

In view of the foregoing and in specific answer to your second question, it is my opinion that where a member of a board of commissioners, which is in the market for and is negotiating for the purchase of sand and gravel, accepts money from a detective, representing himself to be the agent of a company engaged in the business of selling sand and gravel, for the purpose of influencing such commissioner to purchase gravel from such company, the fact that such company was a fictitious company would not be a defense on an indictment for accepting a bribe, under Section 12823 of the General Code.

In concluding, I deem it proper to point out that I am in no wise passing, or attempting to pass, on the evidence in this case, or upon the guilt or innocence of any persons involved in the investigation now being conducted by the Grand Jury. Under the law, the determination as to whether or not an indictment or indictments should be returned is vested exclusively in the Grand Jury, which must act, in accordance with the oaths taken by the members thereof, under the charge of the court and upon the advice of the prosecuting attorney as to the law. No inference whatever, as to whether or not indictments should be returned, is to be drawn from this opinion, which is confined solely to the questions of law presented in your communication.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2422.

BOARD OF EDUCATION—AUTHORIZED TO HIRE CLERK OF BOARD  
TO DRIVE SCHOOL VAN—MUST NOT BE MEMBER OF BOARD.

**SYLLABUS:**

*A board of education may lawfully employ the duly elected and acting clerk of the board, to drive one of the school vans in the district, unless such clerk be a member of the board.*

COLUMBUS, OHIO, August 6, 1928.

HON. JOHN E. PRIDDY, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—This will acknowledge receipt of your inquiry requesting my opinion as follows:

“Is it legal for a Board of Education of a Centralized School District to elect a person as Clerk of the Board of Education and then enter into a contract of employment with the same person to drive one of the school busses in the district?

This question of dual employment comes up but this is a new one and I would be glad if you would let me have your reaction on the proposition.”

By the terms of Section 4747, General Code, boards of education are directed to organize on the first Monday of January after the election of members of such board. In effecting such organization they are required to elect a clerk, the chief duties of whom are prescribed in Section 4754, General Code, which reads as follows:

“The clerk of the board of education shall record the proceedings of each meeting in a book to be provided by the board for that purpose, which shall

be a public record. The record of proceedings at each meeting of the board shall be read at its next succeeding meeting, corrected, if necessary, and approved, which approval shall be noted in the proceedings. After such approval, the president shall sign the record and the clerk attest it."

In addition to the duties required of the clerk, as set forth in Section 4754, *supra*, the clerk signs as clerk, all warrants for the payment of wages of employes and other disbursements made by the board. This duty, however, is merely ministerial, as the accounts and disbursements must all be passed upon by the board and the clerk draws only such warrants as he is authorized to draw by the board of education.

If the same person, who is elected clerk were to be employed in any other capacity by the board such as the driver of one of the school busses, he as clerk, would necessarily draw the warrants for the payment of the compensation of himself as bus driver. This, however, he would do in a purely ministerial capacity and his duty in that regard would not in my opinion, conflict with the performances of his duties in the driving of the school vans.

I am further of the opinion that none of the duties incident to the two positions conflict with each other, and I therefore conclude, in specific answer to your question, that a board of education may lawfully employ the duly elected and acting clerk of the board to drive one of the school vans in the district, provided, of course, that such clerk is not a member of the board.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2423.

ASSESSMENTS—DELINQUENT—STATE ROAD IMPROVEMENT—NO PEN-  
ALTY COLLECTIBLE AGAINST PROPERTY OWNER.

*SYLLABUS:*

*A penalty may not be collected upon delinquent road assessments made for the purpose of paying the property owners' share of a road improvement being constructed by the state.*

COLUMBUS, OHIO, August 6, 1928.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR—Permit me to acknowledge receipt of your request for my opinion, as follows:

"Are delinquent road assessments subject to the added penalty of 10%?"

Your letter does not state the exact kind of road assessments concerning which you inquire, but I assume you are interested in knowing whether or not assessments made for the purpose of paying the property owner's share of a road improvement constructed by the Department of Highways, for which assessment bonds had been issued in anticipation of the payment thereof, are subject to the ten per cent penalty. I also assume that those assessments were made previous to the enactment of the Norton-Edwards Act in 1927 (112 v. 430).

The law in force at that time relative to the collection of such assessments was contained in Section 1216 of the General Code, which read as follows: