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1. JUSTICE OF PEACE—SALARY FIXED BY BOARD OF COUNTY COMMISSIONERS— DOES NOT MAKE COUNTY ONE “WITH WHICH HE IS CONNECTED”—AWARD OF CONTRACT FOR “PROPERTY, SUPPLIES OR FIRE INSURANCE FOR USE OF COUNTY”—SECTIONS 1907.47, 2919.08 RC.
2. CONTRACT—IMPROVEMENT OF COUNTY COURT HOUSE OR COUNTY HOME—MAY BE AWARDED ONLY UPON ADVERTISEMENT FOR BIDS—IF ESTIMATED COST DOES NOT EXCEED ONE THOUSAND DOLLARS WORK MAY BE LET BY PRIVATE CONTRACT—SECTIONS 153.36, 153.37, 153.40, 153.42 RC.
3. INTEREST OF JUSTICES OF PEACE IN COUNTY CONTRACTS—BIDS—ADVERTISEMENT—LEGAL REQUIREMENTS—AWARD OF CONTRACT—SECTION 2919.09 RC.

## SYLLABUS:

1. The fact that the salary of a justice of the peace is fixed and paid by the board of county commissioners as provided in Section 1907.47, Revised Code, does not make such county one "with which he is connected" within the meaning of Section 2919.08, Revised Code, relative to the award of contracts for "property, supplies, or fire insurance for the use of the county."
2. A contract for the improvement of a county courthouse, or of a county home, within the meaning of Sections 153.36 and 153.37, Revised Code, is one which may be awarded only upon advertisement for bids as provided in Section 153.40, Revised Code, unless the estimated cost of the improvement does not exceed one thousand dollars, in which case the work may be let by private contract as provided in Section 153.42, Revised Code.
3. The provisions of Section 2919.09, Revised Code, do not apply, with respect to the interest of justices of the peace in county contracts, to contracts "let on bids advertised as provided by law" in cases where the law *requires* such advertisement and competitive bidding; but where there is no legal requirement of such advertisement and competitive bidding, the fact that such procedure was nevertheless followed in the award of a county contract would not prevent the application of such section as to contracts in which a justice of the peace is interested.

Columbus, Ohio, April 4, 1956

Hon. Harry Friberg, Prosecuting Attorney  
Lucas County, Toledo, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Board of County Commissioners of Lucas County recently published a notice to contractors for sealed bids, copy of which I am attaching, in accordance with specifications on file in the office of the Board of County Commissioners for awnings for the Lucas County Home for the Aged and the Court House. Among the bids that were delivered to the Commissioners there was one bid from a corporation, the president of which was elected Justice of the Peace of Washington Township at a recent election. Due to the fact that the Justice of the Peace, under recent statutory enactment, is now compensated for his services by the County Commissioners, we are requesting an opinion from you whether the Board of County Commissioners could be authorized to award a contract for the purchase of awnings for either of the buildings to be supplied and still be conforming to Section 2919.08 and 2919.09 of the Revised Code of the State of Ohio."

Sections 2919.08 and 2919.09, Revised Code, mentioned in your inquiry, read as follows:

## SECTION 2919.08

“No person, holding an office of trust or profit by election or appointment, or as agent, servant, or employee of such officer or of a board of such officers, shall be interested in a contract for the purchase of property, supplies, or fire insurance for the use of the county, township, municipal corporation, board of education, or a public institution *with which he is connected*.

“Whoever violates this section shall be imprisoned not less than one nor more than ten years.” (Emphasis added.)

## SECTION 2919.09

“No person, holding an office of trust or profit, by election or appointment, or as agent, servant, or employee of such officer or of a board of such officers, shall be interested in a contract for the purchase of property, supplies, or fire insurance for the use of the county, township, municipal corporation, board of education, or a public institution *with which he is not connected*, if the amount of such contract exceeds the sum of fifty dollars, unless such contract is let on bids advertised as provided by law.

“Whoever violates this section shall be imprisoned not less than one nor more than ten years.” (Emphasis added.)

It is assumed that your query so far as Section 2919.09, Revised Code, is concerned, is whether a justice of the peace whose compensation is fixed as provided in Section 1907.47, Revised Code, and paid from the county treasury in the manner pointed out in my Opinion No. 5951, dated November 18, 1955, is “connected” with the county within the meaning of this section.

There can be no doubt that a justice of the peace holds “an office of trust or profit by election or appointment.” Such officer cannot, however, be regarded as an “agent, servant or employee” of the county in which he serves, merely by reason of being compensated by such county, since his office operates wholly independently of the elected officers of the county, and of the principal governing agency of the county, i. e., the board of county commissioners.

