

Permit C: * * * The *permit fee* shall be fifty dollars (\$50.00) *per year* for each location. * * *

Permit D: * * * The *permit fee* shall be one hundred dollars (\$100.00) *per year* for each location. * * * All fees paid by permit holders of A, B, C, or D permits shall be paid as follows:

1. Initial fee when permit is issued.

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* * *."

(Italics the writer's.)

Specifically answering your inquiry, I am of the opinion that:

1. The Ohio Liquor Control Commission can revoke permits for any of the causes enumerated in the Ackerman-Lawrence Bill without giving permit holders notice and an opportunity to be heard.

2. The Ohio Liquor Control Commission has no authority to issue blanket class D permits to railroad companies so as to enable such common carriers to sell and serve beer to passengers in any and all of the dining cars that may be used and operated by such common carriers in and through Ohio. In order to sell beer on dining cars, it will be necessary for railroad companies to take out a class D permit for each separate diner used and operated in and through Ohio.

3. The Ohio Liquor Control Commission, under section 11 of Amended Substitute Senate Bill No. 346, has no authority to issue permits for less than one year.

4. The Ohio Liquor Control Commission has the power to revoke a permit because of false statements made in the application for such permit.

5. Under the Ackerman-Lawrence Bill, a hospital is not required to take out a permit in order, in good faith, to supply its patients with beer for medicinal purposes on the advice of the physicians of the patients.

Respectfully,

JOHN W. BRICKER,

Attorney General.

896.

DIRECTOR OF EDUCATION—MAY NOT BE COMPENSATED FOR ADDRESSES AT EDUCATIONAL GATHERINGS BY SCHOOL DISTRICT—EXCEPTION AS TO ASSISTANT DIRECTOR AND DIRECTORS OF OTHER ADMINISTRATIVE DEPARTMENTS—ILLEGAL EXPENDITURE OF PUBLIC FUNDS SUBJECT TO FINDING FOR RECOVERY.

SYLLABUS:

1. *The Director of Education may not legally receive compensation from the school funds of a school district or from the county board of education fund, for making addresses at school commencements or teachers' institutes or other educational gatherings.*

2. *The Assistant Director of Education and the Chiefs of the Division of Examination and Licensing and Film Censorship within the Department of Education may legally receive compensation from a county board of education fund or from the funds of a city school district, as the case may be, for making ad^s*

dresses at county or city teachers' institutes.

They may also legally accept compensation for making addresses at other educational gatherings and school commencements so long as such compensation is not illegally paid from public funds.

3. *The directors of the several administrative departments of state government, as created by Section 154-3, General Code, except the Director of Education, may lawfully receive compensation for making addresses at teachers' institutes, school commencements or other educational gatherings, so long as these payments do not constitute an illegal expenditure of public funds.*

4. *Any illegal expenditure of public money may be the subject of a finding for recovery by the Bureau of Inspection and Supervision of Public Offices.*

COLUMBUS, OHIO, May, 29, 1933.

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

GENTLEMEN:—This will acknowledge your request for my opinion, which reads as follows:

“Under date of May 6th, 1924, C. C. Crabbe, Attorney General, addressed the following letter to Hon. Vernon M. Riegel, then the Director of Education:

‘Acknowledgment is made of your communication presenting three questions:

First, whether there is any provision of the law permitting a vacation for the Director of Education; second, whether such Director may accept compensation for lectures delivered at institutes; and, third, whether there is any section specifying the number of hours the Director is required to work, and what is meant by entire time as mentioned in section 154-16 of the General Code.

It is evident that section 154-20, which provides for the eight hours of daily service and vacation, relates only to employes in departments as contradistinguished from the officials therein. The director of a department obviously would not be governed by such section either as to the required number of hours of daily service or the vacation period. It has generally been the practice of state officials to take reasonable vacations, and as to such right or authority, perhaps the only inquiry that could be made would be by the State Auditor. It is believed that it is the general responsibility of a position that the Director assumes, and the law does not necessarily contemplate any special number of hours or regularity of labor.

However, in reference to the other questions you present as you suggest, section 154-16 requires the Director to devote his entire time to the duties of his office, and shall hold no other office or position of profit. It is believed that the intent of this section is to prevent such a Director from holding other positions or engaging in other activities which will take his time and thought away from his duties to the State.

In this connection you are referred to section 354 of the General Code which provides that the Superintendent of Public Instruction shall hold no other office or position of employment. Said section further provides:

“He may visit and inspect schools and attend educational gatherings either within or without the state, and deliver lectures on topics

calculated to subserve the interests of popular education and his necessary actual expenses therefor when properly certified shall be paid by the State."

