local relief funds. In Section 3391-6, General Code, I find the following language:

> "All expenses of administering poor relief by local relief areas shall be paid out of poor relief funds. The expense of maintaining the central clearing office and the certification office for federal relief agencies in each county containing one or more cities which have not by contract surrendered their power to levy taxes for poor relief, or part or parts thereof, shall be paid as incurred out of the county treasury. The aggregate amount of such expense shall be apportioned and charged back quarterly by the county commissioners among the local relief areas, or part or parts thereof, in the county, respectively, in proportion to the total number of relief persons in each during the next preceding calendar month."

In view of the language of such section, I am of the opinion that the salary of the certifying agent is to be paid from poor relief funds.

Specifically answering your inquiries, it is my opinion that:

1. The provisions of Section 3391-7, General Code, permit the employment of a local relief director who is related by consanguinity or affinity to the county auditor or county commissioners more remotely than second cousin.
2. The provisions of House Bill No. 675 (Sections 3391 to 3391-13, inclusive, General Code) do not prohibit the employment of a certifying agent to certify persons eligible for employment by federal relief agencies, who may be related to the county auditor or county commissioners, unless he be a local relief director.
3. Under authority of Section 3391-6, General Code, a certifying agent, appointed under authority of Section 3391-8, General Code, may be paid from poor relief funds.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

1011.

CONTRACT—MAYOR OR COUNCILMAN IN CITY—MAY NOT CONTRACT WITH BOARD OF EDUCATION FOR COAL, USE, SCHOOL BUILDINGS, IN AMOUNT EXCEEDING $50.00—BIDS—ADVERTISEMENT.

SYLLABUS:

A mayor or a councilman in a city may not lawfully enter into a contract with a board of education for the furnishing of coal for use in the

school buildings of its district in an amount exceeding $50.00, and letting the contract to the lowest and best bidder after advertisement therefor and the receipt of bids from several dealers in coal does not change the situation.

COLUMBUS, OHIO, August 9, 1939.

HON. LEO J. SCANLON, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR: This is to acknowledge your request for my opinion as to whether or not a mayor or a councilman in a city may lawfully enter into a contract in an amount exceeding $50.00 for the sale of coal to the board of education of the city school district when the board of education advertises for bids for the coal and later a contract for the purchase of the coal is let upon competitive bidding to the lowest and best or lowest responsible bidder; the mayor or councilman, as the case might be, having been found by the board of education to be the lowest and best or lowest responsible bidder.

Section 12911, General Code, which is pertinent to your inquiry, 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 not connected, and the amount of such contract exceeds the sum of fifty dollars, unless such contract is let on bids duly advertised as provided by law, shall be imprisoned in the penitentiary not less than one year nor more than ten years."

You state in your communication that in a certain city school district it has been the practice for a number of years for the board of education to advertise for bids for coal and to purchase the coal needed for the schools after due advertisement therefor and the letting of a contract therefor to the lowest and best bidder. The mayor and one of the city councilmen, both of whom are in the coal business submit bids and in one instance at least, a contract was entered into with the mayor for the purchase of coal in pursuance of his bid, the bid having been found by the school board to be the lowest and best bid. The coal was delivered and paid for in pursuance of the said contract.

Following this action, the Bureau of Inspection and Supervision of Public Offices made a finding against the mayor and the board of education on account of the action taken. The reason given for the finding was that it was a violation of Section 12911, General Code. In support thereof, reference was made by the Bureau to two former opinions of this office;

Opinions of the Attorney General for 1933, page 1891, and for 1934, page 258. You further state that there has existed locally considerable difference of opinion as to the legality of this finding and thereby the soundness of the Attorney General's opinions referred to is questioned.

In so far as the 1933 opinion referred to above is material in the consideration of this question, it is held therein:

> "There is no provision of law requiring boards of education to advertise for competitive bids for the purchase of coal."

The other opinion referred to appears in the published Opinions of the Attorney General for 1934, page 258. In this opinion it is held as stated in the third branch of the syllabus:

> "Whether or not it is a violation of Section 12911, General Code, for a member of the State Senate or House of Representatives to be interested in a contract for the purchase of supplies for the county or any one of the counties from which he is elected, when the amount of the supplies exceeds $50.00, depends upon whether the statutes require the award of the contract for the particular kind of 'supply' after advertisement and competitive bidding and such advertisement and competitive bidding is had pursuant thereto."

At the conclusion of the opinion, the following appears with respect to the application of the provisions of Section 12911, General Code:

> "If there is no provision in the law requiring advertisement and competitive bidding for the particular 'supplies', then it would be illegal for a senator or representative to be interested in a contract for the purchase of 'supplies' over $50.00 for the use of the county from which he was elected, even if advertisement and competitive bidding was had before the contract was let."

In connection with the question here involved, reference might also be made to an opinion of this office appearing in the published Opinions of the Attorney General for 1919, page 629, where it is held:

> "Under Section 12911, an officer of trust is prohibited from being interested in any contract for the purchase of property by a county or other political subdivision or a public institution with which he is not connected, if the amount of such contract exceeds the sum of $50.00 unless the contract is let on bids advertised according to law requiring such contracts to be advertised."

