Note from the Attorney General's Office:

1929 Op. Att'y Gen. No. 29-0790 was reconsidered by
1987 Op. Att'y Gen. No. 87-025.

> " * * * The highest bid, or if bids are received based upon a different rate of interest than specified in the advertisement the highest bid based upon the lowest rate of interest, presented by a responsible bidder, shall be accepted by the taxing authority, or in the case of a municipal corporation by the fiscal officer thereof. * * * . "

Considering the two bids to which you refer only as to the matter of which bid is highest, or, as in this case, the highest bid based upon the lowest rate of interest, there can be no question but that the bid submitted by "B" Company of par at 5¼% is a higher bid than the bid submitted by "A" Company of $228.14 premium on 5½% bonds. The offer contained in "B" Company's bid that they will furnish blank bonds merely results in making "B" company's bid still higher.

It is, I understand, general practice among bond houses when bidding upon bonds of subdivisions other than the larger municipalities which are constantly issuing bonds, to offer to furnish the bond forms. This is done to assure the bond house that the bonds will be in such form as to paper, size, general appearance, etc., as to insure their marketability. If such offer in connection with a bid were considered a defect, I cannot see where it works any prejudice to the public for whom the taxing authority acts. The matter of defect in a bid was passed upon by the Supreme Court of Ohio in considering an award of a contract by a board of education, in the case of *State ex rel. Ross* vs. *Board of Education,* 42 O. S. 374, the third branch of the syllabus being as follows:

> "The board may waive defects in the form of a bid, where such waiver works no prejudice to the rights of the public for whom the board acts."

There may be some question as to whether or not the approximate cost of the bond forms may be considered by the commissioners in determining which bid is the highest, but that question is not before me, in view of the facts as above indicated, "B" Company having submitted the highest bid and, in addition thereto, offered to furnish the bond forms.

In view of the foregoing, it is my opinion that under the provisions of Section 2293-29, supra, assuming that both bidders are responsible, the bonds should be awarded to "B" Company.

Respectfully,
GILBERT BETTMAN,
Attorney General.

790.

OFFICES COMPATIBLE—COUNTY CORONER AND COMMISSIONER OF GENERAL HEALTH DISTRICT—CONDITION NOTED—POSITIONS OF JAIL OR COUNTY HOME PHYSICIAN AND CORONER COMPATIBLE.

SYLLABUS:

1. *The office of county coroner and commissioner of a general health district may be held by one and the same person, except in cases wherein the contract of employment of such health commissioner is so drawn, under the provisions of Section* 1261-19, *General Code, as to require such health commissioner to devote full time to the*

duties of his office, which would result in such commissioner not being able to perform his duties as coroner.

2. *A county coroner may be employed by the county commissioners as physician for the county home or appointed by the commissioners as physician for the county jail.*

COLUMBUS, OHIO, August 24, 1929.

HON. EVERETT L. FOOTE, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

> "Will you kindly render an opinion on the following question: Can the office of coroner be held by one acting as county physician or by one acting as county health commissioner?"

In considering your question, it has been noted that there are no statutory inhibitions against the office of county coroner and health commissioner being held by the same person. It remains then to be determined whether or not the two offices are incompatible at common law. The rule at common law of incompatibility has frequently been stated to be as follows:

> "Offices are incompatible when one is subordinate to or in any way a check upon the other, or when it is physically impossible for one person to discharge the duties of both." *State ex rel.* vs. *Gebert,* 12 O. C. C. (N. S.) 274.

It is assumed that by county health commissioner, you have reference to the health commissioner required under the provisions of Section 1261-19 of the General Code for a General health district. In other words, there are now under existing laws general health districts and city health districts. In examining the sections relating to the duties of the health commissioner, and Sections 2856 et seq., which relate to the duties of the county coroner, no provisions have been found which in anywise raise the question of incompatibility, in so far as one being a check upon the other, or one being subordinate to the other is concerned. Both officials have definite duties outlined by statute which are wholly independent of each other. However, it has been noted that Section 1261-19, in referring to the health commissioner, among other things, provides:

> "Said appointee shall be a licensed physician and shall be secretary of the board and shall devote such time to the duties of his office as may be fixed by contract with the district board of health."

In view of the provisions of the statute last mentioned, in the event that in his contract of employment the health commissioner would be required to devote full time to the duties of his office, it would make it impossible for him to be free to perform his duties as coroner. It is the mandatory duty of a coroner immediately to proceed to investigate when informed that the body of a person, whose death is supposed to have been caused by unlawful or suspicious means, has been found within the county. Logically, it follows that if a full time contract was so drawn as to prevent a coroner from complying with his statutory duties, there would be an incompatibility, since it would be physically impossible to perform the duties of the two positions.

It may be further stated that such health commissioner is employed for such period of time, not exceeding two years, as may be prescribed by the district board, and it follows that such an employe is not in the classified civil service of the state.

The foregoing will dispose of your question in so far as a county coroner and general health commissioner are concerned. However, your letter further presents the question as to whether a county coroner and a "county physician" may be one and the same person. It is assumed that in the use of the term "county physician" you have reference to a physician employed by the county commissioners for the county home or a physician appointed for the county jail, or both. In any event, an examination of the sections authorizing the appointment or employment of a physician for the county home or county jail discloses that there is no incompatibility in either case with the office of county coroner.

Based upon the foregoing, you are specifically advised that:

1. The office of county coroner and commissioner of a general health district may be held by one and the same person, except in cases wherein the contract of employment of such health commissioner is so drawn, under the provisions of Section 1261-19, General Code, as to require such health commissioner to devote full time to the duties of his office, which would result in such commissioner not being able to perform his duties as coroner.

2. A county coroner may be employed by the county commissioners as physician for the county home or appointed by the commissioners as physician for the county jail.

Respectfully,
GILBERT BETTMAN,
Attorney General.

791.

CEMETERIES—TOWNSHIP—POWER OF TRUSTEES TO REQUIRE THAT ONLY SEXTONS UNDER CONTRACT MAY DIG GRAVES—PROCEDURE FOR ENFORCEMENT.

SYLLABUS:

1. *Under the provisions of Section* 3447, *General Code, township trustees may make rules and regulations to the effect that only a sexton or caretaker having a contract with the township trustees for such purposes may participate in digging graves in such a cemetery.*

2. *Such rules and regulations may be enforced in accordance with the provisions outlined in Sections* 10108, 12495, *and* 12496 *of the General Code.*

COLUMBUS, OHIO, August 26, 1929.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

> "We wish to submit the following for your consideration and opinion: Township trustees of Hale Township have discharged the sexton, or at least have hired another on some form of competitive bidding, and the former sexton refuses to quit. Having been sexton over a period of years, he is acquainted with a large number of burial lot owners and has made arrangements with these individual owners to dig the graves on their lot. Under the contract which trustees make with the sexton, the work of digging the graves should go to the sexton that is employed and acting.