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CONTRACT—PURCHASE PROPERTY, USE, BOARD OF EDUCATION—UNDER SECTION 4757 G. C., SUCH BOARD PROHIBITED TO CONTRACT WITH CORPORATION WHERE ONE OF MEMBERS OF SUCH BOARD IS A STOCKHOLDER IN CORPORATION—IF BEFORE CONTRACT EXECUTED, SUCH MEMBER-STOCKHOLDER FILED AFFIDAVIT WITH CLERK OF BOARD OF EDUCATION STATING STATUS WITH SUCH CORPORATION, HE IS NOT SUBJECT TO CRIMINAL PROSECUTION UNDER SECTION 12910 G. C.—PROVISO, ABSENCE CONSPIRACY TO DEFRAUD—STATUTORY STIPULATIONS AS TO INTEREST OR OWNERSHIP, CORPORATION STOCK.

SYLLABUS:

1. *A board of education, under the provisions of Section 4757, General Code, is prohibited from entering into a contract for the purchase of property for the use of such board of education from a corporation of which one of the members of such board of education is a stockholder.*

2. *However, if such member-stockholder owns five per cent or less of the stock of a corporation, not exceeding five hundred dollars in value, whichever is less in amount, and is not an officer or director thereof, he would not, in the absence of a conspiracy to defraud, be subject to criminal prosecution under Section 12910, General Code, if before such contract was entered*

into, he filed with the clerk of such board of education an affidavit stating his exact status and connection with such corporation.

Columbus, Ohio, May 21, 1940.

Hon. H. Lloyd Jones, Prosecuting Attorney,
Delaware, Ohio.

Dear Sir:

Receipt is hereby acknowledged of your request for my opinion, which reads as follows:

“Do the provisions of Section 12912-1, General Code, apply by implication to Section 4757? Is the holding of 1927 O. A. G. No. 764 avoided by the enactment of Section 12912-1?”

The first part of your inquiry appears to concern itself with the question of whether or not a member of the board of education comes within the provisions of Section 12912-1, General Code, which section reads as follows:

Sec. 12912-1. “The provisions of sections 12910, 12911 and 12912 of the General Code of Ohio shall not apply to the persons enumerated in said sections who are share-holders of a corporation and own five per cent or less of the stock or stocks not exceeding in value the sum of five hundred dollars, whichever limitation of ownership is the less in amount, and are not officers or directors thereof, when said corporation has made and entered into any of the contracts and transactions mentioned in the aforesaid sections, unless there exists a conspiracy to defraud. If any stockholder desires to avail himself of the provisions of this section, before entering upon such contract or transaction, such person shall first file with the clerk or fiscal officer of such county, township, city, village, board of education or public institution an affidavit, under oath, stating his exact status and connection with said corporation.”

It is quite clear from the language contained in the above section that the legislature intended to except from the penal provisions of Sections 12910, 12911 and 12912, General Code, any person enumerated under said sections who owns not more than five per cent of the stock of the corporation, not exceeding five hundred dollars in value, and who is not an officer or director thereof, if, before such contract is entered into, such person files with the proper officer an affidavit stating his exact status and connection with said corporation, unless, of course, there exists a conspiracy to defraud.

Section 12910, General Code, reads:

“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.”

Section 12911, General Code, is similar in nature to Section 12910, and prohibits such person from having an interest in purchase contracts with a subdivision, board or institution with which he is *not* connected, if such contract exceeds the sum of fifty dollars, unless it is let on bids duly advertised as provided by law.

Section 12912, General Code, applies only to an officer or council member of a municipal corporation or a trustee of a township in certain types of contracts or undertakings.

Section 4757, General Code, reads in part as follows:

“Conveyances made by a board of education shall be executed by the president and clerk thereof. No member of the board 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. * * *”

Section 4757, General Code, can be distinguished from Section 12910, General Code, in that the former applies only to members of boards of education and prohibits such members from having any pecuniary interest in any contract of the board, and no penalty is provided for the violation thereof. By the terms of the latter a public officer, his agent or employe is prohibited under penalty of imprisonment from having an interest in certain types of purchase contracts with the subdivision, board or institution with which he is connected.

