Note from the Attorney General's Office:

1932 Op. Att'y Gen. No. 32-4021 was modified by
1965 Op. Att'y Gen. No. 65-150.

a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary."

Among the numerous cases cited in support of the above quotation from Corpus Juris is *Parril* vs. *Wood,* 2 O. Dec. (Reprint) 381. There it was held that the holder of a note which was drawn and made payable in Ohio could not recover protest charges from the maker.

In 8 Corpus Juris 624, it is said:

> "In the absence of a statute requiring it, no protest is necessary in case of inland bills of exchange, although it constitutes no wrong against the drawer, *none of the costs thereof being charged against him.*" (Italics the writer's.)

The above noted authorities make it clear that it is unnecessary to protest inland bills of exchange and that the maker can not therefore be made liable for the costs thereof. Obviously, it follows that where an inland check is given for payment of taxes and is dishonored, protest fees can not be placed upon the tax duplicate against the property of the taxpayer.

Having in mind the provision of Article X, Section 5 of the Ohio Constitution that "no money shall be drawn from any county * * * treasury, except by authority of law", I have examined the statutes, and, having failed to find any law which expressly or impliedly authorizes payment out of the county treasury for such unnecessary protest fees on an inland check, I am of the opinion that such fees can not be paid out of the county treasury.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4021.

OFFICES INCOMPATIBLE—ACTING AS PLUMBING INSPECTOR OF GENERAL HEALTH DISTRICT WHILE ENGAGED IN PRIVATE PLUMBING BUSINESS.

SYLLABUS:

A plumbing inspector appointed by a district board of health can not engage, while so employed, in the plumbing business.

COLUMBUS, OHIO, February 2, 1932.

HON. JOHN E. BAUKNECHT, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—This will acknowledge your letter which reads as follows:

> "The Board of General Health District for Columbiana County, Ohio, on the 13th day of January, 1931, passed a resolution creating the office of a Plumbing Inspector for said General Health District, to be appointed by the Board of Health of said General Health District pursuant to provisions of Sections 4421, 4422 and 1261-42 of the General Code of Ohio. This resolution is silent on the question of whether the duties

of such a Plumbing Inspector appointed thereunder would be inconsistent with the Inspector engaging in a general plumbing business in his private individual capacity.

May we have your opinion as to whether any of the above sections, or any laws relative to the General Health Districts or Boards of Health, or any other sections, would make such duties inconsistent.

We have been unable to locate any opinions of your department on this matter, and inasmuch as there seems to be no provision for any other person inspecting the work done by a plumbing inspector in the course of his own private business, we feel that there might be some inconsistency in the duties of a Plumbing Inspector as such, and as an individual plumber."

Upon examination, I find no statutory provision which prohibits a plumbing inspector, appointed by a district board of health, engaging in plumbing business. The question raised by your inquiry has not been before the courts of this state.

The principal duties of a plumbing inspector are no doubt to see that the laws of this state and the regulations made by a general health district are complied with, either in the installation, replacement or repairing of plumbing fixtures or the like. The duties of the position itself suggest an incompatibility or inconsistency between the position of a plumbing inspector employed by a district board of health and the inspector's own private plumbing business.

Even though the plumbing inspector appointed by the district board of health may be beyond reproach in the enforcement of the laws of this state relating to plumbing and in the enforcement of the regulations enacted by the general board of health even as to his own work, nevertheless there is the remote possibility that he may not be beyond reproach in the inspection of his own work. This possibility is sufficient reason for holding that there is an implied inhibition that a plumbing inspector employed by a district board of health can not engage in the private plumbing business while so employed.

Contrariety and antagonism would result when a plumbing inspector attempted to faithfully and impartially discharge the duties of his public position towards his private business enterprise of plumbing. His personal interest in the inspection of his own work would be inconsistent with the proper performance of his duties as a plumbing inspector. On the other hand, the interests of the public and the plumbing inspector would be adverse. The purpose of inspecting plumbing is to protect the public from defective or faulty plumbing which might endanger the health of the community. The possibility of such a conflict of interests makes it essential that an implied inhibition or prohibition be read into the employment of a plumbing inspector engaged by a district board of health so as to prevent the inspector from being tempted away from his public duties.

Although your inquiry involves a question of incompatibility of a public office and a private business, nevertheless the following principles of law are applicable to your inquiry. In 22 R. C. L. 414 it is stated that:

"One of the most important tests as to whether offices are incompatible is found in the principle that the incompatibility is recognized whenever one * * * is subject to supervision by the other, or where a contrariety and antagonism would result in the attempt by one person to discharge the duties of both."

