

appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5577.

OFFICES INCOMPATIBLE—MEMBER AND CLERK OF SOLDIERS' RELIEF COMMISSION—COUNTY COMMISSIONERS FIX COMPENSATION OF MEMBERS OF SOLDIERS RELIEF COMMISSION.

SYLLABUS:

1. *A member of a soldiers' relief commission may not be employed as a clerk under the provisions of Section 2933-1, General Code.*
2. *The authority to fix the compensation to be allowed to members of a soldiers' relief commission is exclusively vested in the board of county commissioners as set forth in Section 2932, General Code.*

COLUMBUS, OHIO, May 21, 1936.

HON. FRANK A. ROBERTS, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR: Your letter of recent date is as follows:

"I have been reliably informed that the practice of appointing one of the members of the Soldiers' Relief Commission as a salaried clerk of said commission has been generally practiced throughout the counties of the State of Ohio.

Under the provisions of Section 2931 of the General Code of Ohio, the commissioners of the Soldiers' Relief Commission of Clermont County selected by resolution a president and secretary.

On the same day and immediately following the passage of this resolution the minutes show that a motion was carried 'that the secretary be appointed clerk for the Soldiers' Relief Commission; salary \$20.00 per month'.

This motion appears to have been made by the person who had been selected as secretary, and was carried unanimously by

the affirmative vote of all three members of the board including the secretary member.

On the same date the minutes disclose that a resolution was unanimously carried 'that the members of the Soldiers' Relief Commission be paid \$6.00 per month for services'.

Kindly advise this office at your earliest opportunity, first, whether a member of the commission may hold a salaried commission as clerk; second, assuming that such position is not incompatible, may the appointment of such clerk be made upon the motion of the party selected or with his vote; third, may the Soldiers' Relief Commission fix the compensation of its members by resolution or is compensation to be fixed by the Board of County Commissioners, under the provisions of Section 2932 of the General Code of Ohio."

The authority vested in the county soldiers' relief commission to employ clerks is contained in Section 2933-1, General Code, in the following language:

"The soldiers' relief commission is hereby empowered to employ such investigators and clerks as may be necessary to carry on relief work when the necessity arises. These investigators and clerks shall be honorably discharged veterans of the war with Spain, or the world war, and shall not be required to take a civil service examination. Their compensation shall be such as established by the soldiers' relief commission, and shall be paid from the county allotment of soldiers' relief funds."

A directly analogous question to your first inquiry was considered and passed upon in my Opinion No. 1756, appearing in Opinions of the Attorney General for 1933, Vol. II, page 1622, the syllabus of which is as follows:

"A member of the soldiers' relief commission may not be employed as an investigator under the provisions of section 2933-1, General Code."

The foregoing opinion cited a number of authorities in support of the well established principle of public policy that a member of an administrative board may not, in the absence of express statutory authority, hold a salaried position thereunder. It follows in my opinion that a member of the soldiers' relief commission may not be employed as a clerk under the provisions of Section 2933-1, General Code.

In view of my answer to your first question, it is unnecessary to answer your second question, but your attention might be directed to an opinion appearing in Opinions of the Attorney General for 1933, Vol. I, page 190, the syllabus of which is as follows:

“1. Where a member of a city, exempted village, village or rural board of education is elected clerk of such board by his own vote, which was necessary to give him a majority, there is no election. This rule is not altered by the fact that another member of the board who was also nominated for clerk, voted for himself.

2. Since the clerk of such board of education is not an officer, he does not retain office until his successor is appointed and qualified.”

Coming to your third question as to whether or not the compensation of the members of the soldiers' relief commission may be fixed by resolution of that commission or by the board of county commissioners, Section 2932, General Code, provides:

“On the presentation of an itemized statement thereof, the county commissioners shall allow the persons composing the soldiers' relief commission, their actual expenses incurred in the performance of their duties, and a fair compensation for their services. The county auditor shall issue his warrant upon the county treasurer for the amount so allowed.”

The foregoing section is perfectly clear and unambiguous and expressly confers upon the board of county commissioners the power to determine the compensation of members of the soldiers' relief commission. It is perfectly obvious that the legislature having vested this authority in the board of county commissioners, it may not be assumed by the commission itself.

Respectfully

JOHN W. BRICKER,
Attorney General.