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1. CLEVELAND METROPOLITAN HOUSING AUTHORITY, CITY OF CLEVELAND, CUYAHOGA COUNTY—MAY CONTRIBUTE PUBLIC FUNDS TO REAL PROPERTY INVENTORY OF METROPOLITAN CLEVELAND TO PARTICIPATE IN BENEFITS OBTAINED BY REAL PROPERTY INVENTORY — SUCH FUNDS MAY BE SO EXPENDED IN SUCH MANNER AS SAID BODY MAY DEEM PROPER AND SHALL CONFORM TO PURPOSE SET FORTH IN SECTION 5626-3 G.C. — BOOKS AND ACCOUNTS SUBJECT TO EXAMINATION BY BUREAU.
2. NO LEGAL INCOMPATIBILITY BETWEEN:
  - a. POSITIONS ASSISTANT CLERK, BOARD OF COUNTY COMMISSIONERS AND TRUSTEE, REAL PROPERTY INVENTORY OF METROPOLITAN CLEVELAND.
  - b. POSITIONS DIRECTOR OF SAID BODY AND ASSISTANT IN CENTRAL CLEARING HOUSE OF COUNTY RELIEF AREA ALTHOUGH SUCH ASSISTANT CALLED EXECUTIVE DIRECTOR OF "COUNTY RECORD BUREAU AND CLEARING HOUSE."
  - c. POSITIONS DIRECTOR, METROPOLITAN HOUSING AUTHORITY AND TRUSTEE OF SAID BODY.

**SYLLABUS:**

1. The City of Cleveland, the County of Cuyahoga and the Cleveland Metropolitan Housing Authority may, under authority of Section 5626-3, General Code, contribute public funds to the Real Property Inventory of Metropolitan Cleveland for the purpose of participation in the benefits to be obtained by a real property inventory.

2. The funds so contributed may be expended by the Real Property Inventory of Metropolitan Cleveland in such manner as it may deem proper, so long as they are expended for the purpose set forth in Section 5626-3, to-wit, for carrying forward a real property inventory in said county.

3. The books and accounts of the Real Property Inventory of Metropolitan Cleveland are subject to examination by the Bureau of Inspection and Supervision of Public Offices.

4. There is no legal incompatibility between the positions of an assistant clerk of the board of county commissioners and a trustee of the Real Property Inventory of Metropolitan Cleveland.

5. There is no legal incompatibility between the positions of director of the Real Property Inventory of Metropolitan Cleveland and an assistant in the central clearing house of a county relief area, although such assistant is called the executive director of the "County Record Bureau and Clearing House."

6. There is no legal incompatibility between the positions of director of the Metropolitan Housing Authority and a trustee of the Real Property Inventory of Metropolitan Cleveland.

Columbus, Ohio, July 25, 1942.

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

Gentlemen:

Your recent request for my opinion, enclosing a communication from two of your examiners in the Cleveland area, duly received. Your letter reads:

"We are enclosing herewith a letter from two of our State Examiners in the City of Cleveland area which shows to some extent the income made available to the 'Real Property Inventory of Metropolitan Cleveland' through contributions from the public funds of Cuyahoga County, City of Cleveland and the Cleveland Metropolitan Housing Authority.

The said organization, known as the Real Property Inventory of Metropolitan Cleveland, apparently is a non-profit corporation with a board of trustees, a president, vice-president, secretary, treasurer and executive director, and receives contributions from the public treasuries heretofore noted, by or under authority of the provisions of section 5626-3 of the General Code.

Our examiners have found that the Director of said organization and certain members of its board of trustees, hold official positions in the subdivisions or political entities contributing to the financing of said organization and further, that the accounts of this organization have not been examined heretofore by any state examiner and therefore the uses made of the public funds so contributed to said organization are not known to this Bureau.

In this connection the examiners submit seven questions which we shall not repeat here, which we do not feel competent to answer without your opinion and advice.

Therefore, may we request that you examine the enclosed correspondence and give us your opinion in answer to the seven questions therein listed."

The enclosure reads in part as follows:

"We submit the following information relative to the Real Property Inventory of Metropolitan Cleveland.

The Real Property Inventory of Metropolitan Cleveland is a corporation not for profit.

The officers and trustees of the corporation are as follows: (Here follows a list of the names of the officers and trustees of the organization here under consideration.)