It is clear from the provisions of this section that if the Superintendent of Public Instruction attends educational gatherings in the State, such attendance is considered as a part of his official duties, and the State may pay his necessary and actual expenses. Since such activities are a part of the duties attaching to his office it would seem improper for him to receive compensation other than the salary provided by law.

Very truly yours,

C. C. Crabbe, Attorney General.

It would seem under the ruling contained in this letter that the attendance of education meetings and the making of education addresses within the State is a part of the duty of the Director of Education and that it would be improper for him to receive compensation other than the salary provided by law. This department has been making findings against Directors of Education for money paid to them for making addresses at Teachers' Institutes and Graduating Exercises. It would seem that the ruling of the Attorney General was based principally upon the provisions of section 354 G. C., although section 154-16 is referred to. You are specifically requested to render this department your written opinion upon the following:

Question 1. May the Director of Education legally receive compensation from the school funds of a school district, or from the county board of education fund, for making addresses at commencement or teachers' institutes, or other educational gatherings?

Question 2. May the officers provided for in section 154-5 and 154-6, General Code, in the department of education, legally receive compensation from the school districts or the county board of education for services in making addresses at commencements, teachers' institutes or other educational gatherings?

Question 3. May the officers of the departments created under the provisions of section 154-3 G. C. other than the Director of Education, legally receive compensation for making addresses at commencements, teachers' institutes or other educational gatherings?

Question 4. In the event that you hold such payments to be illegal, may the amount paid be recovered on findings made by examiners from this department?"

Your questions will be considered in their order.

So far as your first question is concerned, I believe the letter of former Attorney General Crabbe, referred to in your inquiry, fully covers the matter. Section 354, General Code, quoted by the Attorney General in his letter clearly implies that the Director of Education, as a part of the duties of his office, may deliver lectures within the state of Ohio on topics calculated to subserve the interests of popular education and his expenses in so doing will be paid by the state. Any addresses he might make or lectures he might deliver at commencements, teachers' institutes or other educational gatherings would be, of course, in the interest of popular education. That being true, it clearly would not be legal for him to receive any other remuneration for delivering these lectures than his salary fixed by law for his office whether such remuneration might be paid from public funds or otherwise.

There can be no question but that the Director of Education, who is the Superintendent of Public Instruction, a position established by Section 4 of Article VI of the Constitution of Ohio, is a public officer. As such, he is prohibited under penalty, by force of Section 12916, General Code, from receiving any reward other than that provided by law for the performance of his official duties. Said Section 12916, General Code, reads in part, as follows:

“Whoever, being an officer under the constitution or laws of this state, knowingly asks, demands or receives a reward, other than is allowed by law, to execute his official duty, * * shall be fined not more than two hundred dollars or imprisoned not more than twenty days, or both, and forfeit his office.”

With respect to your second question it will be necessary to note the pertinent provisions of Sections 154-5 and 154-6 of the General Code of Ohio which relate to subordinate offices within the several departments created by the “Administrative Code” (Chapter 1a of the General Code of Ohio). Section 154-5, General Code, reads as follows:

“In each department there shall be an assistant director, who shall be designated by the director to fill one of the offices within such department, enumerated in section 154-6 of the General Code, or as the head of one of the divisions created within such department as authorized by section 154-8 of the General Code. When a vacancy occurs in the office of director of any department, the assistant director thereof shall act as director of the department until such vacancy is filled.”

Section 154-6 of the General Code, reads in part, as follows :

“Offices are created within the several departments as follows:

* * * * *

In the department of education:

Chiefs of division as follows:

Examination and licensing.

Film censorship.”

Although the persons occupying the offices created by Sections 154-5 and 154-6, General Code, supra, are “officers” within the meaning of the term as used in Section 12916, General Code, supra, the law does not make it any part of the official duties of these officers to make addresses or deliver lectures at teachers’ institutes or at other similar educational gatherings and for that reason the statute would have no application if these officers should make addresses and receive remuneration therefor. Neither, in my opinion, do the terms of Section 154-20, General Code, with reference to eight hours of daily service in the several departments apply to these officers for the reason that the statute applies to employes only, rather than officers in the several departments.

With respect to the offices created by Sections 154-5 and 154-6, General Code, Section 154-16, General Code, provides:

“Each officer whose office is created by sections 154-3, 154-5, and 154-6 of the General Code shall devote his entire time to the duties of his office, and shall hold no other office or position of profit. In addi-

tion to his salary provided by law, each such officer and each member of the boards and commissions in the departments created by this chapter shall be entitled to his actual and necessary expenses incurred in the performance of his official duties."