It has several times been held by this office that a member of a board of education is a public officer subject to prosecution for the violation of the provisions of Section 12910, General Code. See Opinion, Attorney General, 1927, Vol. II, p. 1326; Opinions, Attorney General, 1929, Vol. II, p. 1460; Opinions, Attorney General, 1938, No. 2854.

Obviously, therefore, since a member of the board of education would

come within the terms of Section 12910, he would also come within the exceptions contained in Section 12912-1, General Code.

In considering your inquiry relative to whether or not the opinion of the Attorney General, No. 764, reported in Opinions, Attorney General, 1927, Vol. II, p. 1326, is avoided by the enactment of Section 12912-1, General Code, reference is hereby made to that opinion in which it is held as follows:

“A Board of education is prohibited by virtue of Section 4757, General Code, from entering into a contract for the purchase of coal with a corporation of which one of the members of the board is a stockholder even though such board member has only one share of stock, and the corporation of which he is a stockholder, and which is selling the coal is being operated at a loss. Such board member, if he participated in the making of such a contract would be subject to prosecution under the provisions of Section 12910 of the General Code.”

Under this ruling, a member of a board of education, who is a shareholder in a corporation under contract to furnish coal to such board of education, would be considered to have such an interest in the contract so as to make him liable to prosecution under Section 12910, and such board of education is prohibited from entering into such a contract. It also appears in the opinion that the board member owned a share of stock in the corporation with which the board was about to enter into a contract. The opinion is silent, however, as to the value and per cent of the stock owned by such member and does not state whether such member was an officer or director in said corporation. Unquestionably, if the same set of facts existed after the enactment of Section 12912-1, General Code, and such member owned not more than five per cent of the stock of the corporation, or stock the value of which did not exceed five hundred dollars, and was not an officer or director thereof, and there was no conspiracy to defraud, and providing further that such member, before entering into such a contract, filed an affidavit stating his exact status in the corporation, as provided in Section 12912-1, General Code, he would then be considered *not* to have such an interest in the contract as would make him criminally liable under Section 12910, General Code.

The conclusion with respect to criminal liability above stated should not, however, be construed to mean that a contract such as the one in question is valid. While the legislature has declared how great the interest in

a contract must be before the person interested is amenable to the criminal laws, that body has not in any way amended Section 4757, General Code, which provides that "No member of the board shall have *** any pecuniary interest in any contract of the board ***." Stated conversely, any contract made by a board of education in which one of its members has a pecuniary interest is invalid, and any contract made by a board of education of which one of its members has a pecuniary interest to the extent of holding more than five per cent of the stock of the corporation contracted with, or stock valued at more than five hundred dollars in such corporation, whichever is the lesser, is not only invalid, but the member having such interest would be criminally liable under the provisions of Section 12910, General Code.

The General Assembly, in enacting a statute, is presumed to have legislated with full knowledge and in the light of all statutory provisions concerning the subject matter of the act, because the legislative mind, in the enactment of a statute, is directed to what has been enacted and exists as a part of the statutory law of the state on the same subject or subjects related to it. 37 O. Jur. 94. Unquestionably, therefore, when the legislature enacted Section 12912-1, General Code, it did so in the light of all statutory provisions on the same subject and was presumed to have had knowledge of Section 4757, General Code.

It is readily apparent from the language of Section 12912-1, General Code, that the legislature intended that the exception therein contained should apply only to the provisions of Sections 12910, 12911 and 12912, General Code, and to no other sections on the subject.

In specific answer to your inquiry, therefore, it is my opinion that:

1. A board of education, under the provisions of Section 4757, General Code, is prohibited from entering into a contract for the purchase of property for the use of such board of education from a corporation of which one of the members of such board of education is a stockholder, regardless of the amount or value of the stock owned by such member.

2. However, if such member-stockholder owns five per cent or less of the stock of a corporation, not exceeding five hundred dollars in value, whichever is less in amount, and is not an officer or director thereof, he would not, in the absence of a conspiracy to defraud, be subject to criminal prosecution under Section 12910, General Code, if before such contract

was entered into, he filed with the clerk of such board of education an affidavit stating his exact status and connection with such corporation.

Respectfully,

THOMAS J. HERBERT,
Attorney General.