As to being “connected,” in the status of a judicial officer, with the county which pays his compensation, it is clear that the only possible “connection” is the fact of such payment.

The legislative objective in the denunciation of the “connection” in this statute is stated in *Doll v. State*, 45 Ohio St., 445 (449), by Judge Williams in the following language:

“\* \* \* To permit those holding offices of trust or profit to become interested in contracts for the purchase of property for the use of the state, county, or municipality of which they are officers, might encourage favoritism, and fraudulent combinations and practices, not easily detected, and thus make such officers, charged with the duty of protecting those whose interests are confided to them, instruments of harm. The surest means of preventing this, was to prohibit all such contracts; \* \* \*”

Because the judicial office here involved is so completely independent in function from operations of the county government it can scarcely be conceived how a justice, dependent only in the matter of salary on the discretion of the board of county commissioners, could influence any county agent in the award of a contract; and it is difficult to suppose that this is the sort of “connection” which the legislature had in mind in the enactment of this section. Accordingly, in view of the necessity of according a strict construction to penal statutes I am impelled to the view that justices of the peace do not hold an office which is “connected” with the county within the meaning of Section 2919.08, Revised Code.

As to Section 2919.09, Revised Code, it would seem that the only question involved in whether the proviso therein as to “bids advertised as provided by law” is applicable. In Opinion No. 2341, Opinions of the Attorney General for 1934, p. 258, the writer said (pp. 263, 264):

“\* \* \* if there is no provision in the law requiring advertisement and competitive bidding for the particular ‘supplies,’ then it would be illegal for a senator or representative to be interested in a contract for the purchase of ‘supplies’ over \$50.00 for the use of the county from which he was elected, even if advertisement and competitive bidding was had before the contract was let.”

In Opinion No. 366, Opinions of the Attorney General for 1949, p. 101, the syllabus reads:

“A county commissioner would be subject to prosecution under provisions of Section 12911, General Code, if interested in a contract for the sale of supplies to a local board of education when the amount exceeds \$50.00 and let on competitive bids after advertisement, when the advertising for bids is not required by law.”

These rulings were noted with approval in my Opinion No. 580, Opinions of the Attorney General for 1951, p. 342, the syllabus in which reads in part:

“\* \* \* Section 12911, General Code, does not forbid a trustee of a county hospital appointed under the provisions of Section 3136, General Code, to have an interest in a contract for the purchase of fire insurance by a political subdivision or public institution with which he is not connected where the amount of the premium payable under such contract exceeds the sum of fifty dollars and where such contract is let pursuant to bids duly advertised as may now or hereafter be provided by law; but such interest is forbidden by this section where such contract is let on competitive bids after advertisement, where such advertising for bids is not required by law.”

I assume that the contract here in question will amount to more than fifty dollars; and the question thus presented is whether there is any provision of law requiring that the “contract be let on bids advertised” within the meaning of Section 2919.09, *supra*. The advertisement submitted with your inquiry indicates that the contract in question is such as to constitute an improvement to the courthouse and the county home within the meaning of Section 153.36 and 153.37, Revised Code, and that advertisement for bids was accomplished in order to comply with the requirements of Section 153.40, Revised Code. I assume, therefore, that the estimated cost is in excess of one thousand dollars, and that competitive bidding could not be dispensed with under the provisions of Section 153.42, Revised Code. Such being the case it becomes clear, in view of the conclusion hereinbefore expressed as to the lack of a “connection” between the justice and the county, that the proviso in Section 2919.09, Revised Code, is applicable in the case described and that the award of the contract to the firm concerned would not be in violation of that section.

In specific answer to your inquiry, therefore, it is my opinion that:

1. The fact that the salary of a justice of the peace is fixed and paid by the board of county commissioners as provided in Section 1907.47, Revised Code, does not make such county one “with which he is connected” within the meaning of Section 2919.08, Revised Code, relative to the award of contracts for “property, supplies, or fire insurance for the use of the county.”

2. A contract for the improvement of a county courthouse, or of a county home, within the meaning of Sections 153.36 and 153.37, Revised Code, is one which may be awarded only upon advertisement for bids as provided in Section 153.40, Revised Code, unless the estimated cost

of the improvement does not exceed one thousand dollars, in which case the work may be let by private contract as provided in Section 153.42, Revised Code.

3. The provisions of Section 2919.09, Revised Code, do not apply, with respect to the interest of justices of the peace in county contracts, to contracts "let on bids advertised as provided by law" in cases where the law *requires* such advertisement and competitive bidding; but where there is no legal requirement of such advertisement and competitive bidding, the fact that such procedure was nevertheless followed in the award of a county contract would not prevent the application of such section as to contracts in which a justice of the peace is interested.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General