X is Executive Director of the Real Property Inventory of Metropolitan Cleveland (his salary for this position is not available).

Other positions which he holds are:

Director of Cuyahoga County Record Bureau & Clearing House — Salary \$3,900.00 per annum (paid from Relief Funds). Secretary of the Cleveland Health Council — Salary \$5,000.00 per annum. Author and Publisher of the 'Sheet-a-Week' (copy attached) which is sold to the public and the information contained therein is apparently compiled from the relief records of the Cuyahoga County Record Bureau and Clearing House. Compiled information for the Cleveland Civil Service Commission at \$10.00 per hour.

The following is a list of payments made to the Real Property Inventory of Metropolitan Cleveland:

City of Cleveland	1940	\$ 5,571.69	
City of Cleveland	1941	576.06	
			\$ 6,147.75
Cleveland Metropolitan Housing Authority	1940		8,000.00
Cuyahoga County	1937	12,000.00	
Cuyahoga County	1938	9,000.00	
Cuyahoga County	1939	9,541.53	
Cuyahoga County	1940	11,000.00	
Cuyahoga County	1941	3,000.00	
			44,541.53
			\$58,689.28

The Commissioners of Cuyahoga County, the City of Cleveland and the Cleveland Metropolitan Housing Authority jointly sponsored a W.P.A. Project No. 2826, to conduct a real property survey and a low income housing area survey and agreed to contribute \$39,443.00 for supervision, etc.

The sponsors delegated the Real Property Inventory of

Metropolitan Cleveland of which Mr. X is Executive Director as their representative, and the contributions by the sponsors are paid to the Real Property Inventory of Metropolitan Cleveland and expended by them as they see fit.

1. Is it legal for these districts to contribute public funds to the Real Property Inventory of Metropolitan Cleveland for this purpose and be expended in this manner?

2. Is it legal under Section 5626-3 G.C. for the Commissioners of Cuyahoga County, the City of Cleveland and the Cleveland Metropolitan Housing Authority to make an annual contribution for the support of the Real Property Inventory of Metropolitan Cleveland?

3. May the funds contributed be expended by the Real Property Inventory of Metropolitan Cleveland as they deem proper?

4. Are the books and accounts of the Real Property Inventory of Metropolitan Cleveland subject to examination by the Bureau of Inspection and Supervision of Public Offices?

5. Is it legal for the County Budget Commissioner to serve as a trustee of the Real Property Inventory of Metropolitan Cleveland?

6. Is it legal for the Director of the Real Property Inventory of Metropolitan Cleveland to serve as Executive Director of the Cuyahoga County Record Bureau and Clearing House, drawing an annual salary of \$3,900.00 from the latter which is paid from relief funds?

7. Is it legal for the Director of the Cleveland Metropolitan Housing Authority to serve as a trustee of the Real Property Inventory of Metropolitan Cleveland?"

Section 5626-3, General Code, reads:

"For the purpose of participating in the benefits to be obtained by a real property inventory within the state of Ohio, any housing authority or any political subdivision, including counties and the state of Ohio by resolution of the taxing authority of such subdivision, may incur indebtedness and authorize the expenditure of funds of such subdivision for the purpose of carrying forward a real property inventory of all or part of the county in which such subdivision is located and/or may contribute to any organization which is now or may hereafter be established for the purpose of carrying forward such a real property inventory."

This section was first enacted on July 16, 1936, as "An Act — To

authorize political subdivisions to expend local funds for participation in and to contribute to a real property inventory of all or part of the county in which such subdivision is located.”

It is worthy of note that the principal change made in the amendment of this act to its present form was the elimination of the provision in the original act which required the consent and approval of the Bureau of Inspection and Supervision of Public Offices as a condition to the participation by the political subdivisions of the state of Ohio. The only other change made was the inclusion of “any housing authority.”

