

3433.

OFFICES INCOMPATIBLE — DIRECTOR QUASI-PUBLIC CORPORATION, REAL PROPERTY INVENTORY CORPORATION—CANNOT SERVE AS PRESIDENT, BOARD OF COUNTY COMMISSIONERS — WHERE COUNTY MAKES CONTRIBUTION FOR REAL ESTATE INVENTORY SERVICES—SEE SECTION 5626-3 G. C.

SYLLABUS:

Where a real property inventory corporation receives public funds under Section 5626-3, General Code, it must be considered a quasi-public corporation and as such, one of its directors cannot at the same time serve as president of the board of county commissioners when the county is making a contribution to the corporation for real estate inventory services permitted in Section 5626-3, General Code, for an incompatibility of offices results where one person attempts to serve at the same time both the offices in question.

COLUMBUS, OHIO, December 20, 1938.

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

GENTLEMEN: This will acknowledge the receipt of your recent communication. Your letter reads in part as follows:

“We are informed that the Real Property Inventory of Cleveland was incorporated during the latter part of 1937; that it is a non-profit corporation, and that the board of directors are to serve without compensation.

“Under the provisions of Section 5626-3, General Code, the commissioners of Cuyahoga County have appropriated certain funds for the purpose of participating in the benefits to be obtained by a real property inventory.

“Question: May the president of the board of county commissioners serve on the board of directors of the Real Property Inventory of Cleveland and as an officer of the corporation?”

Section 5626-3, General Code, referred to in your letter reads:

“For the purpose of participating in the benefits to be obtained by a real property inventory within the state of Ohio, any housing authority or any political subdivision,

including counties and the state of Ohio by resolution of the taxing authority of such subdivision, may incur indebtedness and authorize the expenditure of funds of such subdivision for the purpose of carrying forward a real property inventory of all or part of the county in which such subdivision is located and/or may contribute to any organization which is now or may hereafter be established for the purpose of carrying forward such a real property inventory."

There is no code section directly affecting the question raised in your letter. Those sections of the code which seek to prevent public officials from using their offices to advance their private interests do not cover this case. Sections 12910 and 12911, General Code, refer only to contracts for property, supplies and insurance. Section 12912, General Code, by its express term applies only to municipal and township officers and employes. There is, moreover, no statute requiring a county commissioner to give full time to his office.

In the absence of legislation affecting the matter, we must examine the present situation in the light of common law now recognized in Ohio. When an agency or corporation receives a contribution of public money, its activities must be of such nature as to widely affect public matters, for it is a well known rule of law that public money cannot be spent to advance a purely private interest.

A real property inventory corporation does assuredly engage in activities which are of public concern and interest. This being the case it must be considered a quasi-public corporation especially if it is to receive a contribution of public funds from the county. Regarding the corporation in this light then, it follows that when the president of the board of county commissioners is also director of a real property inventory corporation and that corporation receives a contribution of public funds for its services, the law of incompatibility of public offices must be considered.

Certainly the president of the board of county commissioners has important responsibilities as a member of that board in determining the selection of the corporation for real estate inventory services as authorized under Section 5626-3, General Code. He has also the duty of approving the contribution contemplated and of determining its amount. He could not freely or with propriety exercise these responsibilities as a county official and at the same time be bound by his responsibilities as director of the corporation to receive the contribution. There is definitely a conflict of interests between the two offices in question.

Throop in his work on "Public Offices," Section 34, gives the following clear statement as to the rule on incompatibility:

“Offices are said to be incompatible when from multiplicity of business in them they cannot be executed with care and ability, or when, their being subordinate and interfering with each other it induces a presumption that they cannot be exercised with impartiality and honesty.”

The instant case falls definitely within that rule.

It is therefore my opinion that where a real property inventory corporation receives public funds under Section 5626-3, General Code, it must be considered a quasi-public corporation and as such, one of its directors cannot at the same time serve as president of the board of county commissioners when the county is making a contribution to the corporation for real estate inventory services permitted in Section 5626-3, General Code, for an incompatibility of offices results where one person attempts to serve at the same time both the offices in question.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

3434.

COUNTY BOARD OF EDUCATION—MAP, DIAGRAM OR SURVEY—LOCATION COUNTY SCHOOL DISTRICTS—YEARS 1938-1939—INTERPRETATION SECTIONS 7600-1 TO 7600-8, INCLUSIVE, G. C.

SYLLABUS:

The provisions of Sections 7600-2, 7600-3, 7600-4 and 7600-5, General Code, are operative after January 1, 1939.

The provisions of Sections 7600-1 and 7600-7, General Code, are operative after January 1, 1939, with the exception that the provisions of Section 7600-1, General Code only so far as they relate to making it mandatory that a county board of education adopt a plan of organization for the county school district for each of the years 1935 to 1938, inclusive, and the provisions of Section 7600-7, General Code, supra, only so far as they relate to making it mandatory that the director of education approve the plan of organization for each of the years 1935 to 1938, inclusive, are ineffective and inoperative, after the year 1938.

After the year 1938, a county board of education may adopt a plan of school district organization by changing or modifying its last plan of