

2456.

POOR RELIEF—TOWNSHIP CLERK—DOES NOT VIOLATE PROVISIONS SECTIONS 12910 ET SEQ. G. C. WHERE AT HIS MERCANTILE ESTABLISHMENT HE FILLS DULY AUTHORIZED ORDERS FOR RELIEF — SECTION 3391-1 G. C.

SYLLABUS:

When the township trustees of a township, under authority of a resolution duly adopted by a board of county commissioners, acting in the capacity of the county local relief authority and under authority of Section 3391-1, General Code, have been designated as agents in the administration of poor relief within a township and orders for "poor relief" have been issued which are to be filled by a township clerk at his mercantile establishment, such township clerk does not violate the provisions of Sections 12910, 12911 or 12912 of the General Code in filling such orders.

Columbus, Ohio, June 25, 1940.

Honorable Hugh A. Staley, Prosecuting Attorney,
Greenville, Ohio.

Dear Sir:

I am in receipt of your request for my opinion, which reads as follows:

"A situation has arisen in this county which has caused me some concern, and on which I would like to have your opinion.

In June, 1939, the County Commissioners, acting under House Bill 675, passed a resolution making the Township Trustees their agents, for the purpose of dispensing relief throughout the county. In several of the townships the Township Clerk is engaged in business, either retail grocery or retail coal business, or both, and acting under orders of the Bureau of Inspection and Supervision of Public Offices, these Township Clerks who were in the retail business were permitted to fill the orders which had been issued by the Township Trustees, acting as the agents of the County Commissioners.

Recently, the Relief Examiner, apparently acting under orders of his superiors, stated that he will refuse to approve any further bills furnished by Township Clerks for the reason that it is a violation of Sections 12910, 12911 or 12912 of the General Code.

I would therefore like to have your opinion as to whether or not a Township Clerk, when the Trustees only are acting as agents for the Board of County Commissioners, would come within the inhibition of Sections 12910, 12911, or 12912 of the General Code, in accepting supply orders of relief clients to be filled within his particular place of business."

In Section 3391-1, General Code, is contained the following language authorizing the county local relief authority to employ the trustees as agents of the county local relief authority:

" * * * any board of county commissioners, upon request of the township trustees of any township in the county, shall, by resolution adopted at any time after this act becomes effective, designate such township trustees to act as its agents in the administration of poor relief within such township to the extent provided in such resolution; * * * "

It is under the authority of such section and a resolution adopted pursuant thereto that the township trustees in question were appointed as relief agents.

In determining whether a person or act comes within the provinces of a certain criminal statute, we must resort to the language of the statute itself for such determination.

Section 12910, General Code, to which you refer, reads as follows:

"Whoever, holding an office of trust or profit by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education or a public institution with which he is connected, shall be imprisoned in the penitentiary not less than one year nor more than ten years."

From an examination of the provisions of Sections 3299 et seq., General Code, it becomes apparent that the township clerk is an elective township officer. He holds an office of trust or profit by election or appointment. We must then determine whether under the facts we are considering he is interested in a contract for the purchase of property or supplies *for the use of the township* with which he is connected.

Under the provisions of the so-called "poor relief act" (§§3391 to 3391-12 G. C.), the township has no duty to furnish poor relief, as therein defined. 2 O. A. G. 1939, p. 1264.

The language above quoted from Section 3391-1, General Code, causes it to be apparent that the township, as such, has and could have no legal interest in the furnishing of "poor relief", nor could it contract for the furnishing thereof. The township trustees, in performing such duties as they may legally perform, must act only as the agents of the county local relief authority, which is the board of county commissioners. They have such duties not by virtue of the office of township trustees but by reason of the resolution adopted by the board of county commissioners. As such agents they are the agents of the county local relief area and not the agents of the township within which they were elected. The clerk of the township is not an officer of the county, and is not an officer of the county local relief area. See *Cline vs. Martin*, 5 O. App. 90. It is thus evident that a township clerk is not, in terms, included within the designated persons who may commit the crime prohibited by Section 12910, General Code, when the contract of sale is with the county poor relief area, which is a separate subdivision. As was held in *State v. Myers*, 56 O. S. 340, a criminal statute cannot be extended by construction to include persons or things within the reason or spirit but not within its terms. I am therefore of the opinion that the conduct of the township clerk referred to in your inquiry is not in violation of Section 12910, General Code.

Similar reasoning would lead to the conclusion that such conduct of the township clerk would not violate the provisions of Section 12912, General Code. Such section is, in terms, limited to "officers of a municipal corporation or member of the council thereof or the trustees of a township" and to none others.

Section 12911, General Code, referred to in your inquiry, reads:

"Whoever, holding an office of trust or profit, by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education or a public institution, with which he is not connected, and the amount of such contract exceeds the sum of fifty dollars, unless such contract is let on bids duly advertised as provided by law, shall be imprisoned in the penitentiary not less than one year nor more than ten years."

You may note from the language of this section that no crime is committed when the amount of the contract in which the officer is interested

is fifty dollars or less. Nor is any crime committed under this section if the contract was let by competitive bidding duly advertised. You do not state, and I am not advised, whether the supplies furnished under contract by the township clerks in question were of a sales value in excess of fifty dollars, nor do you advise me whether the clerks have entered into contracts to furnish materials to relief clients within the area in a gross amount in excess of fifty dollars, to be delivered upon receipt of delivery orders. If, under such circumstances, the amount of the contract is less than fifty dollars, there could be no violation of Section 12911, General Code.

You may further observe that Section 12911, General Code, is limited to contracts "for the use of the county, township, city, village, board of education or a public institution." While there is a well established rule applicable to the interpretation of statutes defining offenses and crimes, to the effect that they are not to be extended by construction to include persons not within their descriptive terms (*Barker v. State*, 69 O. S. 68; *Wilson v. Leasure*, 36 O. App. 107), yet in the interpretation of Section 12911, General Code, we do not need to feel unduly restricted by the strict construction applicable to criminal statutes, for the old rule of statutory construction which is applicable as well to statutes requiring a liberal construction—*expressio unius est exclusio alterius*—avoids the necessity of the application of such rule. Such Latin maxim is well translated in *Weirick, v. Mansfield Lumber Co.*, 96 O. S. 386, 397, as follows:

"Where a statute specifically and expressly mentions certain things, other things belonging to the same class, or occurring at the same time, are excluded."

Section 12911, General Code, states that it is a felony for a public official to be "interested in a contract for the purchase of property * * * for the use of the county, township, city, village, board of education or a public institution", etc. Such section does not mention a purchase for the use of a metropolitan or other park district, a drainage district, a local relief area or numerous other such bodies, agencies or instrumentalities. The ordinary rules of statutory interpretation lead us to the conclusion that the Legislature has put everything in the statute that it intended there to appear. Since the Legislature did not make it a violation of Section 12911, General Code, for a public official to have an interest in a contract for the purchase of commodities for the use of a local relief area, we cannot by interpretation make it a violation of such section.

Specifically answering your inquiry, it is my opinion that when the township trustees of a township, under authority of a resolution duly adopted by a board of county commissioners, acting in the capacity of the county local relief authority and under authority of Section 3391-1, General Code, have been designated as agents in the administration of poor relief within a township and orders for "poor relief" have been issued which are to be filled by a township clerk at his mercantile establishment, such township clerk does not violate the provisions of Sections 12910, 12911 or 12912 of the General Code in filling such orders.

Respectfully,

THOMAS J. HERBERT,
Attorney General.