Most of the questions submitted involve a consideration of the character and purpose of the “Real Property Inventory of Metropolitan Cleveland.” Reading its charter in connection with the statute as amended, one cannot escape the conclusion that the two may have been inspired by the same mind. The Real Property Inventory of Metropolitan Cleveland is a corporation not for profit. Its articles of incorporation were filed December 20, 1937. Its purposes are stated in the charter as follows:

“The purpose or purposes for which the corporation is formed are:

Said corporation is formed not for profit, for the purpose of scientific study of real property, population and related subjects in the Cleveland Metropolitan District, and in that part of Cuyahoga County outside of the Cleveland Metropolitan District, for the collection, tabulation, analysis and publication of facts pertaining thereto for use in city planning, study of city development, economical and sociological research, and comparative study, and for the doing of all such things as may be necessary or incidental thereto. No part of the net earnings, if any, of said corporation shall inure to the benefit of any person, member, private shareholder or individual, but shall be devoted exclusively to the continued effectuation and extension of the aforementioned scientific purpose.”

The language of Section 5626-3, General Code, is significant in that it does not undertake to authorize a *contract* with such a corporation, nor does it authorize the *employment* of such an agency, but in terms authorizes the political subdivisions to “*contribute* to any organization which is now or may hereafter be established for the purpose of carrying forward such a real property inventory.” The irresistible inference is that it was the legislative intention that the moneys so contributed should be devoted

to a public purpose, and it would follow that any organization which could qualify to receive such contributions must be regarded as a quasi public corporation. This statute and this organization were directly under consideration by my predecessor in an opinion found in Opinions Attorney General for 1938, p. 2293, where the question was as to the right of a member of the board of county commissioners to occupy the position of a director (presumably a trustee) of the Real Property Inventory corporation. The syllabus of that opinion is as follows:

“Where a real property inventory corporation receives public funds under Section 5626-3, General Code, it must be considered a quasi-public corporation and as such, one of its directors cannot at the same time serve as president of the board of county commissioners when the county is making a contribution to the corporation for real estate inventory services permitted in Section 5626-3, General Code, for an incompatibility of offices results where one person attempts to serve at the same time both the offices in question.”

As bearing on the nature of this corporation, I quote from that opinion as follows:

“When an agency or corporation receives a contribution of public money, its activities must be of such nature as to widely affect public matters, for it is a well known rule of law that public money cannot be spent to advance a purely private interest.

A real property inventory corporation does assuredly engage in activities which are of public concern and interest. This being the case it must be considered a quasi-public corporation especially if it is to receive a contribution of public funds from the county. Regarding the corporation in this light, then, it follows that when the president of the board of county commissioners is also director of a real property inventory corporation and that corporation receives a contribution of public funds for its services, the law of incompatibility of public offices must be considered.”

Coming now to a consideration of your specific questions:

1. Is it legal for these districts to contribute public funds to the Real Property Inventory of Metropolitan Cleveland for this purpose and be expended in this manner? This question seems to involve two different propositions, first as to the legality of the contributions, and second, as to the legality of their expenditure “in this manner.”

The first proposition may be answered without elaboration. The

plain language of the statute, above quoted, Section 5626-3, clearly authorizes the city of Cleveland, the Cleveland Metropolitan Housing Authority and Cuyahoga County, to make contributions to an organization of the character in question. For the purpose of this answer I am assuming, but not undertaking to pass upon, the constitutionality of the statute.

The second phase of the question, to-wit, is it legal for the funds so contributed to be expended "in this manner," is a question for the answer to which we have not sufficient data in your communication. The *manner* of the expenditure is not explained excepting as it may be suggested by the phrase used in your communication, — "expended by them as they see fit." If the books and accounts of the Real Property Inventory of Metropolitan Cleveland are subject to examination by your department, such examination would doubtless disclose facts upon which an opinion might be based as to the legality of the manner in which the funds are being used. Your right to make such examination will be referred to later on.

2. Your second question is substantially the same as your first question, the only difference we see being the introduction of the word "annual" in connection with the contributions to be made by the political subdivisions in question. If the contributions are legal, I see no reason why such contributions should not be made annually.

3. Your third question also seems to be a reiteration of the latter part of your first question. The law has thrown no specific restrictions around the expenditure by an organization of the sort in question of the contributions which have been made to it by the political subdivisions. It must be presumed that the only purpose for which those contributions could be spent would be for the purpose stated in the act which authorizes them to be made, viz., "for the purpose of participating in the benefits to be obtained in a real property inventory in the state of Ohio." Whether or not the organization here in question is devoting these contributions to that purpose, we have no means of knowing.

4. This brings me to the more important question as stated in number four: Are the books and accounts of the Real Property Inventory of Metropolitan Cleveland subject to examination by the Bureau of Inspection and Supervision of Public Offices?

