

4635.

BOARD OF EDUCATION—MEMBER MAY CONTRACT FOR EMPLOYMENT OF NEAR RELATIVES FOR ANY POSITION OTHER THAN THAT OF TEACHER.

SYLLABUS:

*A member of a board of education is not prohibited by Section 12932 or by Section 4757 of the General Code from voting for or participating in the making of a contract of employment with his or her father, brother, mother or sister for any position other than that of teacher or instructor.*

COLUMBUS, OHIO, September 22, 1932.

HON. JOHN W. BOLIN, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

“Under the provisions of Section 12932 of the General Code which provide that a member of a Board of Education cannot vote or participate in the making of a contract with a father, brother or sister, does this Section prevent the employment of such a relative for other positions that a school board might be employing individuals, such as bus drivers and janitors and the like?”

Section 12932, General Code, reads as follows:

“Whoever, being a local director or member of a board of education, votes for or participates in the making of a contract with a person as a teacher or instructor, in a public school to whom he or she is related as father or brother, mother or sister, or acts in a matter in which he or she is pecuniarily interested, shall be fined not less than twenty-five dollars nor more than five hundred dollars or imprisoned not more than six months, or both.”

This is a penal statute and must be strictly construed.

A statute cannot be construed to include that which is not covered by its terms.

*Guear vs. Stechschulte*, 119 O. S. L.;

*Bd. of Ed. vs. Boal*, 104 O. S. 482.

In the latter case, the syllabus reads as follows:

“1. Where a statute defining an offense designates one class of persons as subject to its penalties, all other persons are deemed to be exempted therefrom.

2. The legislature having prohibited a member of the board of education from participating in the making of a contract with a person as teacher in a public school to whom he or she is related as father or brother, mother or sister, by express provisions of Section 12932, General Code, the courts are not authorized to extend such prohibitory provision so as to include the relation of husband and wife or other relations not therein specified.”

By like reasoning, the prohibitory provisions of this statute cannot be extended so as to include any employment other than those specified, namely, of teacher or instructor.

There remains to be determined whether the employment to which you refer would violate the provision of Section 12932, General Code, prohibiting a member of a board of education in acting in a matter in which he or she is pecuniarily interested, or the provision of Section 4757, General Code, that "no member of a board shall have directly or indirectly any pecuniary interest in any contract of the board". I assume that there is no interest of a member of the board in the case you present except that which may arise solely from the relationship between such member and the person employed. Inasmuch as the case of *Board of Education vs. Boal, supra*, has held that the employment of a person by a board, the member of which was her husband, did not violate these statutory provisions, certainly none of the relationships set forth in Section 12932, General Code, would come within the prohibition contained in those provisions as to employment other than that of teacher or instructor, except perhaps where the person employed is an unemancipated minor child of the member of the board employing him.

I am, therefore, of the opinion that a member of a board of education is not prohibited by Section 12932, General Code, or by Section 4757, General Code, from voting for or participating in the making of a contract of employment with his or her father, brother, mother or sister for any position other than that of teacher or instructor.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

4636.

APPROVAL, BONDS OF VILLAGE OF OTTAWA HILLS, LUCAS COUNTY, OHIO—\$5,000.00.

COLUMBUS, OHIO, September 22, 1932.

*Industrial Commission of Ohio, Columbus, Ohio.*

4637.

APPROVAL, LEASE TO RESERVOIR LAND AT INDIAN LAKE—HAZELLE M. FICHTHORN.

COLUMBUS, OHIO, September 22, 1932.

HON. EARL H. HANEFELD, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval a certain lease executed by the State of Ohio, through the Conservation Commissioner, by which there is leased to Hazelle M. Fichthorn, of Bellefontaine, Ohio, for a term of fifteen years at an annual rental of Thirty-six Dollars