

"A justice of the peace may also hold the office of member of the board of education of the rural school district in which he resides."

This office has in numerous opinions declared that certain offices are incompatible because of the provisions of the so-called budget law (sections 5625-1, et seq., G. C.). Thus the same person cannot at the same time hold the positions of member of a rural board of education and that of county commissioner, since both of these subdivisions are taxing subdivisions and such person might be compelled to be present before the budget commission representing contrary interests. While the 1913 and 1918 opinions, if sound, are dispositive of your present inquiry, nevertheless these opinions did not discuss the provisions of the budget law and it might be well to discuss the question of whether or not there is any incompatibility upon that ground.

Section 5625-1, General Code, defines the taxing authority of a municipality as "the council or other legislative authority of such municipal corporation." This section also states that the fiscal officer of a village is the village clerk. It seems that the mayor of a village does not appear before the budget commission.

Section 4259, General Code, reads as follows:

"The mayor shall communicate to council from time to time a statement of the finances of the municipality, and such other information relating thereto and to the general condition of the affairs of the municipality as he deems proper or as may be required by council."

I do not think that this section would render the offices in the present case incompatible. It is to be noted that the mayor of a village is not compelled to give his full time to the duties of his office and the same is true with members of a rural board of education. It would follow that in the present situation the person in question may hold the two offices at the same time.

In view of my answer to your first question, it is unnecessary to consider your second question.

It is therefore my opinion, in specific answer to your question, that the offices of mayor of an incorporated village and member of a rural board of education are compatible.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2156.

SECURITIES—COUNTY COMMISSIONERS UNAUTHORIZED TO RELEASE SAME WHEN BONDS ISSUED AGAINST THEM UNDER H. B. 706—DEBT OF BANK TO COUNTY MAY NOT BE RELEASED BY COMMISSIONERS WHEN.

SYLLABUS:

Securities held by a county against which bonds have been issued under authority of House Bill 706 of the 90th General Assembly, may not be released by the county commissioners under authority of Section 2416, General Code. Neither may the commissioners under such circumstances, under Section 2416, General Code, re-

lease a part of the debt of the bank to the county until the requirements of such bond retirement fund are met.

COLUMBUS, OHIO, January 11, 1934.

HON. GLENN P. BRACY, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“I will thank you for your opinion on the following subject:

Sandusky County has \$49,000.00 on deposit with the Gibsonburg Banking Company under a depository contract duly entered into. The bank has not yet resumed normal business since the bank holiday. The depository contract is secured by collateral security. The county has issued \$49,000.00 in bonds under House Bill No. 706, and in accordance therewith have taken charge of the collateral security for liquidation. Under the authority of House Bill No. 706 the proceeds of the bond issue were divided to the same channels as though the money had been paid by the bank. The proceeds of liquidation of the securities, together with any dividends received from the bank are payable into the bond retirement fund to retire these particular bonds.

The Conservator of the bank now requests the county commissioners to consent to a plan of re-opening which would release a certain percentage of the deposit, the balance to be evidenced by participating certificates.

Question: Is Section 2416, General Code, broad enough to permit the county commissioners to consent to such plan of re-opening involving the above conditions; and would such consent, if given by them, jeopardize their right to hold and liquidate the collateral security as provided by House Bill No. 706?”

Section 2416, General Code, to which you refer, was enacted in the year 1853. It provides that county commissioners may compromise debts due the county in the following language:

“The board may compound or release, in whole or in part, a debt, judgment, fine or amercement due the county, and for the use thereof, except where it, or either of its members, is personally interested. In such case the board shall enter upon its journal a statement of the facts in the case, and the reasons for such release or composition.”

House Bill No. 706, as enacted by the 90th General Assembly, provides a means whereby a subdivision, holding collateral of a bank in default to secure its funds on deposit therein, may realize on such collateral by issuing bonds against such collateral without being compelled to sell the same; the purpose of retaining such collateral being, as expressed in section 1 of the act, “with a view to conserving the value of such securities for the benefit of such county, municipal corporation, township or school district, and for the benefit of the depositors, creditors and stockholders or other owners of such bank.”