Also the following statement in 21 R. C. L. 827, which reads:

"The rule which prevents the agent * * * from acting for himself in

a matter where his interest would conflict with his duty, also prevents him acting for another whose interest is adverse to that of the principle. In law as in morals, it may be stated that as a principle no servant can serve two masters, for either he will hate the one and love the other or else he will hold to one and despise the other."

See also the case of *Cheney* vs. *Unroe,* 77 N. E. 1041 (Ill.), at page 1044.

In this state the legislature has expressed a public policy which, although it applies only to state plumbing inspectors, is indicative of a legislative policy which should be read into an employment of a similar nature when the appointment is made by a district board of health. The legislature, in the enactment of section 1261-3, General Code, defined the duties of a state inspector of plumbing as follows:

"It shall be the duty of said inspector of plumbing, as often as instructed by the state board of health, to inspect any and all public or private institutions, factories, workshops, or places where men, women or children are or might be employed, and to condemn any and all unsanitary (insanitary) or defective plumbing that may be found in connection therewith, and to order such changes in the method of construction of the drainage and ventilation, as well as the arrangement of the plumbing appliances, as may be necessary to insure the safety of the public health.

Such inspector shall not exercise any authority in municipalities or other political subdivisions wherein ordinances or resolutions have been adopted and are being enforced by the proper authorities regulating plumbing or prescribing the character thereof."

Your attention is called to the second paragraph of that section, which provides that a state inspector of plumbing shall not exercise any of the authority reposed in him by the legislature where certain enumerated political subdivisions have provided for the inspection of plumbing. Section 1261-8, General Code, reads as follows:

"No inspector so appointed shall, during his term of office, be engaged or interested in the plumbing business or the sale of any plumbing supplies, nor shall he act as agent, directly or indirectly, for any person or persons so engaged."

Thus, in view of these two sections, if a district board of health failed to appoint a plumbing inspector for a district, such plumbing that required inspection would be looked after by a state inspector of plumbing who could not engage in the private plumbing business. Although section 1261-8 expressly prohibits a state plumbing inspector from engaging in the business of plumbing, yet that fact should not prevent a similar inhibition being, by implication, read into the employment of a plumbing inspector appointed by a district board of health. To hold otherwise, would, in some instances, permit an inspection of plumbing work by a state inspector who can not engage in the private business of plumbing and, in other instances, permit the inspection of plumbing work by one who can engage in such a business. That would be unreasonable, since it can be assumed that the legislature certainly did not intend to nullify its own legislative policy

in the matter of plumbing inspection when it left it to be done by municipalities and other political subdivisions.

Thus, from the viewpoint of public consideration, it would be improper to permit a plumbing inspector appointed by a district board of health to engage in the private plumbing business, because, as heretofore stated, such a business would no doubt interfere with the unbiased discharge of his duty to the public and it would place him in a position inconsistent therewith. This is so even if such relationship only has a tendency to induce him to violate his duty, regardless of how remote the possibility of such a violation may appear.

It is therefore my opinion that a plumbing inspector appointed by a district board of health can not engage, while so employed, in the plumbing business.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4022.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE BALDWIN COMPANY OF CINCINNATI, OHIO, FOR CABINET WORK FOR THE STATE OFFICE BUILDING, AT AN EXPENDITURE OF $11,588.00—SURETY BOND EXECUTED BY THE UNITED STATES FIDELITY AND GUARANTY COMPANY OF BALTIMORE, MARYLAND.

COLUMBUS, OHIO, February 2, 1932.

HON. FRANK W. MOWREY, *Executive Secretary, State Office Building Commission, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the State Office Building Commission, appointed under Section 1 of House Hill No. 17 of the 88th General Assembly, passed March 14, 1929 (113 O. L. 59), and The Baldwin Company of Cincinnati, Ohio. This contract covers the construction and completion of Contract for Cabinet Work for the State Office Building, according to Item No. 5 of the Form of Proposal dated November 11, 1931. Said contract calls for an expenditure of eleven thousand, five hundred and eighty-eight dollars ($11,588.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. It is to be noted that the Controlling Board's approval to the expenditure is not required under House Bill No. 621 of the 89th General Assembly, appropriating the money for this contract. In addition, you have submitted a contract bond upon which the United States Fidelity and Guaranty Company of Baltimore, Maryland, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.