

of incorporation of a building and loan association or of dissolution of such association until such certificates shall have been first submitted to, and approved by the Superintendent of Building and Loan Associations of Ohio.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1755.

APPROVAL, BONDS OF SHAKER HEIGHTS VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$28,000.00.

COLUMBUS, OHIO, October 23, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1756.

SOLDIERS' RELIEF COMMISSION—MEMBER THEREOF MAY NOT BE APPOINTED AS INVESTIGATOR.

SYLLABUS:

A member of the soldiers' relief commission may not be employed as an investigator under the provisions of section 2933-1, General Code.

COLUMBUS, OHIO, October 23, 1933.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"You are respectfully requested to furnish this department your written opinion upon the following:

Section 2933-1, as enacted by House Bill No. 556 empowers the Soldiers' Relief Commission to employ investigators to investigate applications for allowances by the Soldiers' Relief Commission.

QUESTION: May one of the members of the Soldiers' Relief Commission be employed as an investigator under the provisions of this section?"

Section 2933-1, General Code, enacted at the recent session of the legislature, reads as follows:

"The soldiers' relief commission is hereby empowered to employ such investigators and clerks as may be necessary to carry on relief work when the necessity arises. These investigators and clerks shall be honorably discharged veterans of the war with Spain, or the world war, and shall not be required to take a civil service examination. Their compensation shall be such as established by the soldiers' relief commission, and shall be paid from the county allotment of soldiers' relief funds."

Your inquiry relates to the question of whether or not a member of the soldiers' relief commission may be employed as an investigator by such commission. The newly enacted section 2933-1 is silent upon this question. There is, however,

a general rule of policy which prevents a member of a board or commission from appointing himself to a position under such board or commission. The general rule is stated in 46 C. J. 940, as follows:

“It is contrary to the policy of the law for an officer to use his official appointing power to place himself in office, so that, even in the absence of a statutory inhibition, all officers who have the appointing power are disqualified for appointment to the offices to which they may appoint; * * *.”

The above stated principles have been followed by the Ohio courts. In the case of *Ohio ex rel. Louthan vs. Taylor*, 12 O. S. 130, it was held as disclosed by the syllabus:

“Where a member of the board of directors of a county infirmary was, by said board, appointed to the office of superintendent of the county infirmary, he still continuing to hold the office of director—Held,

That the duties of the two offices are incompatible, and can not be legally held by the same person at the same time; and such appointment was, therefore, illegal and void.”

At page 134 the following appears:

“ * * * The word *appoint*, when used in connection with an office, *ex vi termini*, implies the conferring of authority upon *another*. It was not necessary, therefore, that the statute should, in express terms, prohibit the infirmary directors from appointing one of their own number superintendent; for the language, ‘the board of directors shall *appoint* a superintendent,’ *necessarily* means, that the person *appointed* shall be different from those who appoint.”

To the same effect, see the case of *State, ex rel. Henry vs. Newark*, 6 O. N. P. 523.

In an opinion to be found in the Annual Report of the Attorney General for 1911-1912, Vol. II, page 1089, it was held as disclosed by the first branch of the syllabus:

“Contrary to the general rule of policy that a member of a board may not hold a salaried position under such board, special provision of statute makes it possible for a member of a board of education to serve as its clerk and receive the salary for both positions.”

The following appears at page 1090:

“* * * There is a principle of public policy which prohibits a member of an administrative board from holding a salaried position thereunder. This principle, however, is expressly waived, so to speak, by section 4747, above quoted. The authority to prescribe compensation for the clerk is clearly vested in the board by section 4781, General Code, which reads:

‘The board of education of each school district shall fix the compensation of its clerk *** which shall be paid from the contingent fund of the district.***’.”

In an opinion to be found in Opinions of the Attorney General for 1913, Vol. II, page 1600, it was held as disclosed by the syllabus:

“A person employed as a lineman on the electric light and water works plant, and while holding this position is elected a member of the board of trustees of public affairs, and inasmuch as the board of public affairs employs, fixes the wages of and pays the linemen, the same party should not occupy both positions.”

In an opinion to be found in Opinions of the Attorney General for 1917, Vol. II, page 1876, the following appears at page 1878:

“An examination of our statutes will disclose the fact that in a number of instances the legislature has given its express consent to the appointment or election of a member of a board as its secretary or clerk, and it would seem that, inasmuch as they have done this, they meant to withhold such consent in all other cases.

For this reason, and on the authority of the position taken by this department in the past, as above outlined, I would advise you that the offices of member of the board of trustees of public affairs of a village and the clerk of the board of trustees of public affairs are incompatible.”

The above stated principles were followed in Opinions of the Attorney General for 1920, Vol. I, page 163; Opinions of the Attorney General for 1930, Vol. II, page 917.

It is significant to note that the legislature has, in certain instances, permitted persons serving on a board to be appointed to a position under such board, thus showing the necessity of such legislative authority. See sections 4747, and 6828-9, General Code; Amended Senate Bill No. 129, enacted at the recent session of the legislature.

In view of the above authorities, it is my opinion, in specific answer to your inquiry, that a member of the soldiers' relief commission may not be employed as an investigator under the provisions of section 2933-1, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1757.

SECRETARY OF BOARD OF BARBER EXAMINERS MUST BE MEMBER OF BOARD—ENTITLED TO ANNUAL SALARY AS SECRETARY IN ADDITION TO PER DIEM COMPENSATION AS MEMBER.

SYLLABUS:

Under the provisions of Amended Senate Bill No. 129 of the 90th General Assembly, the Secretary of the Board of Barber Examiners must be a member of such Board and is entitled to his annual salary as secretary in addition to his per diem compensation as member, as provided in section 4 of this act.

COLUMBUS, OHIO, October 23, 1933.

HON. GEORGE WHITE, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—This will acknowledge receipt of your request for my opinion which reads as follows: