

"All receipts from student fees and deposits of the Ohio State University and of each state normal school and university receiving state aid, required by law to be paid into the state treasury, shall be credited therein to special funds to be appropriately designated by the names of the respective institutions from which they are received. Such funds shall be applied to the uses and purposes of such respective institutions and shall be used for no other purpose."

The foregoing section in clear and unambiguous language requires that all students fees received by the Ohio State University shall be credited to a special fund to be applied to the uses and purposes of the University. It is apparent that such fees may not under this section be paid into the general fund of the state.

In my judgment, it is equally apparent that fees charged by your board of trustees for extra transcripts of a student's scholastic record are in the same category as tuition fees, duplicate diploma fees, etc., and properly come under the heading of student fees. It is my opinion, therefore, that the fees in question should be payable into the state treasury to the credit of the student fee fund, as required by Section 7986-1, General Code.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

3052.

ARCHITECT—MEMBER PUBLIC INSTITUTIONAL BUILDING AUTHORITY BOARD—MAY BE EMPLOYED AS ARCHITECT IN DEPARTMENT OF ADJUTANT GENERAL OR DEPARTMENT OF PUBLIC WORKS—MAY CONTINUE IN PRIVATE PRACTICE—PROVISO AS TO PUBLIC CONTRACTS OR AWARDS.

*SYLLABUS:*

(1) *An architect, who is a member of the Public Institutional Building Authority Board, may at the same time be employed as an architect in the Department of the Adjutant General or in the Department of Public Works, as his services in the latter departments are not subordinate to or incompatible with his duties as a Board member.*

(2) *An architect may render services to the Adjutant General's department and may also be employed for architectural services in the*

*Department of Public Works, as the services of these two departments involve no incompatibility.*

(3) *An architect who is a member of the Public Institutional Building Authority Board may in the absence of statutory provisions to the contrary, continue in private practice so long as no contracts or awards of buildings in any manner under the jurisdiction of the Public Institutional Building Authority Board are effected.*

COLUMBUS, OHIO, October 6, 1938.

HON. JOSEPH T. FERGUSON, *Auditor of State, Columbus, Ohio.*

DEAR SIR: This will acknowledge the receipt of your recent communication. Your letter reads as follows:

“This office is in receipt of certain vouchers submitted by Dan A. Carmichael, a member of the Public Institutional Authority Board, in regard to his salary as a member of said Board from July 20, 1938, to date.

“This office is further in receipt of a certain voucher No. 137169 in favor of Daniel Carmichael for architectural services rendered the Adjutant General's Department for the period from August 1, to August 15, 1938. This voucher carries Mr. Carmichael on the payroll as an employee of the Department.

“This office is further in receipt of certain claim voucher No. 1755 certified by Department of Public Welfare to D. A. Carmichael for \$371.73, dated August 16, 1938. The voucher is in payment of services rendered by D. A. Carmichael, Architect on a certain contract dated June 20, 1937, for architectural services performed for Ohio State Reformatory, Mansfield, Ohio. It appears that the above item represents a payment based on the architect's fee of 5½% of contract price. It is our information that while the architect has performed a substantial portion of his contract to date, that at the present date the contract has not been entirely completed, but that the above architect is presently and will continue furnishing services and receiving payments on the said contract until the same has been entirely fulfilled.

“In view of the above circumstances, we desire your opinion in regard to the following questions:

“Is it unlawful for Mr. Carmichael to draw two salaries from the state for services performed during the same period as a member of the above noted board, and on the payroll of the

Adjutant General's office in regard to services performed in the construction of a certain armory, or armories?

"Is it lawful and proper for Mr. Carmichael to perform services and/or complete his contract in regard to the Ohio State Reformatory while acting as a member of the Public Institutional Building Authority?

"Does Mr. Carmichael's position as a member of the Public Institutional Building Authority require that he devote his full time to the office?

"I would appreciate any information that you might give me as to Mr. Carmichael's legal status in regard to his present or future contracts as an architect with any state department, board, or institution, or his employment by any department of the state, in addition, or in view of his being a member of the Public Institutional Building Authority."