Upon the issuance of bonds under this act against collateral so held, the proceeds of any sale of such collateral, as well as any interest and principal col-

lected thereon, must be paid into the bond retirement fund for the retirement of the bonds so issued. These provisions are contained in section 4 of the act, which reads as follows:

"All principal and interest collected by the proper officer or agent of such county, municipal corporation, township, or school district, on account of such securities, and the proceeds of any sale or other disposition of any of such securities, and any dividends received from the liquidation of such bank, shall be paid into the bond retirement fund from which such bonds are to be redeemed, until the aggregate of such payments equals the requirements of such fund, whereupon such securities, and any remaining depository balances, not anticipated by such bonds, to the extent then retained by such county, municipal corporation, township or school district, shall be assigned and delivered to the defaulting bank, or to its liquidating officer, or to its successor or assignee, together with a release or other instrument showing full satisfaction of the claim of such county, municipal corporation, township or school district against such bank or officer."

Section 5 of this act is especially pertinent to a consideration of your question. It provides:

"Immediately upon the issuance and sale of bonds as authorized by this act, the possession and control of such securities, and the management thereof, subject to the further disposition thereof as authorized by sections 1 and 4 of this act, shall be transferred to and vested in the authority of such county, municipal corporation, township or school district having charge of the administration of the bond retirement fund thereof. Such authority shall have and exercise all powers and rights, privileges and immunities of an owner, with respect to such securities, subject to the control of the commissioners, the council, township trustees and board of education as the case may be, and unless otherwise specified in any resolution of such commissioners, council, township trustees, or board of education, shall, in case such securities consist of first mortgages accepted pursuant to section 2288-1 of the General Code, have power among other things and without prejudice to the general grant of power herein made, to pay from proceeds of such securities, taxes, insurance premiums, and for repairs and maintenance of property covered by any such mortgage, in case of default in any such respect on the part of the mortgagor or owner of the property, such payments to be made, subject in all cases to reimbursement by the person primarily liable therefor, from the fund for the retirement of the bonds herein authorized."

After a county has realized on its funds which were deposited in a closed bank by invoking the provisions of House Bill No. 706, the bank is undoubtedly still indebted to the county. There is considerable doubt as to whether or not this indebtedness is a debt within the meaning of the term as used in Section 2416, supra. The obligation of the bank by virtue of section 4 of the act is to the bond retirement fund. By this last mentioned section, the securities of the bank held by the subdivision in effect become pledged to the payment of the bonds issued against those securities. Any attempted release of such securities under authority

of Section 2416 would apparently result in the bonds issued against them becoming, to the extent of such release, solely general tax bonds. This contingency was obviously not contemplated by the legislature in view of the fact that these bonds are outside of all limitations as to the amount of net indebtedness which may be incurred.

There is an additional and perhaps controlling consideration in connection with your inquiry which should be commented upon. Section 2416, *supra*, grants certain authority to the county commissioners in compromising debts due the county. By virtue of section 5 of House Bill 706, *supra*, the full control of securities against which bonds have been issued is vested "in the authority * * * having charge of the administration of the bond retirement fund." The administration of the bond retirement fund is vested in the county treasurer in counties which have no sinking fund; and in counties which have a sinking fund, the bond retirement fund is administered by the sinking fund trustees. Section 2295-14, General Code. It follows that, under any circumstance, the county commissioners do not have control over the securities in question and hence may not release the same by virtue of the provisions of Section 2416, General Code.

I have given consideration to the release of collateral against which bonds have been issued as aforesaid. In your letter you also refer to the release of part of the debt due the county under the facts set forth therein. It is obvious that after bonds are issued, under section 4, *supra*, any dividends received from the bank shall be paid into the bond retirement fund until the requirements of such fund are met. The bond holders, in my judgment, have a right to look not only to the collateral against which the bonds have been issued, but, by virtue of section 4, they have a right to look to the debt of the bank to the county for the payment of their bonds. This right of the bondholders to look to the debt of the bank to the county for the payment of the bonds may not be taken away by the commissioners under authority of Section 2416, *supra*.

Specifically answering your question, it is my opinion that securities held by a county against which bonds have been issued under authority of House Bill 706 of the 90th General Assembly, may not be released by the county commissioners under authority of Section 2416, General Code. Neither may the commissioners under such circumstances, under Section 2416, General Code, release a part of the debt of the bank to the county until the requirements of such bond retirement fund are met.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2157.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF HIS
DUTIES AS ASSISTANT SECRETARY OF STATE—M. RAY ALLISON.

COLUMBUS, OHIO, January 12, 1934.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval, a bond in the penal sum of \$10,000.00, upon which M. Ray Allison, Assistant Secretary of State, is principal.