

without competitive bidding, since engineering service is essentially non-competitive in character.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1939.

CONTRACT—BETWEEN BOARD OF EDUCATION AND HUSBAND OR WIFE OF BOARD MEMBER FOR TRANSPORTATION OF PUPILS, JANITOR SERVICE, ETC.—AUTHORIZED.

SYLLABUS:

*A contract made by a board of education with the husband or wife of a member of the board for the transportation of pupils, for janitor service, for repairs or supplies, or for any other purpose, is a valid contract and the making of such contract does not constitute a violation of Section 4757, General Code, by the husband or wife board member who participates in the making thereof.*

COLUMBUS, OHIO, June 4, 1930.

HON. C. LUTHER SWAIM, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of recent date which reads as follows:

“A ruling is respectfully requested from your office upon the following wording of General Code Section 4757:

‘No member of the board (of education) shall have directly or indirectly any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as clerk or treasurer.’

General Code Section 12932 reads as follows:

‘Whoever, being a local director or member of a board of education, votes for or participates in the making of a contract with a person as a teacher or instructor in a public school to whom he or she is related as father or brother, mother or sister, or acts in a matter in which he or she is pecuniarily interested, shall be fined’, etc.

The Supreme Court of Ohio in *Board of Education vs. Boal*, 104 O. S. 482, 135 N. E. 540, held that these two sections did not prohibit a husband, a member of a board of education, from voting for his wife as a teacher, holding that a married woman had her separate property in Ohio, and that Section 12932 did not include wife or husband in the prohibited clauses. This decision discussed contracts for teaching only.

The question has arisen in this county, and in other counties, and there has never been a final decision or opinion on the same, as to the legality of contracts for janitor service, bus-driving, repairs, etc., in which the other contractual party is a husband or wife of a member of the board of education making such contract. This has often been discussed by various prosecuting attorneys, but no final decision has ever been reached. Therefore, the request to your office for this opinion, for a state-wide interpretation of General Code, Section 4757.

Is a contract valid for the bus-driving or transportation of pupils when

made with the husband or wife of a member of the board of education, which is a party to the contract?

Is a contract valid for janitor service when made with the husband or wife of a member of the board of education, which is a party to the contract?

Is a contract for repairs or supplies valid when made with the husband or wife of a member of the board of education, which is a party to the contract?"

As you state, the Supreme Court of Ohio, in the case of *Board of Education vs. Boal*, 104 O. S. 482, held that a member of a board of education did not violate the terms of Section 12932, General Code, by participating in the making of a contract with his wife to teach in the public schools of the district.

In the course of the opinion in the case, written by Judge Matthias, the pertinent part of Section 4757, General Code, is quoted and the opinion practically says that the participation in the making of a contract to teach by a member of a board of education with his wife violates neither Section 4757, General Code, nor Section 12932, General Code, although Section 4757, General Code, is not mentioned in the syllabus of the case.

In fact, to hold that an act is not in violation of Section 12932, General Code, is practically holding that it is not in violation of Section 4757, because of the similarity of the two statutes. It will be observed upon reading Section 12932, General Code, that it not only prohibits a member of a board of education from participating in the making of a contract with a person as teacher or instructor in a public school to whom he is related as father or brother, mother or sister, but also contains the prohibition "or acts in a matter in which he or she is pecuniarily interested". This latter prohibition is almost identical with the prohibition contained in Section 4757, General Code.

The court's opinion in the case is largely devoted to a discussion of the principle embodied in the maxim "Expressio unius est exclusio alterius", upon the application of which it follows that where a statute, in defining an offense, designates one class of persons as subject to its penalties, all other persons are deemed to be exempted therefrom, and, therefore, Section 12932, General Code, does not prohibit a member of a board of education from participation in the making of a contract with his wife to teach in the public schools.

The question before the court, however, involved the general proposition of whether or not a member of a board of education who participates in the making of a contract with his wife to teach in the public schools was in violation of Section 12932, General Code, and the effect of the holding of the court was that such acts were not prohibited by the said statute. The case, therefore, must be taken as authority for the holding that such participation by a board member is not acting in a matter in which he or she is pecuniarily interested and, therefore, not in violation of either Section 12932 or Section 4757, General Code.

True, as you state, this decision discussed contracts for teaching only. I see no difference in principle between such contracts and any sort of contract that might be made with the wife or husband of a member of a board of education. The law contemplates the making of a contract with a teacher who is employed by the board the same as with any other employee. Section 7699, General Code, reads as follows:

"Upon the appointment of any person to any position under the control of the board of education, the clerk promptly must notify such person verbally or in writing of his appointment, the conditions thereof, and request and secure from him within a reasonable time to be determined by the board, his acceptance or rejection of such appointment. An acceptance of it within the time thus determined shall constitute a contract binding both parties thereto until such time as it may be dissolved, expires, or the appointee be dismissed for cause."

I know of no reason why the same principle would not apply to contracts for the purchase of supplies or any other contract made with the wife or husband of a member of a board of education.

My predecessor reached a similar conclusion in an opinion reported in Opinions of the Attorney General for 1927, at p. 2089, where it is held:

“The relation of husband and wife is such that the relation alone does not engender an interest of the husband in the contracts of the wife, and where a county sheriff contracts with his wife for the furnishing of meals to the prisoners in the county jail, to be paid for from county funds, he does not thereby become interested in a contract for the purchase of supplies for the use of the county, in violation of Section 12910, General Code. Nor can he be said thereby to secure a private personal profit out of the feeding of the prisoners confined in the jail.”

I am, therefore, of the opinion, in specific answer to your question, that a contract made by a board of education with the husband or wife of a member of the board for the transportation of pupils, for janitor service, for repairs or supplies, or for any other purpose, is a valid contract and the making of such contract does not constitute a violation of Section 4757, General Code, by the husband or wife board member who participates in the making thereof.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1940.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR  
DUTIES—H. P. CHAPMAN, AS CHIEF ENGINEER OF CONSTRUCTION  
—KENT E. WEDEKIND, AS RESIDENT DISTRICT DEPUTY DIRECTOR.

COLUMBUS, OHIO, June 4, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted a bond in the penal sum of \$5,000, upon which the name of H. P. Chapman appears as principal and the name of the Union Indemnity Company appears as surety, conditioned for the faithful performance of the duties of the principal as Chief Engineer of Construction of your department.

You have also submitted a bond in the penal sum of \$5,000, upon which the name of Kent E. Wedekind appears as principal and the name of Commonwealth Casualty Company appears as surety, conditioned for the faithful performance of the duties of the principal as Resident District Deputy Director assigned to Ottawa County.

Finding said bonds to have been executed in proper legal form, I have accordingly endorsed my approval thereon as to form and return the same herewith.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*