

100.

TOWNSHIP TRUSTEE—CONVEYANCE OF SCHOOL PUPILS BY CONTRACT WITH A BOARD OF EDUCATION—LEGAL.

SYLLABUS:

A township trustee is not precluded, by reason of his official position, from contracting with a board of education for the conveyance of pupils.

COLUMBUS, OHIO, February 16, 1929.

HON. EMMITT L. CRIST, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—I am in receipt of your recent communication which reads as follows:

“I submit the following question for your opinion:

Mr. A, one of the Township Trustees of X Township, contracts with the Board of Education of said X Township to carry school children to and from their respective residences and the school; is said contract of Township Trustee A of X Township with the Board of Education of said X Township legal?

The question in my mind is whether Section 12910, G. C., covers this case, so as to exclude a township trustee from contracting with a township board of education while he is holding the office of trustee in the same township.”

It will be noted from the provisions of Sections 4679, et seq. of the General Code relating to the school districts of the State, that school districts are separate and distinct political subdivisions of the State, with the same status, as such, as are other political subdivisions such as townships, municipal corporations and counties. Moreover, the boundaries of a school district need not necessarily correspond to the boundaries of any other political subdivision and, in most cases, do not. It is possible that the boundaries of a school district may be coterminous with those of a municipal corporation or civil township, but they need not necessarily be so. A civil township may comprise within its boundaries one or more school districts or parts of districts, and there may not be an entire school district within a civil township; that is to say, a school district may consist of the territory of an entire civil township and part of the territory of a contiguous civil township.

The conduct of the schools in a school district, and the control and management of the school district are taken care of by a board of education elected by the people. The township trustees have no jurisdiction over the schools of any school district within its borders, nor does the board of education of any school district in a township have any jurisdiction over the affairs of the township, as such. In other words, the members of a board of township trustees are not *connected* by reason of their being trustees, with any board of education, nor are members of a board of education, as such, *connected* with any board of township trustees. Section 12910, General Code, reads 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.”

It will be observed from the terms of Section 12910, *supra*, that a member of a board of township trustees is prohibited from being interested in a contract for the purchase of property, supplies or fire insurance for the use of the township with which he is connected, and a member of a board of education is prohibited from being interested in such a contract with the board of education with which he is connected, but this would not preclude a township trustee from being interested in a contract for the purchase of property, supplies or fire insurance for the use of a board of education, for the reason that he is not by reason of being a township trustee, "connected" with such board of education. Section 12912, General Code, reads as follows:

"Whoever, being an officer of a municipal corporation or member of the council thereof or the trustee of a township, is interested in the profits of a contract, job, work or services for such corporation or township, or acts as commissioner, architect, superintendent or engineer, in work undertaken or prosecuted by such corporation or township during the term for which he was elected or appointed, or for one year thereafter, or becomes the employe of the contractor of such contract, job, work, or services while in office, shall be fined not less than fifty dollars nor more than one thousand dollars or imprisoned not less than thirty days nor more than six months, or both, and forfeit his office."

An examination of the terms of Section 12912, *supra*, clearly indicates that the inhibition against a township trustee being interested in the profits of a contract, job, work or services is confined to a contract, job, work or services for such *township* and does not prohibit the township trustee from being interested in such a contract for a board of education.

A board of education is authorized to enter into contracts for the conveyance of pupils within the district, and there is no law which prohibits it from contracting with a person for that purpose, even though he be a trustee of a township which includes all or a part of the school district for which it is acting. Moreover, the above statutes, Sections 12910 and 12912, are penal statutes, and should be strictly construed.

I am therefore of the opinion that a township trustee is not precluded by reason of his official position, from contracting with a board of education for the conveyance of pupils.

Respectfully,
GILBERT BETTMAN,
Attorney General.

101.

**TAX AND TAXATION—GASOLINE AND MOTOR VEHICLE LICENSE TAXES
—MUNICIPALITY'S AND COUNTY'S PORTION—LEGALLY USED FOR
MAINTAINING RESPECTIVE BRIDGES.**

SYLLABUS:

1. *The moneys allotted to a municipality under the provisions of Sections 5537 and 6309-2 of the General Code, may legally be expended for the purpose of maintaining and repairing bridges and viaducts upon streets within the municipality. (Opinion, Attorney General, 1924, page 335, overruled.)*

2. *County commissioners may legally expend the county's portion of the motor vehicle license and gasoline tax receipts for the purpose of maintaining and repairing bridges on public roads and highways in the county system of highways.*