

of such library association of a person to act as librarian thereof, shall fix his compensation, which shall be paid from the county treasury. In counties where not more than one judge of the court of common pleas holds regular terms of court at the same time, the compensation so to be paid such librarian shall not exceed the sum of five hundred dollars per annum."

I assume that the office of court bailiff, concerning which you inquire, is the one created under Section 1692 of the General Code, sometimes known as court constable, and this opinion is based on that assumption. Section 1692 reads:

"When, in the opinion of the court, the business thereof so requires, each court of common pleas, court of appeals, superior court, insolvency court, in each county of the state, and, in counties having at the last or any future federal census more than seventy thousand inhabitants, the probate court may appoint one or more constables to preserve order, attend the assignment of cases in counties where more than two common pleas judges regularly hold court at the same time, and discharge such other duties as the court requires. When so directed by the court, each constable shall have the same powers as sheriffs to call and impanel jurors, except in capital cases."

An examination of the above sections fails to disclose any situation where one of the offices might be a check upon the other, and inasmuch as the court bailiff is appointed by the common pleas judge, and the law librarian by the library trustees, it could not be said that either office is subordinate to the other.

Specifically answering your question, therefore, I am of the opinion that the office of court bailiff or constable and that of law librarian are compatible and the same person may be appointed to discharge the duties of both offices, and may receive compensation for both positions if it is physically possible for him to perform the duties of both positions.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1108.

LAND TRUST CERTIFICATES—SELLER LICENSED AS REAL ESTATE  
BROKER.

*SYLLABUS:*

*Land trust certificates are instruments evidencing an interest in real estate, and anyone selling such instruments, should be licensed as a real estate broker, as provided in Sections 6373-25 and 6373-26, General Code.*

COLUMBUS, OHIO, October 26, 1929.

HON. ED. D. SCHORR, *Director of Commerce, Columbus, Ohio.*

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

"We respectfully request your opinion on the following question:

Should a broker selling land trust certificates for compensation and for the owner, be licensed by the State Board of Real Estate Examiners?"

Section 6373-25, General Code, as amended by the 87th General Assembly, provides in part as follows:

"As used in this act:

'Real estate broker' means a person, firm, or corporation who, for a commission, compensation or valuable consideration, sells, or offers for sale, buys, or offers to buy, negotiates the purchase or sale or exchange of real estate or leases, or offers to lease, rents, or offers for rent, any real estate, *interest therein* or improvement thereon, for others.

'Real estate salesman' means a person who for a commission, compensation or valuable consideration, is employed by a licensed broker, to sell, offer for sale, or to buy, or to offer to buy, or to lease, or to offer to lease, rent, or offer for rent, any real estate, *interest therein* or improvement thereon. \* \* \* "

It is clear that anyone selling an interest in real estate, as provided in this section, is a "real estate broker" within the meaning thereof, and must be licensed, as provided in Section 6373-26, General Code; so that the sole question is whether or not land trust certificates are instruments evidencing an "interest" in real estate.

It should be observed that the frequent appearance of land trust certificates predicated upon income producing real estate is of comparative recent origin. They are instruments designed to diversify the ownership in a given parcel of real estate and to enable the man of smaller means to have a real estate investment in a large and important property.

Although land trust certificates are commercially new, a determination of their legal import depends upon well established principles of the law of real property and trusts. Customarily, in the issuance of land trust certificates, the fee simple title to the real estate in question which has been leased for ninety-nine years renewable forever, is conveyed to a trust company as trustee, and the equitable interest thus created is divided into a given number of component parts, each part being evidenced by what is known as a land trust certificate. Thus, a land trust certificate is an instrument representing an undivided part of an equitable estate in real property. The question then becomes, is this undivided part of an equitable estate an "interest" in "real estate", as those words are used in Section 6373-25, General Code? Manifestly this question must be answered in the affirmative. Clearly the estate of the lessor who has given a perpetual lease of his property is an "interest" in real estate. Clearly, also, if the estate of such lessor has been trustee for the benefit of the lessor, his estate continues to be an "interest" in real estate, though equitable. It surely remains as "interest" if it has been broken up into aliquot parts and such, as above detailed, is what the holder of land trust certificates receives. Collateral support to this analysis is given by the custom which has grown up of acknowledging before a notary public any transfer of land trust certificates—showing that an "interest" in real estate is being conveyed.

I am not unmindful of the fact that land trust certificates are included within the term securities, as defined in the Securities Law, and that anyone dealing in land trust certificates must, under the provisions of the Securities Law, be licensed as a dealer in securities. The mere fact, however, that the legislature has made such provision in the Securities Law cannot alter the fact that if land trust certificates are "interests" in real estate, whosoever deals in such land trust certificates, as provided in Section 6373-25, must also be licensed by the State Board of Real

Estate Examiners. I express no opinion as to this situation, as it involves a matter of legislative policy, and not a question of law.

In conclusion, it is my opinion that land trust certificates are instruments evidencing an interest in real estate, and anyone selling such instruments should be licensed as a real estate broker, as provided in Sections 6373-25 and 6373-26, General Code.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

1109.

DISAPPROVAL, BONDS OF EAST CLEVELAND CITY SCHOOL DISTRICT, CUYAHOGA COUNTY—\$43,000.00.

COLUMBUS, OHIO, October 26, 1929.

Re: Bonds of East Cleveland City School District, Cuyahoga County, Ohio, \$43,000.00.

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

GENTLEMEN :—The transcript relative to the above issue of bonds discloses that these bonds were authorized April 18, 1921. After having been offered to and rejected by the sinking fund trustees and the Industrial Commission, these bonds were advertised for sale for three consecutive weeks, the date of first publication being April 28, 1921. This notice of sale provided that bids would be received for these bonds until May 16, 1921, eighteen days after the date of first publication. The transcript discloses that on May 16, 1921, the bonds were awarded pursuant to such notice. Section 2294, General Code, as then in force and effect, provided as follows:

“All bonds issued by boards of county commissioners, boards of education, township trustees, or commissioners of free turnpikes, shall be sold to the highest bidder after being advertised once a week for three consecutive weeks and on the same day of the week, in a newspaper having general circulation in the county where the bonds are issued, and, if the amount of bonds to be sold exceeds twenty thousand dollars, like publications shall be made in an additional newspaper having general circulation in the state. The advertisement shall state the total amount and denomination of bonds to be sold, how long they are to run, the rate of interest to be paid thereon, whether annually or semi-annually, the law or section of law authorizing the issue, the day, hour and place in the county where they are to be sold.”

This office has repeatedly held that the requirement of such advertisement means that 21 days should elapse between the date of first publication and the date of sale. Accordingly, I advise you not to purchase these bonds.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*