

## SYLLABUS:

A president of a board of education, who is also an officer and director of a bank, may not vote on a resolution authorizing the borrowing of money from such bank.

Columbus, Ohio, April 2, 1963

Hon. Lynn B. Griffith, Jr.  
Prosecuting Attorney  
Trumbull County  
Warren, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“The President of the school board of the Girard City School District is the president, a director, and a shareholder, owning not more than 5% of the stock of the First National Bank, the only commercial bank in the city from which the school board has been borrowing substantial sums of money on short-term notes in anticipation of tax collections. At the last board meeting where a resolution was presented to borrow \$90,000.00 from the bank, a 2-2 vote resulted and the president in question voted in favor of the resolution to borrow from his bank. An objection to the vote was then made by the minority.

“Ohio Revised Code Section 3313.33 would clearly prohibit borrowing activity with the commercial bank because of the School Board President’s connection therewith. However, reference to Revised Code Section 133.38 would indicate that the prohibition would no longer apply in this particular situation.

“The question therefore to be answered is:

“Does R.C. Section 133.38 remove the prohibition contained in R.C. Section 3313.33, or is R.C. Section 3313.33 the controlling law on the activity of a member of the Board of Education? ”

Section 133.38, Revised Code, reads as follows:

“An officer, director, stockholder, employee, or owner of any interest in a state or national bank or other financial institution purchasing notes or other obligations lawfully issued and sold at private or public sale by any

taxing or bond-issuing authority shall not be deemed to be interested, either directly or indirectly, as a result of such relationship, in the sale and purchase of such notes or other obligations, or in the contract evidenced thereby, for the purpose of any law of this state prohibiting an officer of such taxing or bond-issuing authority from being so interested in any contract of such taxing or bond-issuing authority."

Section 3313.33, Revised Code, reads as follows:

"Conveyances made by a board of education shall be executed by the president and clerk thereof. No member of the board shall have, directly or indirectly, any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as clerk. No contract shall be binding upon any board unless it is made or authorized at a regular or special meeting of such board.

"This action does not apply where a member of the board, being a shareholder of a corporation but not being an officer or director thereof, owns not in excess of five per cent of the stock of such corporation. If a stockholder desires to avail himself of the exception, before entering upon such contract such person shall first file with the clerk an affidavit stating his exact status and connection with said corporation."

The pertinent language of Section 133.38, Revised Code, is "notes or other obligations lawfully issued and sold at private or public sale." This expression is in the past tense and seemingly reaches only securities which have been once sold at public or private sale or at least securities to be sold at public sale or at private sale under Section 133.35, Revised Code. It does not, in my opinion, effect proceedings prior to the issuance of securities. Specifically it does not authorize direct participation in the negotiation of loans by a taxing authority under Section 133.30, Revised Code, where such participation is prescribed under any other section of the Revised Code. I find such a proscription in the instant case in Section 3313.33, Revised Code, quoted above and in Section 3319.21, Revised Code, which is as follows:

"Whenever a local director or member of a board of education votes for or participates in the making of a contract with a person as a teacher or instructor in a public school to whom he is related as father, brother, mother, or sister, or acts in any matter in which he is

pecuniarily interested, such contract, or such act in such matter, is void.

“This section does not apply where a director or a member of such board, being a shareholder of a corporation but not being an officer or director thereof, owns not in excess of five per cent of the stock of such corporation and the value of the stock so owned does not exceed five hundred dollars. If a stockholder desires to avail himself of the exception provided in this section, before entering upon such contract such person shall first file with the clerk of the board an affidavit stating his exact status and connection with said corporation.”

In answer to your question, a president of a board of education, who is also an officer and director of a bank, may not vote on a resolution authorizing the borrowing of money from such bank.

Respectfully,

WILLIAM B. SAXBE

Attorney General