

dealer in this state to a customer in another state in the manner indicated in your communication are not subject to the excise tax provided with respect to the sale of such articles in this state.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

2254.

APPROVAL, CONTRACT FOR HIGHWAY IMPROVEMENT IN THE CITY
 OF LANCASTER, FAIRFIELD COUNTY, OHIO.

COLUMBUS, OHIO, February 5, 1934.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

2255.

VILLAGE—BOARD OF PUBLIC AFFAIRS MAY EMPLOY EX-MARSHAL
 AS GAS METER READER WITHIN ONE YEAR AFTER EXPIRATION
 OF HIS TERM.

SYLLABUS:

The board of public affairs of a village may legally hire at a definite salary an ex-marshal of said village, in the capacity of a gas meter reader, within one year after such ex-marshal's term has expired.

COLUMBUS, OHIO, February 5, 1934.

HON. RAY W. DAVIS, *Prosecuting Attorney, Circleville, Ohio.*

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

“I would like very much to have an opinion upon the following question:

May the Board of Public Affairs of a Municipal Corporation hire at a definite salary within one year after his term has expired, an ex-marshal of that corporation to read Gas Meters for it without violating section 12912 of the Ohio General Code, or any other pertinent section?”

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 there-

after, 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."

This office has in numerous past opinions uniformly held that the words of the foregoing section "during the term for which he was elected or appointed, or for one year thereafter" do not modify the verb "is interested", and that such words merely modify the clause beginning "or acts as commissioner", etc. See Opinions of the Attorney General for 1929, volume I, page 633; Opinions of the Attorney General for 1928, volume I, page 693; Opinions of the Attorney General for 1928, volume II, page 1311; Opinions of the Attorney General for 1922, volume I, page 530; Opinions of the Attorney General for 1917, volume I, page 10; Annual Report of the Attorney General for 1914, volume I, page 385, and volume II, page 1257; Annual Report of the Attorney General for 1912, volume II, page 1743, and Annual Report of the Attorney General for 1910-1911, page 1033.

The meaning of the one year provision is aptly expressed in the first branch of the syllabus of the opinion appearing in Opinions of the Attorney General for 1917, volume I, page 10, as follows:

"The one year provision of section 12912 G. C. serves merely as a prohibition against an officer described therein acting as commissioner, architect, superintendent or engineer in work undertaken or prosecuted by such corporation or township one year after his term has expired."

Furthermore, the meaning of the word "work" preceding the word "undertaken" in the foregoing statute has been interpreted to mean a "public improvement in which the services of commissioner, architect, superintendent or engineer might be appropriately employed." In Annual Report of the Attorney General for 1910-1911, it was stated at page 1034:

"It is, of course, to be observed that the word 'work' as used in the latter half of said original section is not synonymous with the same word as used in the first half thereof. The reference is to public improvement, etc., in which the services of commissioner and architect, superintendent or engineer might be appropriately employed."

Section 4361, General Code, states that the board of trustees of public affairs "shall manage, conduct and control * * * artificial or natural gas plants, * * * furnish supplies of * * * gas, collect all * * * gas rents, and appoint necessary officers, employes, and agents." Under this statutory provision, the board of public affairs of the village involved in your communication undoubtedly hired the ex-marshal as gas meter reader.

Conceding for the purpose of argument that a gas meter reader might be held to be acting in the capacity of a "commissioner, architect, superintendent or engineer" when performing the services of reading gas meters, although such a construction can scarcely be considered, as section 12912 is a penal section and penal sections are strictly construed, the work which the gas meter reader performs can not possibly be within the scope of the word "work" preceding the

word "undertaken" in said statute, if the meaning of the said word "work" as laid down by the above opinion is to be adopted.

In the latest of the opinions of the Attorney General construing the one year provision of section 12912, General Code, namely, Opinions of the Attorney General for 1929, volume I, page 631, it was held as disclosed by the syllabus:

"A member of a board of park trustees appointed under the provisions of section 4068 of the General Code, may resign and immediately thereafter be legally appointed park superintendent."

In the opinion the then Attorney General stated at page 633:

"Quite obviously the statute was designed primarily to prevent a municipal officer, as such, committing the municipality to the prosecution of some special project involving the expenditure and then resigning and, in a private capacity, reaping profit from the very work he helped to initiate. This can have no application to the present case and I therefore feel that there is a violation of neither the letter nor the spirit of the law."

I concur in the construction placed on section 12912, General Code, by the former opinions. An examination of the General Code reveals no other provision of law which would prevent an ex-marshal from being employed on a salary by a board of public affairs of a village.

I am therefore of the opinion, in specific answer to your question, that a board of public affairs of a municipality may hire at a definite salary an ex-marshal of such municipality to read gas meters for the municipality without violating section 12912, General Code, or any other section or sections of the General Code of Ohio.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2256.

SCHOOL DISTRICT—LIABILITY OF DISTRICT FOR TUITION OF PUPIL WHO ATTENDS HIGH SCHOOL OUTSIDE DISTRICT BUT OTHER THAN THAT TO WHICH ASSIGNED.

SYLLABUS:

1. *When a district board of education contracts with another district board of education for the admission of one or more of its resident high school pupils into the school of such other district in pursuance of Section 7750, General Code, such contract is in effect, an assignment of the pupils affected thereby to the schools of the other district.*

2. *Even though a high school pupil residing in a district which does not maintain a high school is assigned to a high school outside the district of his residence, the pupil may elect to attend another high school, and the question of the liability of the board of education of the district of his residence for tuition in the high school which he elects to attend will be governed by the provisions of Section 7764, General Code.*

3. *Where a pupil residing in a school district which does not maintain a high*