which were collected by such court. However, inasmuch as the act requires the fines for violation of state law to be paid to the proper county or other political subdivision there would seem to be no definite provision that could be said to be inconsistent with Section 3056, General Code. In any event, in view of the fact that House Bill No. 89 did not become operative until the November election in 1931, and in view of former opinions to the effect that it was the intention of the Legislature in the amendment of Section 3056, General Code, by the 88th General Assembly, to include all municipal and police courts, it is not believed logical to argue that the fines collected by such municipal court are not subject to the provisions of Section 3056. However, in analyzing this section, in view of the fact that parts of three counties comprise the jurisdiction of the municipal court in Fostoria, your question becomes difficult. Said section speaks of "county" in the singular, and in so far as that act in itself is concerned, it would not seem to have contemplated a situation such as you describe. It is clear that certain deductions are to be made equal to the compensation allowed by the county commissioners to the judge of the municipal court, clerk and prosecuting attorney before any distribution is to be made to the library association. House Bill No. 89, provides for the payment of certain compensation of the municipal judge by each of the three counties involved in your question. Therefore, taking the two acts together, it is not difficult to reach the conclusion that in the distribution of the fines after the deduction of the allowances made by the county commissioners from the three counties involved, said fines are to be distributed to the law library associations of the three counties. In what manner the distribution should be made is, as a matter of law, unanswerable. The implication is clear that the three counties are to participate for the reason that a deduction shall be made of the allowance paid by each of the three counties toward the budget salary. There is no guide in the statute as to how such moneys shall be divided among the library associations of the respective counties. It is suggested, however, from a practical standpoint that, inasmuch as deductions are made with reference to the amount that is paid by each county, an equitable distribution of said fine may be made in proportion to the amount which each county contributes to the support of the court. As heretofore indicated, this suggestion is not a requirement of the law but is a practical method which it is believed may be employed to arrive at a distribution of the fines referred to in your communication. If this method is followed, it is believed the Bureau of Inspection and Supervision of Public Offices will raise no questions with reference to such a distribution, and in view of the equitable result, it is probable that the courts would not disturb such action.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4313.

ARCHITECT—LICENSE BY EXEMPTION FROM EXAMINATION—CHIEF OCCUPATION MUST HAVE BEEN THAT OF ARCHITECT—PRACTICE OF ARCHITECTURE DEFINED.

SYLLABUS:

1. *Where a person who is employed as a draftsman by a firm of architects and is known to the profession and to the public only as a draftsman, has rendered some architectural services outside of his regular employment as such draftsman, such person has not been engaged in the practice of architecture so as to entitle him to*

exemption from examination provided for in section 1334-7 *C. of the General Code.*

2. *Where a person whose chief occupation is not that of an architect and who has not been held out to the public as an architect, has performed some architectural services only as incidental to his chief occupation, such person can not be deemed to have engaged in the practice of architecture so as to entitle him to the exemption from examination provided for in said section* 1334-7 *C.*

3. *Where a person has been employed as an architect by a corporation or political subdivision for at least one year immediately previous to the date of approval of the law relating to the registration of architects, and his entire time has been devoted to architectural services, such person has been engaged in the practice of architecture under his own name, and therefore comes within the provisions of said section, provided he presents to the state board of examiners of architects proof of his competency and qualifications as provided therein.*

COLUMBUS, OHIO, May 12, 1932.

State Board of Examiners of Architects, Columbus, Ohio.