As there is no express statutory provisions in the Ohio General Code prohibiting one person from rendering the services in question to the department in question, the issues presented must be examined in the light of general rules relating to incompatibility of offices.

Section 5238, General Code, charges the Adjutant General with certain responsibilities as to state armories.

"The adjutant general shall be the director of state armories. He shall provide grounds, armories and other buildings for the purpose of drill and for the safe keeping of arms, clothing, equipment and other military property issued to the several organizations of the national guard, and may purchase or build suitable buildings for such purposes when, in his judgment, it is for the best interest of the management, care and maintenance of such grounds, armories and buildings and may adopt and prescribe such rules and regulations for the management, government and guidance of the organizations occupying them as may be necessary and desirable."

Under this section and Section 2314, General Code, the Adjutant General may retain a full time architect as a member of his staff and he may also employ a private architect (see 1930 O.Ä.G., Vol I, No. 1507). From the facts given in your letter, I take it that Mr. C. serves the Adjutant General in one of these two capacities.

In addition to this he is also under contract with the state for architectural service to the Ohio State Reformatory. This brings Mr. C. under supervision of the Department of Public Works which is by

virtue of Section 154-40, General Code, given power to supervise and erect public buildings for state departments and institutions. Section 154-40, General Code, (not quoted herein because of its length) contemplates the requiring of architectural services by this department.

We come now to the matter of Mr. C.'s membership on the Public Institutional Building Authority Board (referred to hereinafter as the Authority Board). Such membership does, I believe, add another angle to the situation before us.

Sections 2332-1 to 2332-13, General Code, effective July 11, 1938, define the jurisdiction, obligation and authority of that Board.

Section 2332-1 defines the terms of the Act as follows:

"Whenever used in this act, and unless the context clearly indicate otherwise:

(a) "'Authority' means the public institutional building authority, hereby created.

(b) "'Board' means the governing body of the authority.

\* \* \*

(g) "'State institution' means and includes all institutions under the management and control of a state department as herein defined.

(h) "'State department' means and includes a regularly constituted division of the state government created by Section 154-3 of the General Code, and the adjutant general, and institutions under boards of trustees."

Section 2332-2 provides for the purpose and organization of the Board as follows:

"The public institutional building authority is hereby created for the purpose of providing for the construction, equipment and improvement of buildings for the use of benevolent, penal, and reformatory state institutions."

Section 2332-4, General Code, reads in part as follows:

"The authority is created for the purpose of constructing and improving buildings and other facilities for and in connection with any state institution as herein defined, in co-operation with any federal agency; or otherwise. In furtherance of such purpose and duties, the authority shall have the following express powers, in addition to the general powers hereinabove mentioned, to-wit:

"(1) To acquire and hold, under and as against the State of Ohio, the interest in lands of the state hereinafter defined.

“(2) To make contracts of every name and nature and to execute all instruments necessary and convenient for the accomplishment of the foregoing purposes and the carrying on of its business.

“(3) To permit the use of any building or facility constructed or improved by the authority, by the state department for the use of which the same has been constructed or improved, while the authority shall retain title thereto as hereinafter provided; and to fix, alter, and charge rentals, rates and other charges for such use, in such amounts or rates as it may determine to be necessary for the purpose of providing for the payment of the expense of the authority, the construction, improvement, repair and maintenance of such building or facility, the payment of the principal of and interest on the obligation of the authority, allocable to such building or improvement, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations.” \* \* \*

Section 2332-11 gives department status to the Authority as follows:

“The Authority shall be deemed to be a state department within the meaning of subparagraphs (1), (6), (8) and (10) of Section 154-40 of the General Code; *and buildings and facilities constructed and improved by it, so far as applicable shall be conformed to any comprehensive plans which the department of public works may have prepared and suggested*, pursuant to sub-paragraph (4) of said section. Excepting as otherwise provided in said enumerated paragraphs of Section 154-40 of the General Code, and in this act, any construction or improvement work of the authority shall be governed by the provisions of Sections 2314, 2314-1, 2314-2, and 2315 to 2365, both inclusive, 2365-1 to 2365-4, both inclusive, 2366, 2366-1 and 2366-2 of the General Code. The authority shall be deemed a ‘public authority’ within the meaning of Section 8324 of the General Code.”