The provisions contained in the foregoing section to the effect that the officers mentioned shall devote their entire time to the duties of their respective offices and that they shall not hold any other offices or positions of profit simply means, in my opinion, that they shall not be regularly engaged in some activity or hold some regular positions that will, as stated by the former Attorney General, "take their time and thought away from their duties to the state." This does not, in my opinion, preclude them from making an occasional address at a teachers' institute or other educational gathering in contradistinction to their making a business of it, if the Director, who is the head of the department and, as such, controls, to a great extent, the activities of these officers in the performance of their official duties, permits them to do so.

I know of no rule of law which would prevent the officers filling the positions created by Sections 154-5 and 154-6, General Code, from accepting payment for delivering lectures or addresses at commencements, teachers' institutes or other public gatherings, providing payment is made to them from private funds or from public funds when such payments are authorized and permitted by law.

Clear and express authority is extended to county boards of education to pay from public funds the expenses of conducting county teachers' institutes by Section 7860 of the General Code. Payment for speakers would no doubt be regarded as legitimate expense of conducting a teachers' institute. A similar provision is made in Section 7822, General Code, for the payment of the expense of conducting teachers' institutes in city school districts.

The officers to which your third inquiry refers, are those mentioned in Section 154-3, General Code, other than the Director of Education. These officers are the Director of Finance, the Director of Commerce, the Superintendent of Public Works, the Director of Highways, the Director of Agriculture, the Director of Health, the Director of Industrial Relations, and the Director of Public Welfare.

There are no provisions of law making it the duty or privilege of any of the aforementioned officers to attend educational gatherings or to make addresses or deliver lectures on topics calculated to subserve the interests of popular education at the expense of the state or otherwise, as is provided for the Director of Education in Section 354, General Code, *supra*.

The same observations may therefore be made with reference to the right of these officers to receive payment for making any such addresses as were made in response to your second question with reference to officers provided for by Sections 154-5 and 154-6 of the General Code.

The applicability of Sections 154-16 and 154-20, General Code, to this question is also the same as to questions one and two, and has been fully discussed under those heads.

I come now to the consideration of your fourth question, that is, whether or not, if any payments made to any of these officers for delivering commencement addresses, lectures or addresses at teachers' institutes or other educational gatherings are found to be illegal, the amount so paid may be recovered on findings made by examiners from the Bureau of Inspection and Supervision of Public Offices.

It will not be necessary for the purposes of this opinion, to quote the pertinent provisions of Sections 274 et seq. of the General Code of Ohio, relative to the powers and duties of the Bureau of Inspection and Supervision of Public Offices in the making of examinations of public offices and the inspection and supervision of the accounts of taxing districts and public institutions, as everyone is familiar with them.

The Bureau is directed by Section 286, of the General Code, in its report of any such examination, to note whether or not any public money has been illegally expended or whether or not any public money collected has not been accounted for, or whether any public money due, has not been collected. This is what is commonly known as a "finding for recovery." Provision is made in the said Section 286, for the recovery, by suit, of any public moneys so found to be due any public treasury and it is made the duty of certain officials to institute and prosecute such suits for the recovery of such moneys. Clearly, if it is found that public moneys had been paid from a public treasury illegally, for the making of addresses or lectures, it would constitute "public money illegally expended", as the term is used in the statute, and a "finding" may and should be made for its recovery.

The receipt or acceptance of money illegally by a public officer, which constitutes a "reward" within the terms of Section 12916, General Code, can not be made the subject of a "finding for recovery" by the Bureau, in my opinion, unless this money has been expended from a public treasury as the statutes does not extend to the Bureau the power to make such a finding.

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

1. The Director of Education may not legally receive compensation from the school funds of a school district or from the county board of education fund, for making addresses at school commencements or teachers' institutes or other educational gatherings.

2. The Assistant Director of Education and the Chiefs of the Division of Examination and Licensing and Film Censorship within the Department of Education may legally receive compensation from a county board of education fund or from the funds of a city school district, as the case may be, for making addresses at county or city teachers' institutes.

They may also legally accept compensation for making addresses at other educational gatherings and school commencements so long as such compensation is not illegally paid from public funds.

3. The directors of the several administrative departments of state government, as created by Section 154-3, General Code, except the Director of Education, may lawfully receive compensation for making addresses at teachers' institutes, school commencements or other educational gatherings, so long as these payments do not constitute an illegal expenditure of public funds.

4. Any illegal expenditure of public money may be the subject of a finding for recovery by the Bureau of Inspection and Supervision of Public Offices.

Respectfully,

JOHN W. BRICKER,
Attorney General.