to pass upon questions involving the authority to pay, from public funds, premiums for burglary insurance for the protection of public funds in the hands of certain public officials. See Opinions of the Attorney General for 1927 at pages 874 and 2160; Opinions of the Attorney General for 1928 at page 331; Opinions of the Attorney General for 1929 at pages 413 and 1395.

The consistent holding of this office, as shown by the aforesaid opinions, has been that where by law or ordinance public officials or employes are required to give bond which fully protects the public against losses occasioned by theft, robbery or burglary, the paying, from public funds, of premiums for burgary or robbery insurance to cover such losses is wholly unauthorized, in the absence of specific statutory authority therefor.

I am therefore of the opinion in specific answer to your questions:

First, where by ordinance a city treasurer is required to give a bond for the faithful performance of duty and obligating himself to pay over all moneys received in his official capacity according to law, the payment, from public funds, of the premium on robbery or burglary insurance to cover losses which may be sustained by said city treasurer on account of robbery and burglary, is wholly unauthorized.

Second, where the public is secured by means of a bond of either the director of public service or his clerk from any losses of public funds in the hands of such clerk that may be sustained by reason of robbery or burglary, there is no authority to effectuate burglary or robbery insurance for the protection of such funds and pay for the same from the public treasury.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2067.

CONTRACT—FOR CONSTRUCTION OF ADDITION TO MUNICIPAL HOSPITAL—AWARD TO MEMBER OF PLANNING COMMISSION ILLEGAL.

SYLLABUS:

A member of a city planning commission is a municipal officer, and under the provisions of Section 3808, General Code, and the decision of the Supreme Court in the case of Wright vs. Clark, 119 O. S., 462, such member may not legally enter into a contract for the construction of an addition to a municipal hospital.

COLUMBUS, OHIO, July 8, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication requesting an opinion on the following question:

> "May a member of the planning commission accept a contract from the city, when bids have been received, and said commissioner holds the low bid for the construction of an addition to the municipal hospital?"

In connection with your communication, you submit a letter from the Mayor of the city of L., which explains that the member of the planning commission under consideration, was appointed on said commission because he was an outstanding leader

in the community and it was regarded for the best interests of the city to make such appointment.

Section 3808, General Code, reads:

> "No member of the council, board, officer or commissioner of the corporation, shall have any interest in the expenditure of money on the part of the corporation other than his fixed compensation. A violation of any provision of this or the preceding two sections shall disqualify the party violating it from holding any office of trust or profit in the corporation, and shall render him liable to the corporation for all sums of money or other thing he may receive contrary to the provisions of such sections, and if in office he shall be dismissed therefrom."

In the case of *Wright* vs. *Clark*, 119 O. S., 462, it is conclusively held that a contract entered into in violation of this section is void. In that case, a village engineer had furnished materials to the village, and there was no contention whatever that any fraud of any character had been practiced. On the other hand, it appeared that the village had received the benefits of the materials purchased and the transaction was beneficial to the municipality. However, as above indicated, it was held that the contract was void.

Therefore, the sole question remaining to be determined in connection with your inquiry is whether or not a member of the planning commission is a municipal officer, within the meaning of Section 3808, supra.

Sections 4366-1 et seq. of the General Code, provide for the establishing of a city planning commission in cities having a board of park commissioners which shall consist of seven members, namely, the mayor, service director, president of the board of park commissioners and four citizens of the municipality, who shall serve without compensation and who shall be appointed for terms of six years each.

Each city without a board of park commissioners may establish a city planning commission consisting of five members, namely, the mayor, service director and three citizens of the municipality, who shall serve without compensation and who shall be appointed for terms of six years each.

There are other provisions in the case of a city planning commission for a commission plan of government, also another provision relative to such commission in cities having a city manager form of government and provision for the creation of a planning commission in villages. However, it is believed unnecessary to go into further detail with reference to the creation of said commission.

Section 4366-2, General Code, provides in part:

> "The powers and duties of the commission shall be to make plans and maps of the whole or any portion of such municipality, and of any land outside of the municipality, which in the opinion of the commission bears relation to the planning of the municipality, and to make changes in such plans or maps when it deems same advisable. * * * "

The section further provides what the maps or plans shall show with reference to the commission's recommendation for new streets, alleys, bridges, etc. The section also authorizes the commission to make recommendations to the mayor, council and department heads concerning the location of streets, with a view to the systematic planning of the municipality. There are many other specific powers that are granted to the planning commission which it is believed unnecessary to discuss for the purposes of this opinion.

While it is true that a member of such commission receives no compensation, in

view of the duties and powers which are cast upon such an officer, it must be concluded that such a member is a municipal officer.

I realize that in view of the facts stated by the mayor it would seem to be a harsh rule, and regret that the decisions compel me to the conclusion that a contract such as is under consideration is in violation of the provisions of Section 3808, General Code. Nevertheless, the legislative policy of this state is clearly established to the effect that a municipal officer may not enter into contracts with the municipality not only by reason of the provisions of Section 3808, supra, but also by the penal provisions of Sections 12910 and 12912, of the General Code.

In specific answer to your inquiry, you are advised that a member of a city planning commission is a municipal officer, and under the provisions of Section 3808, General Code, and the decision of the Supreme Court in the case of *Wright* vs. *Clark, supra,* such member may not legally enter into a contract for the construction of an addition to a municipal hospital.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2068.

COUNTY RECORDER—FEE FOR MAKING MARGINAL REFERENCE TO AN ASSIGNMENT ON ORIGINAL RECORD OF LEASE UNAUTHORIZED.

SYLLABUS:

A county recorder has no authority to make a charge for making a marginal reference to an assignment on the original record of a lease.

COLUMBUS, OHIO, July 8, 1930.

HON. LEE D. ANDREWS, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—Your recent communication reads:

> "I wish to submit to you two questions involving the work of the county recorder.
>
> 1. The law does not require a marginal reference of an assignment of a lease to be made. However, this marginal reference is very important and should be made. Can this reference be made without the authority of the person making the assignment and be charged to that person?
>
> 2. It has been custom in this county to charge a fee of 25c for entering this marginal reference of assignment of a lease on the original record of said lease. Upon examining the law with reference to this matter, I find that the law does not describe any certain amount to be paid for this service. I have learned that other counties make a similar charge of 25c and some charge a less amount for this service. Is it legal to charge a fee of 25c for making these marginal references?"

As suggested in your communication the law does not require a marginal reference of an assignment of a lease. There are provisions of the statutes which require the assignment and release of mortgages to be copied upon the margin of the record and expressly provide that for such service a fee of twenty-five cents (25c) shall be charged by the recorder. There is no similar provision with reference to marginal