Note from the Attorney General's Office:

1933 Op. Att'y Gen. No. 33-1174 was questioned by
1987 Op. Att'y Gen. No. 87-107.

such acts occurred or when they were found out (either before or after the time of entering into the present contract) nor the fact that the board itself was somewhat careless in not keeping a check on the accounts, or that the defalcation was made good, enter into the question.

Surely, a person charged with a defalcation under such circumstances cannot be heard to complain of the board's entrusting the whole matter to him instead of keeping a double check on the business, in exoneration of his defalcations if in fact such defalcations did occur, nor does returning the money condone the offense if circumstances are such that an offense was committed.

Whether or not the shortage occurred by reason of acts of this man involving moral turpitude, is purely and entirely a question to be determined by the board of education. It would not be proper for me to express an opinion on the matter even if I had all the facts before me. The law entrusts the decision of that question to the board of education and imposes on the district the burden of the board's mistake if that decision is wrong.

It is also possible, so far as the facts recited in your inquiry are concerned, that nothing sufficiently improper to justify the dismissal of the teacher has occurred.

A board of education has the means of securing at first hand all the information necessary to properly decide the matter, and should decide it wtih a view to the welfare of the school and the rights of the teacher.

It is my opinion that under the facts as stated by you, the teacher may not be lawfully dismissed unless the board should find, after taking into consideration all the surrounding facts and circumstances as well as the effect of the whole matter on the teacher's efficiency and usefulness as a teacher, that the teacher has been guilty of acts involving moral turpitude, and that in making this determination, the fact that the information upon which the charge is predicated did not come to the attention of the board until after the teacher had been re-hired, although the acts themselves constituting the charge occurred prior to that time, does not enter into the question; nor does the fact that the board itself may have been negligent in not keeping a closer check on the accounts out of which the shortage occurred, or that the alleged shortage in the accounts was later straightened up have anything to do with the board's official determination.

Very truly yours,
JOHN W. BRICKER,
Attorney General.

1174.

COUNTY COMMISSIONERS—COUNTY HOME—MEDICAL RELIEF AND MEDICINE MUST BE INCLUDED IN CONTRACT WITH PHYSICIAN.

SYLLABUS:

Section 2546, *General Code, requires the county commissioners in their contracts with physicians as therein provided, to include both medical relief and medicine.* (*O. A. G.*, 1913, *Volume* 1, *page* 186, *discussed, approved and followed.*)

COLUMBUS, OHIO, July 27, 1933.

HON. L. ASHLEY PELTON, *Prosecuting Attorney, Medina, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

> "The clerk of the County Commissioner's office has called me concerning the following matter, upon which I would like your opinion:
>
> The County Commissioners, after receiving bids, appoint a physician to take care of all the work at the County Home. This year it has been let to Dr. E. L. Crum, of Lodi, at a nominal figure. Dr. Crum, in his work at the home, of course has to have various medicines from time to time and Dr. Crum has been furnishing same for them and of course has been paid for the same. The only qquestion that has been raised is whether or not these purchases can be made from the doctor as long as he is under appointment as physician for the County Home."

I assume for the purpose of this opinion that in the contract of the county commissioners with said physician that, although no reference was made to medicine, the contract was made in pursuance of the authority granted by section 2546, General Code. Section 2546, General Code, provides inter alia:

> "The county commissioners may contract with one or more competent physicians to furnish medical relief *and* medicines necessary for the inmates of the infirmary, but no contract shall extend beyond one year. Medical statistics shall be kept by said physician who shall report same to the county commissioners quarterly showing the nature and extent of services rendered, to whom, and the character of the diseases treated. * * *" (Italics the writer's)

Section 2419-3, General Code, provides for the changing of the name "county infirmary" to "county home" so that the words "infirmary" or "county infirmary" whenever they occur in the General Code of Ohio are to be construed to read "county home."

In an opinion found in the Reports of the Attorney General for 1913, Volume 1, page 186, the syllabus is as follows:

> "The provisions of section 2546, General Code, disclose the intention that the county commissioners in their contracts with physicians as therein provided, should include both medical relief and medicines necessary within the jurisdiction of their work."

Although there have been some changes made in section 2546, General Code, subsequent to this opinion, there has been none in regard to the point in question. The request for that opinion read:

> "Must contracts with infirmary physicians made under section 2546, G. C., include medicines, or should separate bills be submitted for medicines and professional services and separate contracts entered into?"

It was reasoned that to permit or require county commissioners to enter into separate contracts for medical services and for medicines, it would be necessary

to read the word "and" as "or" in the statute. Such words may be interchanged if the sense requires it by virtue of section 27 of the Ohio General Code, but such words should be read as they appear when the statute gives a clear meaning without interchanging. Sutherland on Statutory Construction, section 397. In section 2546, General Code, "and" may be read as it appears without detriment to clearness of meaning.

In the course of the above mentioned opinion it is said at page 187:

> "The statute authorizes the county commissioners to enter into a contract with one physician to furnish medical relief and medicines, if it is deemed advisable. It would not seem consistent or necessary to require a separate contract for each purpose, with one contractor.
>
> I am of the opinion that the medicines referred to are such as are directly connected with and incidental to the work of furthering medical relief contracted for. If the legislature had intended that separate contracts should be entered into for each purpose, it would not have compelled a contract to be made for medicines with physicians alone; it would have authorized such contract to be made with druggists, dealers or other persons able to furnish the same, *if it had not been intended that the same contract was to include both medicines and medical relief. * * * The statute authorizes but one contract to be entered into for both medical relief and medicines.*" (Italics the writer's)

In the making of a contract with the physician pursuant to section 2546, General Code, the penal sections 12910 and 12912, General Code, prohibiting a person holding an office of trust or profit by election or appointment, or an agent, servant or employe of such officer or a board of such officers, from being interested in a contract for the purchase of property, is not applicable. Such penal statutes are construed strictly, and since section 2546, General Code, authorizes the county commissioners to make a contract with the physician for medical relief and medicines necessary within the jurisdiction of his work, such contract is not within the penal provisions.

I am of the opinion that the medicines referred to in your letter are such as are directly connected with and incidental to the work of furthering medical relief and that the physician is not entitled to be further compensated for the same.

My conclusion makes it unnecessary to discuss the question stated in your communication.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1175.

PROSECUTING ATTORNEY—UNAUTHORIZED TO EXPEND AMOUNT EXCEEDING AGGREGATE FIXED BY COMMON PLEAS COURT FOR REGULAR OFFICE EMPLOYMENT.

SYLLABUS:

Where the judge or judges of the common pleas court of a county have fixed the aggregate amount to be expended by the prosecuting attorney for assistants,