GENTLEMEN:—I acknowledge receipt of your communication which reads in part as follows:

> "The State Board of Examiners of Architects hereby requests a ruling on the following points in connection with the interpretation and application of H. B. 282, as passed by the Eighty-Ninth General Assembly and designated as Section 1334 to 1334-21, inclusive, of the General Code of Ohio:
>
> (1) Under the provisions of certain sections (hereinafter enumerated) of the Architects Registration Law, this Board is required, with some discretionary power as to ability, to register any person on the basis of (Section 5) 'having been engaged in the practice of architecture under the title "architect" for at least one year' and (Section 7, Subdivision 'C') 'who has been engaged in the practice of architecture in this state for at least one year immediately previous to the date of approval of this act, as a member of a reputable firm of architects or under his or her own name.'
>
> * * * * * * * * *
>
> (3) A. Under the requirements of the term 'at least one year' as above outlined, would any employment for less than full time (considered 40 to 44 hours per week for the building trades with which the practice of the architect must be carried on in almost a concurrent manner) be considered adequate to meet the real intent and purpose of Section 1334-7-C of the law?
>
> B. The following is a typical case: A draftsman has been employed continuously full time by a firm of architects, and at the same time prepares, with or without the consent or knowledge of his employer, plans and specifications at his home, and possibly renders some supervision. Under the most favorable circumstances, the services rendered could only be of a very limited nature. He is known to the profession and most of his friends only as a draftsman. To the public he is an employee of John Doe, architect. To a very few clients (contractors mostly) he has called himself an architect. He certainly was not known as a 'practicing architect' and seldom if ever was listed as an architect in any published professional lists or rosters.

C. Stating the question as given under Paragraph A. in another way: Does this service (consisting mostly of drafting) on the side constitute the recognized practice of the profession of architecture necessary to qualify for registration under the provisions of Subdivision 'C' of Section 1334-7 of this law?

(4) Other typical cases are as follows:

A. Could a public official, specifically a county surveyor, presumably employed and paid for his services (not necessarily architectural) on a full time basis by a political subdivision, be considered as having practiced architecture during the same period of said employment sufficiently to qualify for registration by exemption under Subdivision 'C' (disregarding for the moment any question as to his ability) as 'having been engaged in the practice of architecture in this state for at least one year' as required by the law? He certainly was not known as a practicing architect by the general public, nor was he ever listed as an architect in any published professional lists or rosters.

B. Could a carpenter, realtor, builder, plumber, contractor, merchant, engineer or broker be considered as having practiced architecture sufficiently to qualify for registration by exemption under 'C' when what little work of an architectural nature, which he claims to have performed, was only incidental to his chief occupation, which was and still is his chief means of livelihood?

(5) In view of the form, manner and order of conducting the practice of architecture as deduced from Webster's definition of the practice of law, can a person claim and be granted exemption under Subdivision 'C' if the practice offered is that of an employee such as hereinafter outlined?

A. The General Corporation employs John Doe in the capacity of architect on a fixed salary to devote his full time in the developing of, the supervising the construction of, and the maintaining of the buildings owned by said corporation. The relations between John Doe and the General Corporation are not the same as the relations that should exist between a professional practitioner and his client.

* * * * * * * * *

F. Can the services rendered by a person employed by a political subdivision as an architect on a full time fixed salary basis be construed as the practice required for exemption under Subdivision 'C'? This person is in about the same situation as John Doe except that he can not be the owner, and being a public official his activities and duties adhere more closely to the standards which are recognized as good architectural practice.

* * * * * * * * *"

Section 1334-5, General Code, reads in part as follows:

"Any properly qualified person who shall have been engaged in the practice of architecture under the title of 'architect' for at least one year immediately previous to the date of the approval of this act and who desires to continue in such practice shall secure such certificate and be registered in the manner hereinafter provided by this act."

Section 1334-7, General Code, reads in part as follows:

"The board of examiners may, in lieu of all examinations, accept

satisfactory evidence of any one of the qualifications set forth under the following subdivisions of this section:

* * * * * * * * *

C. The board of examiners shall grant a certificate of qualification to practice and shall register without examination any one who has been engaged in the practice of architecture in this state for at least one year immediately previous to the date of approval of this act as a member of a reputable firm of architects or under his or her own name; provided, that applicants under this subdivision shall present proof of competency and qualifications to the board; and provided further, that the application for such certificate and registration shall be made within one year after the date of approval of this act."

Your inquiries call for a determination of what is meant by the phrase "engaged in the practice of architecture" as it is used in these statutes.

