

taining over three hundred thousand population, who publishes the list of delinquent lands, lots, or parts of lots omitted from the delinquent land list, in accordance with section 5718-2, General Code, is entitled to receive the rates fixed by section 6251, General Code, for publishing such list.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

4171.

TOWNSHIP—CLERK MAY NOT SELL GASOLINE TO TOWNSHIP TRUSTEES
 WHEN.

SYLLABUS:

A township clerk violates section 12910, General Code, if he sells gasoline to the township trustees of the township with which he is connected, for the use of such township.

COLUMBUS, OHIO, April 20, 1935.

HON. KENNETH KREIDER, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—This acknowledges receipt of a communication over the signature of your assistant, George J. McDonald, as follows:

“This office has been asked the following question. May one who is clerk of the Township Trustees sell gasoline to such Board from time to time in small quantities, where such purchases do not exceed \$50.00 a month?

In this particular case the Clerk of the Board of Township Trustees operates and owns a small store in the same township, which store is the only place in the township gasoline may be purchased. Occasionally small purchases are made for which the Board of Township Trustees is billed at the end of the month. The question has been raised as to the legality of such purchases.

We have examined the statutes 12910, 12911, 12912, etc., of the General Code as well as several previous opinions of the Attorney General's office in this connection, but we are unable to come to a definite conclusion. Your information on this subject will be appreciated.”

Sections 12910, 12911 and 12912, General Code, mentioned in your communication, are penal statutes and therefore, under the well recognized principle of statutory construction, must be strictly construed.

An examination of sections 12911 and 12912, General Code, clearly shows such sections can have no application to the facts you present. Section 12911 has application only where an officer or employe of such officer is interested in a contract for the purchase of property, supplies or fire insurance for the use of a political subdivision with which he is *not* connected, which is not the case here, and section 12912 applies to municipal officers, including councilmen and township trustees only, not including a township clerk.

Section 12910, General Code, however, is applicable, reading 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."

A township clerk is an independent public officer of the township. This is clear from sections 3299 and 5625-1d, General Code, and other pertinent statutory provisions.

In Opinions of the Attorney General for 1918, Vol. I, page 525, it was stated in the second paragraph of the syllabus:

"2. The interest referred to in sections 12910 and 12911, G. C. has reference to a pecuniary interest as seller, and not to the interest of an officer as buyer."

In such opinion it was held that a county commissioner would violate section 12910, General Code, in the event he sold gravel to a county highway superintendent, to be used on the public highways of the county.

Also, in Opinions of the Attorney General for 1933, Vol. I, page 780, it was held, as disclosed by the second paragraph of the syllabus:

"A member of a soldiers' relief commission may not by virtue of section 12910, General Code, have an interest in a store selling supplies to the county home."

Such opinions did not involve a township officer selling supplies to township trustees for the use of the township, but it is obvious that their facts are analogous to the situation here presented. In other words, section 12910, General Code, has application where the officer of a political subdivision has an interest in the contract with the political subdivision as seller, only, and not as purchaser.

In Opinions of the Attorney General for 1933, Vol. III, pages 1948 and 1949, it was stated that the words "with which he is connected" following the words "public institution" in section 12910, General Code, modify all the preceding nouns, as well as the words "public institution." See also Opinions of the Attorney General for 1930, Vol. II, page 1436, and Annual Report of the Attorney General for 1911-1912, Vol. I, page 227. Thus the words "with which he is connected" clearly modify the word "township."

There is no doubt but that gasoline is included within the word "supplies", appearing in section 12910, General Code. In the case of *West vs. Detroit Fidelity and Surety Company*, 225 N. W. 673; 118 Nebr., 544, decided May 29, 1929, by the Supreme Court of Nebraska, gasoline was held to be within the meaning of the word "supplies", which word was used in a bond for a highway contract.

Again, it would clearly appear that each purchase of gasoline, in no matter how small a quantity, would constitute a contract of sale to the township, within the provisions of section 12910, General Code. Such section places no limitation on the amount of the contract, as does section 12911, General Code. Finally, the fact that the store in

question is the only one in the township where gasoline can be obtained could not affect the application of this section, as no exceptions are to be found in the section.

I am therefore of the opinion, in specific answer to your question, that a township clerk who is clerk of the board of township trustees of the township, and owner and operator of the only store in the township where gasoline may be obtained, violates section 12910, General Code, if he sells gasoline to the township trustees for the use of the township, in small quantities not exceeding \$50.00 a month.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4172.

JUVENILE COURT—JURISDICTION TO DECLARE CHILD DEPENDENT—
COUNTY WHEREIN CHILD DECLARED DEPENDENT RESPONSIBLE
FOR SUPPORT—(O. A. G. 1929, VOL. II, P. 1151, FOLLOWED).

SYLLABUS:

1. *The juvenile court has jurisdiction to declare any child dependent which is found within the county under facts and circumstances constituting dependency. The legal residence of the child or its parents, or those standing in loco parentis does not determine the jurisdiction of the court. (O. A. G. 1929, Vol. II, page 1151 approved and followed.)*

2. *The county in which such court assumes jurisdiction and declares such child to be dependent, will be responsible for the support of such child.*

COLUMBUS, OHIO, April 20, 1935.

HON. PAUL A. BADEN, *Prosecuting Attorney, Hamilton, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

“I should like to submit the following set of facts for your consideration and opinion.

In 1926 one A. F. who was at that time the mother of two children, H. and G., married one A. Z. in Alabama. In 1926 A. and A. Z. together with the two children, both of whom are still minors, moved to Cincinnati, Ohio. Z. worked in Cincinnati for the Cincinnati Street Railway Co. and we are not certain whether or not he had gained a residence when he was killed in 1927.

However, the widow with the two children continued to live in Hamilton County until February 1928, without obtaining relief from any source.

In February, 1928, the mother, A. Z., together with the two children came to Butler County. She was investigated by the Butler County Juvenile authorities and in June, 1928, it was determined that she was not a fit person to take care of these children, this complaint coming from Mr. P. representing the Industrial Commission of Ohio.

In June, 1928, the Juvenile Judge of Butler County made the following order:

“This day this cause came on to be heard, it appearing all papers had