In the course of the 1919 opinion the then Attorney General said:

> "It must be noted that the particular thing which it is sought to prevent in this section is the interest in such contracts on the part of officers of trust and the first part of the section is an outright prohibition of such interest, the only exception to which prohibition is found in the latter part of the section. Under this exception if such contract be advertised as provided by law, the officer may legally be interested in such contract. In all others, as for example where there is no provision for so advertising, he is prohibited from having any interest.
>
> Consistent with the above conclusion, the question involved in your concrete case may be answered in the negative with the further observation that no provision in law for competitive bidding, after advertisement in such case, being made, the further fact that it was advertised or not would not affect the question, as under the laws applicable to such sales and on the facts stated by you, Section 12911 prohibits such official from being interested in such purchase, even if an unauthorized or unprovided for advertisement is made."

The Opinions of the Attorney General are rendered by him as the legal adviser of state officers, boards and commissions, primarily for their guidance. These opinions are not binding on courts but are frequently cited and generally accorded due respect. As stated in Ruling Case Law, Vol. 25, p. 1047:

> "The opinions of the Attorney General of the United States or of a state are always valuable when passing upon questions of statutes and although not binding, are always considered and frequently resorted to."

See State ex rel. Alexander v. Culbertson, 6 O. N. P. (N. S.), 311, affirmed without opinion by the Circuit Court; State ex rel. Shively v. Lewis, 15 O. N. P. (N. S.), 582; Whiteley v. Arbogast, 6 O. N. P. (N. S.), 313, affirmed by the Supreme Court without opinion, 79 O. S., 429. In the case last mentioned, it is stated by Judge Kunkle of the Common Pleas Court of Clark County:

> "An opinion of the Attorney General of our state should be respected, but as it neither binds nor protects the court which follows it, the same is entitled to only such consideration as the reasons given for the opinion warrant."

I have reviewed the aforementioned opinions of the Attorneys General with considerable care, and I have no hesitancy in subscribing to the sound-

ness of the conclusions therein reached and the reasons given therefor in so far as they relate to the question here under consideration, and the proper construction and applications of the provisions of Section 12911, General Code.

There is no doubt whatever as to the law with respect to boards of education not being required by law to advertise for bids for the purchase of coal. The only provision of law for advertisement for bids by boards of education before entering into contracts is that contained in Section 7623, General Code, and the purchase of coal is not one of the things for which public bidding is required to validate a contract for such purpose under the provisions of that section. This fact has oftentimes been alluded to by this office both formally and informally, and the Circuit Court, in the case of Gosline v. Toledo Board of Education, et al., 11 C. C. (N. S.), 195, specifically held that it was unnecessary for a board of education to advertise for bids for the purchase of coal for schools. This case was referred to with approval and followed in the cases of State ex rel. Bartholomew v. Witt, Treas., 30 App., 414, 418, and Fahl v. Board of Education, 23 N. P. (N. S.), 309-412.

The terms of Section 12911, General Code, are not ambiguous. Its provisions are so clear as I view them as to leave little room for construction or interpretation. The first part of the statute contains a prohibition in clear, plain, forthright language, on the entering into of certain contracts by the parties mentioned therein; the latter part of the statute makes an exception thereto. In accordance with the well settled principle of law that exceptions in a statute should be strictly construed, it becomes necessary that a proposed contract be strictly within the exception in order that it may not be within the prohibition. If the exception read:

> "Unless such contract is let on bids,"

there would be no question but that contracting parties might easily avoid the prohibition by advertising and letting the contract on bids whether the law made any provision in the particular case for taking bids or not. The exception goes further, however, and reads:

> "Unless such contract is let on bids *duly advertised as provided by law.*" (Italics the writer's.)

Surely, something is meant by the words italicized above. It seems to me only one thing can be meant. Certainly, if no provision is made to advertise for bids in the letting of a contract as in the case of contracting for the purchase of coal by a board of education, it would be impossible to let the contract *on bids duly advertised according to law.* Certainly contracting parties can not bring such a contract within the exception as set

out in the statute by letting the contract on bids advertised *not* according to law.

I am of the opinion that a mayor or a councilman in a city may not lawfully enter into a contract with a board of education for the furnishing of coal for use in the school buildings of its district in an amount exceeding $50.00, and letting the contract to the lowest and best bidder after advertisement therefor, and the receipt of bids from several dealers in coal does not change the situation.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

1012.

PUBLIC INSTITUTIONAL BUILDING AUTHORITY—SALARY AND COMPENSATION OF OFFICERS AND EMPLOYES—STATE EX REL. BUILDING AUTHORITY V. GRIFFITH, 135 O. S. 604, DID NOT HOLD ACT UNCONSTITUTIONAL IN ENTIRETY—SECTIONS 2332 TO 2332-13, G. C.

SYLLABUS:

1. The Supreme Court of Ohio did not, in the case of State ex rel. Building Authority v. Griffith, 135 O. S., 604 (1939), hold the Public Institutional Building Act (Sections 2332-1 to 2332-13, inclusive, of the General Code) unconstitutional in its entirety.

2. Such decision of the Supreme Court does not prevent payment of the salary and compensation of the officers and employes of the Public Institutional Building Authority employed under Sections 2332-2 and 2332-3 of the General Code.

COLUMBUS, OHIO, August 10, 1939.

HON. H. D. DEFENBACHER, *Acting Director, Department of Finance, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your request of July 27, 1939, for my opinion, as follows:

> "The Public Institutional Building Authority was created under Sections 2332-1 to 2332-13 of the General Code of Ohio, effective July 11, 1938. Said sections were amended and supplemented by Senate Bill 313, effective May 28, 1939.
>
> The Public Institutional Building Authority was created for the purpose of providing for construction, equipment and improvement of buildings for the use of benevolent, penal and reformatory state institutions.