

tributes the proceeds of a sale of real estate in a foreclosure proceeding to secure such benefits. Since the addition of the words "or required by law or decree of court" in Amended Senate Bill No. 23, it would appear that the sheriff, since he is required under section 5692, General Code, to pay the taxes in foreclosure cases by order of the court, falls within the express provisions of Amended Senate Bill No. 23, and, consequently, may avail himself of the provisions of that Act.

Without further extending this discussion, it is my opinion in specific answer to your question that where ordered by the court in a foreclosure proceeding to pay the taxes and assessments from the proceeds of a sale, a sheriff may avail himself of the provisions of Amended Senate Bill No. 23, enacted at the second special session of the 90th General Assembly.

Respectfully,

JOHN W. BRICKER.

Attorney General.

3016.

TEACHER—PROHIBITED FROM SOLICITING BIDS OR OFFERING FOR
SALE SUPPLIES OR EQUIPMENT FOR USE IN PUBLIC SCHOOLS
OF STATE.

SYLLABUS:

The provisions of Section 7718, General Code, prohibit a teacher who is employed by any board of education, and who is the owner of a business dealing in supplies and equipment ordinarily used in schools, from soliciting bids on or offering for sale such supplies or equipment for use in the public schools of the state.

COLUMBUS, OHIO, August 9, 1934.

HON RUSSELL M. WILHELM, *Prosecuting Attorney, Marion, Ohio.*

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

"The following facts and question have been submitted to this office with the request that we secure your formal opinion in the matter:

STATEMENT OF FACTS

One J. G. who is a school teacher employed by the City School Board of Marion, Ohio, is engaged in an independent business owned and operated by himself under the name of 'Marion Paper and Twine Company' of Marion, Ohio. This company is engaged in the handling and sale of toilet paper, chalk, mimeograph paper, stencils, janitor's supplies, erasers, towel cabinets, etc., but does not handle text books, school seats and desks or filing cabinets. J. G. has submitted letters and called in person on various school boards in this county asking to bid on supplies such as stated above for the various school boards.

QUESTION

General Code, Section 7718 prohibits any teacher acting as a sales agent for any person or firm whose text books are filed, as provided by law, or for school apparatus or equipment of any kind for use in the public schools of the state. In view of the facts set forth in the above statement of fact, is it your opinion that the supplies sold by J. G. come under the term 'equipment' in General Code, Section 7718, and does this section prohibit the said J. G. from engaging in such business."

Section 7718 of the General Code, to which you refer, provides as follows:

"A superintendent, supervisor, principal or teacher employed by any board of education in the state shall not act as sales agent, either directly or indirectly, for any person, firm or corporation whose school text books are filed with the superintendent of public instruction as provided by law, or for school apparatus or equipment of any kind for use in the public schools of the state. A violation of this provision shall work a forfeiture of their certificates to teach in the public schools of Ohio."

In an opinion rendered by one of my predecessors, found in Opinions of the Attorney General for 1916, page 863, it was stated:

"The manifest purpose of the enactment of the provisions of the above mentioned section was to prohibit superintendents, supervisors and teachers employed by boards of education throughout the state from assuming such relationship to any publisher or publishers of any books offered for sale in this state, or any person having for sale in the state any school apparatus or equipment as to create in any such teacher, superintendent or supervisor a direct or indirect pecuniary interest in inducing boards of education to adopt or purchase books, apparatus or equipment from any particular firm or corporation, and further to bar all teachers, superintendents and supervisors, while so employed by a board of education, from engaging in any activity, the direct purpose or ultimate end of which is the sale of the books, apparatus or equipment offered by any person, firm or corporation for the use of the public schools of the state, and to effect a like inhibition against persons, firms or corporations inducing teachers, superintendents or supervisors, either directly or indirectly, through such employment, to use their influence with boards of education in securing the sale and adoption of the books, apparatus and equipment of the particular employer of such teacher, supervisor or superintendent, and to effect the full accomplishment of this purpose it is provided that such teacher, superintendent or supervisor shall not act, either directly or indirectly, as a sales agent for any such person, firm or corporation."

The question presented directly by your inquiry is whether or not the term "equipment", as the same appears in Section 7718, includes such articles and merchandise as are sold by Marion Paper and Twine Company, the owner of which business is a teacher employed by the city school board of Marion, Ohio.

Webster's New International Dictionary defines the words "equip" and "equipment" as follows:

Equip—To furnish for service, to fit out, to supply with whatever is necessary to efficient action in any way.

Equipment—Whatever is used in equipping, necessities or furnishings.

In the case of *Landan vs. Sykes*, 98 Miss. 495, it was held that where a corporation executed a mortgage covering all of its plant and equipment, the term "equipment" should be construed to mean whatever was used in equipping, the collective designation for the articles comprising an outfit, to fit out or supply with whatever was necessary to efficient action in any way, and hence included the company's office furniture and articles used in the office in the conduct of the business.

In determining what is equipment, we should have clearly in mind the subject which is being equipped. In this case, it is a school house and certainly a school house would be in modern times incomplete without such articles as toilet paper, chalk, mimeograph paper, stencils, janitor's supplies, erasers, towel cabinets, etc., all of which articles are handled by the teacher to which you refer. Therefore, in view of the fact that the articles enumerated in your communication are ordinarily used and needed or required for the proper and efficient operation of a school, it is my conclusion that the word "equipment" as used in Section 7718 would fairly include such articles as are sold by Marion Paper and Twine Company.

The statute in question provides that "A * * teacher * * shall not act as sales agent, either directly or indirectly, for any person, firm or corporation". In the instant case, the teacher in question is the owner of the business and he, as such owner, is acting on his own behalf when soliciting bids for supplies to be used in the school. The act of an agent is supposed to be done by command and in accordance with the will of the principal or employer and to have the same binding effect for and upon him as if transacted by himself in person. The agent is the substitute for or representative of the principal, he is to act in place of and instead of the principal. Applying this elemental principle of agency and taking into consideration the manifest purpose of the statute, it is obvious that a teacher who solicits orders for a business engaged in the handling of school supplies and equipment, of which business he is the owner, would come within the purview of the statute.

It therefore follows and I am of the opinion, in answer to your inquiry, that the provisions of Section 7718, General Code, prohibit a teacher who is employed by any board of education, and who is the owner of a business dealing in supplies and equipment ordinarily used in schools, from soliciting bids on or offering for sale such supplies or equipment for use in the public schools of the state.

Respectfully,

JOHN W. BRICKER,
Attorney General.