

631.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS EXAMINER OF BUILDING AND LOAN ASSOCIATIONS—
THOMAS F. STUDEVANT.

COLUMBUS, OHIO, July 19, 1929.

HON. JOHN W. PRUGH, *Superintendent of Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—You have submitted a bond in the sum of \$5,000, upon which Thomas F. Studevaut appears as principal, and the Southern Surety Company of New York appears as surety, to cover the faithful performance of the duties of the said principal, as examiner of Building and Loan Associations. Said bond apparently has been required in pursuance of the provisions of Section 677 of the General Code, which provides that you shall require from each examiner a bond for such an amount as you deem proper, which shall be for not less than \$5,000, in any case, the premium on which shall be paid by the Superintendent of Building and Loan Associations, from funds appropriated for that purpose.

Upon examination, I have found said bond to have been executed in proper legal form, and I have approved it only as to form, and return it herewith.

Respectfully,

GILBERT BETTMAN,
Attorney General.

632.

APPROVAL, BONDS OF ROSSFORD RURAL SCHOOL DISTRICT, WOOD COUNTY—\$115,000.00.

COLUMBUS, OHIO, July 20, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

633.

CLEVELAND METROPOLITAN PARK DISTRICT—OFFICERS AND EMPLOYEES—INTEREST IN CONTRACT FOR PURCHASE OF EQUIPMENT PROHIBITED.

SYLLABUS:

The officials and employes of the Cleveland Metropolitan Park District are included within the terms of Section 12910 of the General Code.

COLUMBUS, OHIO, July 20, 1929.

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

GENTLEMEN:—Your communication of recent date reads as follows:

“The director of the board of park commissioners of the Cleveland Metropolitan Park District has recommended to the board the purchase of certain equipment manufactured by a corporation in which one of the members of the park board is a member of the board of directors, and the question has arisen, in view of this, whether such purchase would be in violation of Section 12910 of the General Code or in violation of any of the other provisions dealing with the same subject matter.”

Section 12910 of the General Code, to which you refer, provides:

“Whoever, holding an office of trust or profit by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education or a public institution with which he is connected, shall be imprisoned in the penitentiary not less than one year nor more than ten years.”

The Cleveland Metropolitan Park District was created in pursuance of the provisions of Section 2976-1, et seq., of the General Code of Ohio. Without an extended discussion, it may be stated that said sections authorize the creation of a district which is a subdivision of the state separate and distinct from any other subdivision. The constitutionality of the laws authorizing the creation of such districts, in connection with the district about which you inquire, was under consideration in the case of *McNab et al. vs. The Board of Park Commissioners of the Metropolitan Park District in Cleveland*, 108 O. S. 497. The court in its opinion concludes that the exercise of such power to encourage and preserve forestry is a valid exercise of the police power and that previous to the enactment of the legislation under consideration such power was often conferred upon municipalities. The court concludes further that if such power could be conferred upon municipalities, it is self evident that it could likewise be conferred upon “any district or other political subdivision of the state.”

Section 12910 of the General Code, supra, by its express terms refers to a person being interested in a contract for the purchase of property, supplies, etc., for the use of the county, township, city, village, board of education or a public institution. It is evident that a park district such as you describe is not included within the provisions of said section unless the term “public institution,” used in said section, comprehends such a board or subdivision of the state. The term “institution,” when used in connection with public functions, has received various interpretations. In the case of *State ex rel. Guilbert, Auditor, vs. John Kilgour, et al.*, 8 O. N. P. (n. s.) 617, it was held that “institution” comprehends “corporations” or “associations” established by law, having the attributes of permanency as distinguished from the temporary establishment of individuals or partnership effort, together with officers and members. In this case the court was construing the law relating to banking institutions. In the case of *Gerke, etc., vs. Purcell*, 25 O. S. 229, it was held that “institution” sometimes refers to an establishment or place of business and sometimes to an organized body. The latter case was cited as authority in the case of *The Benjamin Rose Institute vs. Myers, Treas., et al.*, 92 O. S. 252. In the latter case the Supreme Court was construing the phrase “institutions of purely public charity,” as used in the constitution

in relation to tax exemptions, and, among other things, cited with approval in its opinion a Georgia case, which held:

"The term 'institution' is sometimes used as descriptive of an establishment, or place, where the business or operations of a society or association is carried on; at other times it is used to designate the organized body. *Gerke vs. Purcell*, 25 Ohio St. 244."

The foregoing will indicate that the term "public institution" is a rather broad term and may include a corporate body as well as a building or place.

Section 2976 of the General Code provides that a board of park commissioners "shall be a body politic and corporate." Logically there is no reason why a member of such a board should not be inhibited in the same manner as other officers mentioned in Section 12910, *supra*. In my opinion, in the use of the term "public institutions" the Legislature clearly intended to include boards such as you mention.

You are specifically advised, therefore, that officials and employes of the Cleveland Metropolitan Park District are included within the terms of Section 12910 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

634.

CRIMINAL COURT—LIMA—NO AUTHORITY FOR APPOINTMENT OF
PROBATION OFFICER.

SYLLABUS:

There is no statutory authority for the office of probation officer for the criminal court at Lima.

COLUMBUS, OHIO, July 20, 1929.

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

GENTLEMEN:—Your recent communication reads:

"Section 4587, G. C., reads:

'In each municipality having a police court, the council, by ordinance, shall provide for the appointment of one or more persons to be known as probation officers. Probation officers shall devote their time to the interests of persons placed upon probation. Upon the order of the police court, they shall investigate the circumstances of any case that may come before the court for final jurisdiction.'

Section 14740-34, G. C., reads:

'The clerk of the mayor shall act as clerk for said court.'

QUESTION: May the clerk of the municipal court at Lima, Ohio, legally hold the office of probation officer at the same time?"

In your question you refer to the "Municipal Court at Lima." There seems to be no specific statute establishing a so-called municipal court in the city of Lima. However, it is assumed that you refer to the court established in the city of Lima