

for an expenditure of twenty-nine thousand, six hundred forty-nine dollars (\$29,649.00).

You have submitted the certificate of the Director of Finance to the effect that that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted evidence that the Controlling Board has properly consented to and approved the expenditure of the moneys appropriated by the 88th General Assembly, for the purpose covered by this contract, in accordance with Section 2 of House Bill No. 513 and Section 11 of House Bill No. 510 of the 88th General Assembly. In addition, you have submitted a contract bond upon which the Globe Indemnity Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the Workmen's Compensation Act have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return the same to you herewith, together with all other data submitted in this connection.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1797.

APPROVAL, BONDS OF CARLISLE RURAL SCHOOL DISTRICT, WARREN COUNTY—\$75,000.00.

COLUMBUS, OHIO, April 18, 1930.

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

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1798.

APPROVAL, BONDS OF MORROW COUNTY—\$47,806.06.

COLUMBUS, OHIO, April 19, 1930.

*Industrial Commission of Ohio, Columbus, Ohio.*

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1799.

OFFICES COMPATIBLE—TOWNSHIP TRUSTEE AND TRUSTEE OF COUNTY CHILDREN'S HOME.

**SYLLABUS:**

*The offices of township trustee and trustee of a county children's home may be held by the same individual at the same time.*

COLUMBUS, OHIO, April 19, 1930.

HON. W. S. PAXSON, *Prosecuting Attorney, Washington C. H., Ohio.*

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

“I would appreciate receiving a ruling from you on this question: ‘Is it lawful for the same individual to hold at the same time the offices of township trustee and trustee of the County Children’s Home?’ ”

Public offices and public employments are said to be incompatible when they are made so by statute or when by reason of the common law rule of incompatibility they are rendered incompatible. The common law rule of incompatibility as stated by the court in the case of *State ex rel. vs. Gebert*, 12 O. C. C. (N. S.) 274, is as follows:

“Offices are considered incompatible when one is subordinate to or in any way a check upon the other; or when it is physically impossible for one person to discharge the duties of both.”

There are no statutory inhibitions upon one and the same person holding the office of township trustee and being a member of the board of trustees of a county children’s home. It remains to be determined, therefore, whether or not the two offices are incompatible by reason of the common law test above set forth.

The statutes controlling children’s homes are to be found in Sections 3077 to 3087, 3089 to 3100 and 3103 to 3108, General Code. It is unnecessary for the purposes of this opinion to state in detail the various provisions embodied in those statutes as well as in the many statutes governing township trustees.

Suffice it to say that after careful examination of the statutes I find no reasonable grounds for holding the one office to be a check on the other, either on account of the poor laws or any other laws.

There is no doubt but that it is physically possible for the same person to hold these two offices, since neither is a full time position.

Without further discussion, I am of the opinion that the offices of township trustee and trustee of a county children’s home may be held by the same individual simultaneously.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1800.

MUNICIPALITY—FIFTY PER CENT OF ITS PROCEEDS FROM GAS AND MOTOR VEHICLE LICENSE TAXES APPLICABLE FOR CONSTRUCTING AND RE-PAVING STREETS BY CONTRACT ONLY—COMPETITIVE BIDDING UNNECESSARY WHEN COST OF IMPROVEMENT UNDER \$50.

## SYLLABUS:

*Any proportion up to fifty per cent (50%) of the funds available to municipalities from the gasoline tax and motor vehicle license tax, under Sections 5537 and 6309-2, General Code, as amended by the 88th General Assembly, may be expended for the purpose of construction and repaving of public streets, but the same may be expended only pursuant to contract. If the amount involved for a given improvement is less than five hundred*