

is more common than for a minor to act in that capacity. The same thing is true as to the deputies in the offices of the auditor and recorder. They are chosen for other qualities than ability to make selection of suitable persons, in the various parts of the county, to act as jurors.

We are satisfied that the statute, in providing that the selection of such names shall be made by the clerk, auditor, and recorder, except in case of their absence or disability, designates the *persons* who are required to perform an act, and does not have reference to the performance of an act by *officers*, merely as such; and that, in case of the absence or disability of either the clerk, auditor or recorder, a judge must select a person to act in his place. Consequently, the language of the acts empowering deputies to perform the duties pertaining to the offices of their principals, broad as it is, does not extend to the performance of the duty under consideration here; and it is perfectly clear that the performance of such a duty could not be delegated by one of those persons to another person, in the absence of statutory provision permitting that to be done."

Notwithstanding the comprehensive language of Section 9 of the General Code, above quoted, with respect to the authority and duties of deputies, it is apparent that some duties may be imposed by statute upon a public officer that cannot legally be performed by his deputy. The position of deputy in the office of the county recorder does not, in my opinion, impose upon the incumbent any duties of a contractual, judicial or other nature such as under the common law a minor is not eligible to perform.

It quite clearly appears that the position of a deputy in the office of a county recorder is not an office within the provisions of Section 4 of Article XV of the state Constitution, above noted. Inasmuch as there is no statutory provision forbidding the appointment of a minor to the position of deputy in the office of the county recorder, and, as above noted, there is nothing in the duties of the office making such minor ineligible under the common law, no reason is apparent why a minor cannot be legally appointed to such position and perform the duties of the same. Your question is, therefore, answered in the affirmative.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1970.

DISAPPROVAL, AGREEMENT BETWEEN THE STATE OF OHIO AND THE PENNSYLVANIA RAILROAD COMPANY, FOR THE CONSTRUCTION OF A SWITCH TRACK, AT APPLE CREEK, OHIO.

COLUMBUS, OHIO, April 14, 1928.

HON. JOHN E. HARPER, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date, submitting for my approval proposed agreement by and between The Pennsylvania Railroad Company, operating the Pennsylvania, Ohio & Detroit Railroad, and the Department of Public Welfare of the State of Ohio.

The agreement pertains to the construction of a switch track from the C. A. & C. Division of the Pennsylvania Railroad into the land which has been acquired by the state for the erection of an institution for feeble-minded at Apple Creek, Ohio.

It is observed that on the first page of the agreement, under the heading "Track No. 11," there appears the following :

" \* \* \* but the Director of the 'Industry' hereby agrees that he will cause to be introduced in the General Assembly a bill to authorize the execution of a deed to the Railroad Company for a sixteen-foot strip, eight feet on either side of the center line of said track, for the entire length of said track beyond the present right of way line of the Railroad Company, and he further agrees that he will make every reasonable effort to have said bill enacted and the provisions thereof put into effect."

I am of the opinion that this clause, in so far as it pertains to the Director of the Department of Public Welfare agreeing that he will cause to be introduced into the General Assembly a bill to authorize the execution of a deed to the railroad company, and further that he will make every reasonable effort to have said bill enacted and the provisions thereof put into effect, should not be included in the agreement. Any agreement that a public official will, at some future date, use his influence to induce the Legislature to make grant of the kind here involved is contrary to public policy. Moreover, although I am not passing upon the question at this time, if a public official would attempt to carry out such an agreement there might be some violation of the laws of Ohio pertaining to lobbying.

It is observed that in certain printed provisions of the contract, to-wit, paragraphs 6, 8 and 9, the Department of Public Welfare is agreeing to assume liability for certain losses or damages to "property and injuries to or the death of persons, growing out of or resulting from the performance of the said work." Likewise, the Department agrees to "indemnify the Railroad Company against loss or damage to property of the industry, or to property upon its premises, regardless of Railroad Company negligence \* \* \* ." Further, that the Department "will protect, indemnify, and save harmless the Railroad Company against any loss, damage, and expense in consequence of injury to person or property \* \* \* ."

Your attention is directed to the fact that the State of Ohio is not subject to suits in damages unless there is specific statutory provision therefor and it would be impossible for the Department of Public Welfare to pay any of the funds appropriated to it for the purpose of indemnifying the railroad company against loss or damage as provided in paragraphs 6, 8 and 9 of this agreement. In addition, unless specifically authorized by the Legislature, a statutory officer is without authority to enter into an agreement of this nature binding on the State. Such provisions, therefore, have no force in law and the only remedy that the railroad company might have would be to present a claim to the Sundry Claims Board for action by it and by the Legislature. It is recommended that you notify the railroad company of the objectionable matters contained in paragraphs 6, 8 and 9 of the proposed agreement and these provisions should be stricken out of said agreement. As soon as the contract is submitted to me, without the provisions to which I have objected, I shall approve the agreement.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*