You will note that the Authority Board under Section 2332-2 is required only to provide for the construction and improvement of buildings for the use of state benevolent, penal, and reformatory institutions. In like manner the powers enumerated in Section 2332-4, *supra*, are given only in connection with the Authority Board's responsibility to build and construct facilities for and in connection with state institutions. From this it can be seen that the Authority Board is in no way given authority to supervise, control or inspect other state depart-

ments. It has by virtue of its duties no control over the services of employes of other departments.

This intent of the legislature is clearly brought out in Section 2332-11, supra, which confers departmental status on the Authority. The portions underlined in that section, supra, clearly show that between the Authority and the other state departments utmost cooperation is expected but not supervision. Such being the case, I am unable to see how the Authority Board is placed in a position to supervise, approve or pass upon the plans and projects of other state departments. In its own construction and remodeling work it has authority to provide for its own employes and is not compelled to use those of other departments.

Such being the case, I can see no way in which Mr. C's position as a member of the Authority Board is a check upon, subordinate to or in any way incompatible with his services to the Department of Public Works or the Adjutant General's department.

Only in case the Authority Board should attempt to use for its work the architectural services of Mr. C. as a private architect specially retained or arranged by the Authority would an incompatibility arise or be created.

Section 2332-2, supra, does not provide that members of the Authority Board should give full time, nor does it state that they may not engage in any other occupation. The general rule (46 Corpus Juris 1037, Section 307) in such matters is that officers need not in the absence of a provision of law to that effect, devote all their time to the performing of their official duties, but may engage in other occupations. Such being the case, it would seem that a Board member may engage in other occupations so long as it is physically possible, and so long as the duties of other occupations do not interfere with the duties belonging to a Board member.

No one can escape the practical effect of the facts or the law discussed above. Certainly the spectacle of one person serving the state in three capacities for pay gives rise to questions of propriety and impropriety. However, the office of the Attorney General can not in carrying out its legal functions take unto itself authority to create standards for public policy as a matter of law. Such a prerogative belongs solely to the legislature and in the absence of statutory prohibitions which operate as safeguards against unhealthy but legal practices this office is powerless to prohibit a situation such as the one before us.

In specific answer to your questions, it is my opinion that:

(1) An architect, who is a member of the Public Institutional Building Authority Board, may at the same time be employed as an architect in the Department of the Adjutant General or in the Depart-

ment of Public Works, as his services in the latter departments are not subordinate to or incompatible with his duties as a Board member.

(2) An architect may render services to the Adjutant General's department and may also be employed for architectural services in the Department of Public Works, as the services of these two departments involve no incompatibility.

(3) An architect who is a member of the Public Institutional Building Authority Board may in the absence of statutory provisions to the contrary, continue in private practice so long as no contracts or awards of buildings in any manner under the jurisdiction of the Public Institutional Building Authority Board are effected.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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3053.

APPROVAL—CONTRACT AND BOND, DEPARTMENT OF PUBLIC WELFARE WITH LEIMANN CONSTRUCTION COMPANY, CINCINNATI, CONSTRUCTION AND COMPLETION OF RETAINING WALL FOR RAILROAD SIDING, LONGVIEW STATE HOSPITAL, CINCINNATI, OHIO, AT A COST OF \$3,888.00.

COLUMBUS, OHIO, October 7, 1938.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval a contract by and between Leimann Construction Company, Cincinnati, Ohio, and the State of Ohio, acting by the Department of Public Works, for the Department of Public Welfare, for the construction and completion of Contract for Retaining Wall for a project known as Retaining Wall for Railroad Siding, Longview State Hospital, Cincinnati, Ohio, as set forth in Item 1, of the Form of Proposal dated September 19, 1938, which contract calls for a total expenditure of three thousand eight hundred and eighty-eight dollars (\$3,888.00).

You also have submitted the following papers and documents in this connection: Encumbrance record No. 42, dated September 23, 1938, estimate of cost, division of contract, notice to bidders, proof of publication, workmen's compensation certificate showing the contractor having complied with the laws of Ohio relating to compensation, the form of proposal containing the contract bond signed by the Royal