Section 274 of the General Code provides in part as follows:

“There shall be a bureau of inspection and supervision of public offices in the department of auditor of state which shall have power as hereinafter provided in sections two hundred seventy-five to two hundred eighty-nine, inclusive, to inspect and supervise the accounts and reports of all state offices, including every state educational, benevolent, penal and reformatory institution, public institution and the offices of each taxing district or public institution in the state of Ohio. Said bureau shall have the power to examine the accounts of every private institution, association, board or corporation receiving public money for its use and purpose, and may require of them annual reports in such form as it may prescribe. \* \* \*”

It will be noted that the first sentence of the above quoted section authorizes the inspection of all state offices and institutions and the offices of each taxing district. The second sentence adds to this the power to examine the accounts of *“every private institution, association, board or corporation receiving public money for its use and purpose.”* This language does not warrant the conclusion that every corporation, from whom the state or one of its political subdivisions should buy merchandise or service which is paid for by public money, should be subject to examination by the Bureau. The addition of the words “for its use and purpose” would seem to give character to the class of private institutions, etc., which receive public moneys and which are subject to examination by the Bureau. If I am correct in my view that the organization here under consideration is in the nature of a quasi-public corporation and that it is organized to carry out the purposes of the act relating to public contributions, it would seem to follow conclusively that the moneys paid to it must be expended for the public purposes for which they are contributed, and that the state and its political subdivisions have a vital interest in knowing that the money so contributed is properly expended.

Accordingly it is my opinion that the Bureau of Inspection and Supervision of Public Offices has the right to examine the books and accounts of the Real Property Inventory of Metropolitan Cleveland and has the right to require of that organization such reports as the Bureau may prescribe.

The remaining questions which you have submitted raise questions of incompatibility of offices and employments. None of the employees named are public officers in the proper sense. Their powers and responsibilities are very different from those pertaining to public officers. This distinction becomes of importance in considering the questions sub-



mitted. We will note a few of the many cases in which the differences are pointed out.

In the case of *Newman vs. Skinner*, 128 O.S. 325, the syllabus reads in part as follows:

“1. A public officer, as distinguished from an employee, must be invested by law with a portion of the sovereignty of the state and authorized to exercise functions either of an executive, legislative or judicial character.”

In *State ex rel v. Commissioners*, 95 O.S. 157, the court in discussing the status of the clerk of the board of county commissioners, said at page 160:

“ \* \* \* If specific statutory and independent duties are imposed upon an appointee in relation to the exercise of the police powers of the state, if the appointee is invested with independent power in the disposition of public property or with power to incur financial obligations upon the part of the county or state, if he is empowered to act in those multitudinous cases involving business or political dealings between individuals and the public, wherein the latter must necessarily act through an official agency, then such functions are a part of the sovereignty of the state.

The duties cast upon Crawford, however, are not of that character. His employment is not durable in time. The board of county commissioners are the officials who are in fact clothed with the sovereign power of the state, and the duties of the clerk are incidental thereto and purely clerical. He is the amanuensis of the board. As the statute and resolution designate him, he is a ‘clerk’ whose business it is to record its transactions. He has no police power, no power affecting public obligation, financial or otherwise, and he does not represent the public in the slightest capacity in any transaction involving it and the individual.”

While most of the cases relating to incompatibility arise in connection with public offices as distinguished from public employments, yet I can see no reason for not applying the principles which have been developed, as well to public employes as to public officers, where the nature of their duties or the powers conferred upon them would seem to make them ineligible to render efficient and impartial service in another public office or employment. Accordingly I come to consider the principles which have been laid down by the text writers and by judicial pronouncement.

It is stated in *Throop on Public Officers*, p. 33:

“At common law, there is no limit to the number of offices which may be held simultaneously by the same person, provided that neither of them is incompatible with any other; and this rule extends to offices of the highest grade, and which involves, for their adequate performance, the greatest expenditure of time and labor.”

After referring to constitutional and statutory provisions of many states, the same author says:

“But wherever no such prohibition exists, or in cases to which it does not apply, the courts within the United States uniformly recognize and apply the common law rule.”

