

4402.

MEMBERSHIP—BOARD OF ARCHITECT EXAMINERS—MAY RENDER ARCHITECTURAL SERVICES IN CONNECTION WITH STATE OWNED PROJECTS.

SYLLABUS:

Membership in the State Board of Examiners of Architects does not in any way affect the eligibility of each or any of such members for obtaining architectural commissions for professional services to be rendered in connection with the state owned projects.

COLUMBUS, OHIO, June 8, 1932.

HON. R. C. KEMPTON, *Secretary, State Board of Examiners of Architects, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication in which you submit the following question for my opinion:

“Does membership in the State Board of Examiners of Architects in any way affect the eligibility of each or any such member for obtaining architectural commissions for professional services to be rendered in connection with the state-owned projects?”

The State Board of Examiners of Architects was provided for by House Bill No. 282, of the 89th General Assembly (114 O. L., 521 to 530), which act was codified by the Attorney General as Sections 1334 to 1334-21, of the General Code.

A careful examination of such bill discloses that there is no provision therein which would require a member of the board to devote his entire time to the duties of his office nor is there any provision inhibiting a member from being employed as architect on state projects and receiving a commission for such services.

Undoubtedly, it was the intention of the legislature in enacting House Bill No. 282, to provide that membership in the State Board of Examiners of Architects would constitute the member thereof an officer of the state. This clearly appears from the italicized language of Section 1334 of the General Code, which reads as follows:

“That within sixty days after this act shall go into effect, the governor shall appoint a *state* board of examiners of architects, which board shall be composed of five architects who have been in active practice in the state of Ohio for not less than ten years previous to their appointment.

In making the first appointments under this act the governor shall appoint one of the said members to hold *office* for a period of one year, one to hold *office* for two years, one for three years, one for four years, and one for five years. The original certificates of qualification for the practice of architecture in the state of Ohio as hereinafter provided for shall be signed and issued by the governor to the first five appointees to the said board. At the expiration of the term of *office* of each of the

said members the governor shall appoint a successor who shall serve for five years. In case a successor is not appointed at the expiration of the term of any member such member shall hold *office* until his successor has been duly appointed and has qualified. The governor may, upon bona fide complaint and for good cause shown, after ten days notice to the member or members against whom charges may be filed, and after opportunity for hearing, remove any member of said board for inefficiency, neglect of duty, or malfeasance in *office*.

Any vacancy occurring in the membership of the board in any manner other than by expiration of term shall be filled by the governor by an appointment for the unexpired term.

The members of said board shall, upon entering upon the discharge of their duties, subscribe to and file with the secretary of state the constitutional oath of *office*." (Italics, the writer's.)

Thus, it remains to be determined whether or not there are any existing statutory provisions in the General Code which would prevent a state officer from rendering personal services for the state, outside of the duties of his office.

A perusal of the General Code, discloses no such inhibition unless Sections 12910 and 12911, General Code, could be said to be applicable. Said sections provide as follows:

"Sec. 12910. 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 of a public institution with which he is connected, shall be imprisoned in the penitentiary not less than one year nor more than ten years."

"Sec. 12911. 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."

It is not believed that the above quoted statutory provisions can reasonably be construed to have application to your set of facts. Hence, in specific answer to your question, I am of the opinion that membership in the State Board of Examiners of Architects does not in any way affect the eligibility of each or any of such members for obtaining architectural commissions for professional services to be rendered in connection with the state owned projects.

Respectfully,

GILBERT BETTMAN,
Attorney General.