

must certify under oath that such person "has fully complied with all the requirements of the workmen's compensation act of the state of Ohio".

2. A non-resident of Ohio who is not doing business in Ohio and who has not complied with the requirements of the workmen's compensation act of Ohio may not subscribe to such affidavit.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

4283.

**PEDDLER'S LICENSE REQUIRED ONLY OF PEDDLER WHO ACTUALLY  
PEDDLES STOCK IN TRADE.**

**SYLLABUS:**

*A peddler's license issued pursuant to the provisions of Sections 6347 et seq., General Code, is required of those persons who actually peddle their stock in trade and is not required of those persons who have a financial interest in the peddling of merchandise but who do not actively peddle such merchandise.*

COLUMBUS, OHIO, May 24, 1935.

HON. FERDINAND E. WARREN, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

"The Auditor of Putnam County, Hon. John F. Klein, on April 19, 1935, requested an opinion from your office and was forwarded a copy of Opinion 4885 which Mr. Klein feels does not answer his problem. The question is relative to peddler's licenses issued by the County Auditor pursuant to Section 6347 to 6355 inclusive. Briefly, the problem resolves itself to three questions:

1st. A merchant with a fixed business sends out a salaried employee to peddle his wares. Is either the peddler or merchant subject to a peddler's license?

2nd. A merchant with a fixed place of business furnishes merchandise to a third person who goes out and sells the merchandise and turns all funds over to the merchant. At the end of a given period the merchant makes an accounting and pays the third party a certain per cent on the goods sold. Is either the merchant or the peddler subject to a license?

3rd. A third person takes goods on consignment from a merchant with a fixed place of business and peddles same, paying the merchant a fixed price for all goods sold and retaining the balance as his profit. Is either the merchant or the peddler subject to a license under this state of facts?"

You do not state in your letter the method in which the "employee" in your first question and the "third person" in your second and third questions carry on their transactions. You refer to them, however, as "peddlers". I assume therefore that

these persons actually carry their stock in trade along with them and sell their articles at retail from place to place, making delivery at the time of the sale and being paid for the same when delivery is made.

In an opinion to be found in Opinions of the Attorney General for 1934, Vol. II, page 943, I discussed in detail what constituted "peddling" within the meaning of that term as used in Sections 6347 et seq., General Code.

In your first question a merchant with a fixed place of business permits someone else to peddle his wares. You ask if either the peddler or the merchant must take out a peddler's license. By virtue of Section 6347, General Code, a peddler is required to take out a peddler's license in only one county and this license permits him to peddle his stock in trade over the entire state, subject to the rights of municipalities to require an additional license. The license is required of those persons who actually do the peddling. In your first question the merchant does no peddling unless he could be said to be so doing by reason of his relationship to the peddler. The license required of peddlers is, of course, a personal license. The object of such license is to regulate persons, who because of the fact that they have no fixed place of business, might very easily perpetrate fraud upon innocent purchasers who in making such purchase from such persons have little time to investigate the wares they are buying.

In Sections 6347 et seq., General Code, it clearly appears that the legislature wished to regulate the *person* doing the actual peddling. In my Opinion No. 4162, rendered April 17, 1935, I held as disclosed by the second branch of the syllabus:

"2. The exemption granted pursuant to the provisions of Section 6351, General Code, is a personal exemption applicable only to the veteran himself and does not extend to non-veteran partners who may be engaged in business with such honorably discharged soldier."

From the opinion I quote the following passage:

"It is quite obvious that such a license is a personal privilege and it may not be transferred unless expressly authorized by the municipality. The mere fact that an honorably discharged soldier may secure the license in question without the payment of any fee does not give his partner, who is a non-veteran, the same privilege. In other words, the license in question is a personal license and not a partnership license."

An examination of the numerous authorities both in and out of this state referred to in the 1934 opinion *supra*, clearly compels the conclusion that the license is a personal one, intended only for those persons who actually peddle their stock in trade over the state. Consequently in your first question only the employe who actually does the peddling is required to secure a peddler's license pursuant to the provisions of Sections 6347, et seq., General Code.

Your second and third questions are substantially the same as the first question with the exception that an interested third person not an employe is actually doing the peddling. The merchant in neither case peddles his stock in trade and is therefore not required to take out a peddler's license. Consequently in both your second and third questions only the so-called "third person" is required to take out a peddler's license issued pursuant to the provisions of Sections 6347, et seq., General Code.

Summarizing and in specific answer to your questions, it is my opinion that a peddler's license issued pursuant to the provisions of Sections 6347, et seq., General Code,

is required of those persons who actually peddle their stock in trade and is not required of those persons who have a financial interest in the peddling of merchandise but who do not actively peddle such merchandise.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

---

4284.

OFFICES INCOMPATIBLE—TOWNSHIP TRUSTEE AND MEMBERS BOARD OF GENERAL HEALTH DISTRICT—(O.A.G. 1930, VOL. III, P. 1718), APPROVED.

**SYLLABUS:**

*The offices of township trustee and member of the board of a general health district are incompatible. (Opinions of the Attorney General for 1930, Vol. III, page 1718, approved and followed.)*

COLUMBUS, OHIO, May 24, 1935.

HON. CLIFTON L. CARYL, *Prosecuting Attorney, Marysville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“This office desires an informal opinion upon the following:

Whether or not a member of the Board of Township Trustees may legally serve as a member of the District Board of Health?

On the 6th day of May, which was the regular time for the election of members to the health board, a member of the board of township trustees in Union County was duly elected to fill the vacancy, a result of which has caused serious objection on the part of said board of health as to whether or not such member of the board of township trustees may legally qualify.

Your predecessor in office in 1930 rendered an opinion that a member of the board of township trustees was prohibited from serving on the district board of health, however, from a careful reading of that opinion I am inclined to believe that it is not well founded, and should not apply in this matter.”

The statutes relative to your question do not specifically preclude one and the same person from holding the offices in question simultaneously. However, it is necessary to determine whether or not these offices are incompatible by reason of the common rule of incompatibility. A good definition of the common law test of incompatibility is to be found in 46 Corpus Juris, pages 941 and 942 as follows:

“At common law the holding of one office does not of itself disqualify the incumbent from holding another office at the same time, provided there is no inconsistency in the functions of the two offices in question. But where the