As to rules for determining compatibility, the same writer says at page 37:

“A learned American judge, discussing this question, has forcibly said, that it has been erroneously supposed from the remarks of Lord Tenterden in *Rex v. Jones* (1 B. & Adol. 677), that in order to render two offices incompatible, there must be some such relation between them as that of master and servant — that one must have ‘controlment’ of the other; or that one must be charged with the duty of auditing or supervising the accounts of the other; or that one must be chosen by, or have the power of removal of the other. But these are only instances of incompatible offices, not definitions; and therefore it does not follow that these are all the instances in which offices are incompatible. Thus a judicial office and a ministerial office are incompatible.”

*State v. Butts*, 9 S. C. 156.

At page 38, quoting Dillon on Municipal Corporations (section 166, note):

“ \* \* \* incompatibility in office exists, where the nature and duty of the two offices are such as to render it improper, from considerations of public policy, for one incumbent to retain both.”

Numerous illustrations given by the author from American cases show hopeless inconsistency, so that apparently every case must be judged largely on its own merits. The entire discussion by this author seems to limit the question to strictly public offices and there is no suggestion in any case of alleged incompatibility between a public office or employment, and a private employment, even though the latter had some elements of public service.

In the case of *People v. Green*, 5 Daily (N. Y.) 254, the question was whether the office of member of the assembly was incompatible with that of deputy clerk of the court of special sessions. The appellate court said:

“Nor is the office of a member of assembly in the legal sense of the word, incompatible with that of deputy clerk of the court \* \* \*. It may be granted that it was physically impossible for the relator to be present in his seat in the assembly chamber, in the performance of his duty as a member of that body, and at the same time at his desk in the court, doing his duty as deputy clerk thereof. But it is clearly shown in those opinions, that physical impossibility is not the incompatibility of the common law, \* \* \*. Incompatibility between two offices is an inconsistency between the functions of the two; as judge and clerk of the same court; officer who presents his personal account subject to audit, and the officer whose duty it is to audit it. \* \* \* Where one office is not subordinate to the other, nor the relations of the one to the other such as are inconsistent and repugnant, there is not that incompatibility from which the law declares that the acceptance of the one is the vacation of the other. The force of the word in its application to this matter, is that, from the nature and relations to each other of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one, toward the incumbent of the other. \* \* \* The offices must subordinate, one the other, and they must, *per se*, have the right to interfere, one with the other, before they are incompatible at common law.”

In the case of *State ex rel vs. Gebert*, 12 C.C. (N.S.) 274, it was held:

“The offices of mayor and of member of congress are not incompatible and may be held by one person.”

This was a case decided by the Circuit Court of Franklin County, and the court said in the course of the opinion:

“Offices are considered 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.”

In the case of *State ex rel. vs. Gibbons*, 17 Abs. 341, the court of appeals held:

“\* \* \* 6. One person may not hold two positions of public employment when the duties of one may be so administered

that favoritism and preference may be accorded the other, and result in the accomplishment of purposes and duties of the second position which otherwise could not be affected.

7. The offices of city commissioner and deputy county auditor are incompatible, and under the general law applicable in the city of Middletown cannot be held by one man."

This case involved the office of a member of the city commission established as the legislative body under the charter of the city of Middletown. The court said at page 344 of the opinion:

"To countenance such practice, would but make it possible for one branch of government or one individual to control the official act and discretion of another independent branch of the same government or of interlocking governments which are constructed so as to operate in conjunction with each other. If the possible result of the holding of two positions of public trust leads to such a situation, then it is the rule, both ancient and modern, that the offices are incompatible and are contrary to the public policy of the state."

The incompatibility which the court found in this case grew out of the fact that the deputy county auditor, having the power under some conditions to perform the duties of the auditor, might while sitting as a member of the county budget commission be called upon to pass upon the requisitions of the municipal corporation and might therefore favor the municipality.

Your fifth, sixth and seventh questions relate to the incompatibility of the positions held by (1) the county budget commissioner, at the same time serving as a trustee of the Real Property Inventory, (2) the director of the Real Property Inventory serving as executive director of the Cuyahoga County Record Bureau and Clearing House, and (3) the director of the Cleveland Metropolitan Housing Authority serving as trustee of the Real Property Inventory.

The general discussion set out above as to incompatibility of offices and employments has more or less a bearing on these questions.

