in question is not a centralized district and this opinion is based upon that assumption.

Section 4696, General Code, provides:

“A county board of education may, upon a petition of a majority of the electors residing in the territory to be transferred, transfer a part or all of a school district of the county school district to an exempted village, city or county school district, the territory of which is contiguous thereto. Upon petition of seventy-five per cent of the electors in the territory proposed to be transferred the county board of education shall make such transfer. A county board of education may accept a transfer of territory from any such school district and annex same to a contiguous school district of the county school district.

In any case before such a transfer shall be complete (1) a resolution shall be passed by a majority vote of the full membership of the board of education of the city, exempted village or county school district making or accepting the transfer as the case may be (2) an equitable division of the funds and indebtedness between the districts involved shall be made by the county board of education, which in the case of territory transferred to a county school district shall mean the board of education of the county school district to which such territory is transferred, and (3) a map shall be filed with the county auditor of each county affected by the transfer.

When such transfer is complete the legal title of the school property shall become vested in the board of education of the school district to which such territory was transferred.

Any territory which has been transferred to another district, or any part of such territory, shall not be transferred out of the district to which it has been transferred during a period of five years from the date of the original transfer without the approval of the state director of education to such a transfer.”

The last paragraph was added by the General Assembly in 1929 and became effective July 21, 1929. This amendment does not affect your question, but it compels me to further assume in considering your question that the rural school district referred to, has not been transferred within the last five years.

That it is mandatory upon the county board of education to make the transfer after the proper steps have been taken has been decided by the Ohio Supreme Court in the case of *State, ex rel. vs. Hadaway, et al.*, 113 O. S. 658, and *Summit County*

Board of Education vs. State, ex rel. Sipe, 115 O. S. 333. My immediate predecessor also so ruled in an opinion to be found on p. 966, Vol. II, Opinions of Attorney General for 1928.

In the opinion above referred to, the Attorney General also ruled that when school territory lying within one county school district is transferred to a contiguous county school district by authority of Section 4696, General Code, the district to which the transfer is made may or may not accept the transfer, and I concur in this view.

The Seneca County Board of Education, however, does not have jurisdiction conferred by law to make transfers of territory from a district of its county school district to a contiguous city school district, as in the case of transfers between districts of the county school district under Section 4692, General Code.

It should be observed that the mere making of the transfer by the Seneca County Board of Education does not make the transfer complete. The board of education of the Tiffin City School District must first accept the transfer so made, and there is no statutory authority to compel the city board to accept a transfer of territory if it does not wish to do so, no matter how many persons petition for it.

Answering your specific inquiry, I am of the opinion that it is discretionary with a city board of education whether or not it will accept the transfer of the territory of a contiguous rural school district made to it by the county board of education.

Respectfully,

GILBERT BETTMAN,
Attorney General.

977.

APPROVAL, BONDS OF HENRY COUNTY—\$10,000.00.

COLUMBUS, OHIO, October 3, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

978.

APPROVAL, BONDS OF PUTNAM COUNTY—\$5,151.06.

COLUMBUS, OHIO, October 3, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.