In the case of *People* vs. *LaBarre,* 193 Cal. 388, the court construed a statute which provided that any person who shall have practiced chiropractic for two years after graduation from a chiropractic school or college would be entitled to take an examination for a license to practice. As to the meaning of the word "practice", the court said:

> "It is the opposite of casual or occasional or clandestine practice and carries with it the thought of active, open and notorious engagement in a business, vocation, or profession."

In the case of *Jackson* vs. *Hough,* 38 W. Va. 236, the statute under consideration required a license to practice the business of stock or other brokers. The court said:

> "But here the word 'practice' is used, meaning to exercise or follow a profession or calling as one's usual business to gain a livelihood."

In the case of *Sanborn* vs. *Weir, et al.,* 95 Vt. 1, the statute provided for the licensing, without examination, of persons who had practiced veterinary medicine, surgery and dentistry in that state for two years prior to November, 1912. The court said:

> "In contemplation of the word 'practice' of veterinary medicine, surgery and dentistry does not mean a few isolated acts, but implies an occupation that is continuing; and a practitioner of veterinary science is one who habitually holds himself out to the public as such."

I do not believe that the extent of a person's practice of architecture is determinative, nor do I believe that the fact that a person may not have worked at the profession every day in the week would prevent him from being considered as engaged in the practice of architecture within the meaning of these statutes. However, I am of the view that architecture must have been the chief occupation of a person and that it is necessary that he has held himself out to the public as an architect to come within the provisions of section 1334-7, paragraph C.

Therefore, referring to your inquiry designated as 3A, the mere fact that a person may not have devoted full time to his profession would not, of itself, pre-

vent such person from being considered to be engaged in the practice of architecture.

Referring to your inquiry designated as 3C, a typical case being outlined in paragraph 3B of your letter, the person referred to can not be considered as having been engaged in the practice of architecture within the meaning of these statutory provisions, although he may have performed some architectural services outside his employment as a draftsman.

It is also clear that, under the definitions of the word 'practice', given above, the persons described in paragraphs 4A and B, were not engaged in the practice of architecture so as to bring them within the exemption provided for in section 1334-7, paragraph C.

The inquiries contained in paragraphs 5A and F of your letter relate to a person who is employed as an architect by a private corporation or political subdivision on a salary basis and who devotes his full time to architectural work. This, I believe, constitutes the practice of architecture, but the statute also requires that such practice must be "as a member of a reputable firm of architects or under his or her name." If an architect is employed by another architect or by a firm of architects, such practice would not come within the provisions of this statute for he is not practicing either as a member of a firm or under his own name, his work being done under the name of the firm or architect by whom he is employed. In other words, the architectural work which he does is not done under his name as the architect. On the other hand, where an architect is employed to do architectural work for a corporation or a political subdivision, such corporation or subdivision is really his client, and his work is not done under the name of any other architect, but really is done under his own name. It should not make any difference whether an architect is employed by one client or several clients; neither should the fact that he is being paid a salary and is not working on the usual fee basis make any difference.

I am therefore of the opinion that:

1. Where a person who is employed as a draftsman by a firm of architects and is known to the profession and to the public only as a draftsman, has rendered some architectural services outside of his regular employment as such draftsman, such person has not been engaged in the practice of architecture so as to entitle him to exemption from examination provided for in section 1334-7 C. of the General Code.

2. Where a person whose chief occupation is not that of an architect and who has not been held out to the public as an architect, has performed some architectural services only as incidental to his chief occupation, such person can not be deemed to have engaged in the practice of architecture so as to entitle him to the exemption from examination provided for in said section 1334-7 C.

3. Where a person has been employed as an architect by a corporation or political subdivision for at least one year immediately previous to the date of approval of the law relating to the registration of architects, and his entire time has been devoted to architectural services, such person has been engaged in the practice of architecture under his own name, and therefore comes within the provisions of said section, provided he presents to the state board of examiners of architects proof of his competency and qualifications as provided therein.

Respectfully,

GILBERT BETTMAN,
Attorney General.