5. Is it legal for the county budget commissioner to serve as a trustee of the Real Property Inventory of Metropolitan Cleveland? I am informed that the so-called "county budget commissioner" is merely an assistant clerk of the board of county commissioners of Cuyahoga County,

who assists that board in budget matters. His duties are in no way prescribed by law. He is merely a clerical assistant to the clerk of the board and subject to such orders as may come from the clerk or from the commissioners. His appointment is authorized by Section 2409, General Code, which reads as follows:

“If such board finds it necessary for the clerk to devote his entire time to the discharge of the duties of such position, it may appoint a clerk in place of the county auditor and such necessary assistants to such clerk as the board deems necessary. Such clerk shall perform the duties required by law and by the board.”

My predecessor in an opinion rendered December 22, 1938 (Opinions, Attorney General, 1938, p. 2320), held that said budget commissioner or assistant clerk could not at the same time serve as member of the child welfare board, as the duties of the two positions rendered them incompatible. However, on January 7, 1939 (Opinions, Attorney General, 1938, p. 2484), he reversed his former opinion holding:

“An assistant clerk of the Board of County Commissioners may at the same time serve as member of the County Child Welfare Board without violating the Common Law rule as to incompatibility of offices. (Opinion No. 3440 issued December 22, 1938, overruled in part.)”

In my opinion the second opinion was sound. And if such county budget commissioner or clerk could legally hold the two public positions there under consideration, it certainly follows that his membership as a trustee of the Real Property Inventory of Metropolitan Cleveland raises no serious question of incompatibility. The application of the principles hereinbefore discussed warrant no such conclusion. I therefore hold that the so-called county budget commissioner can legally serve as a trustee of the Real Property Inventory of Metropolitan Cleveland.

6. Is it legal for the director of the Real Property Inventory of Metropolitan Cleveland to serve as executive director of Cuyahoga County Record Bureau and Clearing House, drawing an annual salary of \$3,900.00 from the latter which is paid from relief funds?

Section 3391-1, General Code, which is a part of the chapter relating to the administration of poor relief, provides that the territory in each county outside the corporate limits of cities shall be a local relief

area known as the "county local relief area," the local relief authority of which shall be the board of county commissioners.

Section 3391-2, General Code, prescribes the powers and duties of such local relief authority and rules for granting relief. Subsection 7 provides as follows:

"There shall be created in each county a central clearing office for the purpose of keeping records of all persons in the county receiving public assistance after the effective date of this act. Such records shall set forth the kind of public assistance granted to each person as well as any other information required by the state director; provided, however, that the state director may dispense with the establishment of a central clearing office in a county wherein records, in his judgment sufficient for the purpose, are maintained by either a public or a private agency. The board of county commissioners shall have authority to appoint the necessary assistants in the central clearing office. Such assistants shall be exempt from the provisions of sections 486-1 to 486-30, both inclusive, of the General Code."

There is no such officer or employe mentioned in the statute as "executive director" of the County Record Bureau and Clearing House, but the statute does provide that the board of county commissioners shall have the authority to appoint the necessary assistants for the central clearing office. It is assumed, therefore, that by whatever name the employe in question is called, and regardless of the extent of the duties imposed upon him by the board of county commissioners, he is merely an "assistant." The statute give him no specific power or authority and no discretion is vested in him so far as the law is concerned.

It is also to be noted from the information submitted by you that he is at the same time secretary of the Cleveland Health Council and that the Real Property Inventory, of which he is the director, publishes and sells a pamphlet, the information therein contained being apparently compiled from the relief records of the Cuyahoga County Record Bureau and Clearing House. Whatever may be said as to the wisdom and propriety of employing the director of the Real Property Inventory in these two public capacities at very substantial salaries, I cannot see that it has any bearing on the legal question involved, and I am unable to find that his employment, as so-called executive director of the Cuyahoga Record Bureau and Clearing House, is incompatible with his position as director of the Real Property Inventory.

7. Is it legal for the director of the Cleveland Metropolitan Housing Authority to serve as a trustee of the Real Property Inventory of Metropolitan Cleveland?

The Metropolitan Housing Authority is a public corporation appointed pursuant to the provisions of Section 1078-30, and consists of five members. Section 1078-31 provides as follows:

“Said housing authority shall be organized by electing one of its members chairman, and another vice-chairman, and shall have power to employ counsel, a director who shall be ex-officio secretary, and such other officers and employees as may be desired, and shall fix the term of office, qualifications and compensation of each.”

Section 1078-32, General Code, provides as follows:

“No member or employee of said authority shall have any interest, directly or indirectly, in any contract for property, materials or services to be acquired by said authority.”

An examination of the remaining sections of the statute relating to the Metropolitan Housing Authority discloses the numerous and extensive duties and powers of the authority, but nowhere, so far as I find, is any authority or discretion conferred upon the so-called director and ex-officio secretary. He is merely the mouthpiece of the board. As such it may be of great assistance to him and of value to his board to be in direct touch with the researches of the Real Property Inventory, but I am unable to see that he has any such interest, direct or indirect, in the services that the inventory might render to his board, as to bring him within the prohibition of Section 1078-32, General Code.

Sections 12910, 12911 and 12912, General Code, are aimed at the prevention of the practice of governmental officials or, in some cases, employes, having an interest in contracts with the public authorities, but neither of these sections seems to reach the case we are considering.

Section 12910, General Code, provides as follows:

“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."

Section 12911 is substantially the same in forbidding any such officer or employe to be interested in a contract for the purchase of property, supplies or fire insurance for the use of a public body with which he is *not* connected where the amount of such contract exceeds the sum of fifty dollars, unless such contract is let on bids duly advertised as provided by law.

Section 12912 is limited to officers of a municipal corporation or member of the council thereof, or trustee of a township.

Construing these statutes, the Supreme Court held in the case of *Doll v. State*, 45 O. S. 445:

"A person duly elected to, and holding the office of member of the board of public works of the city of Cincinnati, is 'an officer elected to an office of trust or profit in this state,' within the meaning of section 6969 of the Revised Statutes, which makes it a crime for such officer to become 'directly or indirectly interested in any contract for the purchase of any property or fire insurance, for the use of the state, county, township, city, town or village,' and is amenable to the provisions of that section, if, while acting as such officer, he becomes interested in a contract for the purchase of property for the use of the city.

To become so interested in the contract, it is not necessary that he make profits on the same. But it is sufficient, if while acting as such officer, he sell the property to the city for its use, or is personally interested in the proceeds of the contract of sale, and received the same or part thereof, or has some pecuniary interest or share in the contract."

The court in its opinion at page 451 approved the following language used in the charge to the jury:

" \* \* \* 'What is it to become directly or indirectly interested in a contract, in the sense contemplated by the statute, upon which this indictment is founded? To be interested in a contract, is to have and to hold some pecuniary interest in it; to have and to hold a share, portion, or part of it or in it.' "

I am therefore of the opinion that the mere fact that the director of the Metropolitan Housing Authority is a trustee of the Real Property Inventory which, as heretofore stated, is a non-profit corporation, does not result in incompatibility, as defined by the authorities.



Answering your several inquiries specifically, it is my opinion:

1. It is legal for the city of Cleveland, County of Cuyahoga and the Cleveland Metropolitan Housing Authority to contribute public funds to the Real Property Inventory of Metropolitan Cleveland for the purpose, as stated in the statute, of participating in the benefit to be obtained by the Real Property Inventory.

2. It is legal under Section 5626-3, General Code, for the Commissioners of Cuyahoga County, the city of Cleveland and the Cleveland Metropolitan Housing Authority, to make an annual contribution for the support of the Real Property Inventory of Metropolitan Cleveland.

3. The funds contributed may be expended by the Real Property Inventory of Metropolitan Cleveland as they deem proper so long as they are expended for the purposes indicated in Section 5626-3, General Code, for carrying forward a real property inventory in said county.

4. The books and accounts of the Real Property Inventory of Metropolitan Cleveland are subject to examination by the Bureau of Inspection and Supervision of Public Offices.

5. It is legal for the so-called county budget commissioner of Cuyahoga County, who is in fact an assistant clerk of the board of county commissioners of the county, to serve as a trustee of the Real Property Inventory of Metropolitan Cleveland.

6. It is legal for the director of the Real Property Inventory of Metropolitan Cleveland to serve as executive director of the Cuyahoga County Record Bureau and Clearing House.

7. It is legal for the director of the Cleveland Metropolitan Housing Authority to serve as a trustee of the Real Property Inventory of Metropolitan Cleveland.

Respectfully,

THOMAS J. HERBERT  
Attorney General.