

"The net indebtedness of any subdivision shall be the difference between the par value of the outstanding and unpaid bonds and notes of the subdivision and the amount held in the sinking fund and other indebtedness retirement funds for their redemption. An indebtedness shall not be deemed to have been created or incurred until the delivery of the bonds under contract of sale.

Bonds or notes issued in anticipation of the levy or collection of special assessments, either in original or refunded form, county bonds issued in anticipation of the levy or collection of township taxes, notes issued in anticipation of the collection of current revenues, notes issued for emergency purposes under Section 2293-7 of the General Code or heretofore issued under Sections 4450, 5629, or 7630-1 of the General Code, and bonds issued to pay final judgments shall not be considered in calculating the net indebtedness." (Italics the writer's)

The provisions of the statutes above referred to render obvious the conclusion that not only may township trustees issue bonds in anticipation of the collection of special assessments for the purpose of paying all or a portion of the cost of constructing roads within the township but that such bonds are not subject to the two per cent net indebtedness limitation set out in Section 2293-17, General Code; and further, that such bonds may be issued without submitting the question of their issuance to a vote of the electors.

In this connection, however, your attention is directed to the fact that bonds may not be issued by boards of township trustees to pay the township's share of a road improvement without submitting the question of issuing such bonds to a vote of the electors and that such bonds are subject to the two per cent. net indebtedness limitation set out in Section 2293-17, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1863.

MEMBER OF COUNCIL—MAY RESIGN AND BE APPOINTED VILLAGE STREET COMMISSIONER.

SYLLABUS:

A member of a village council, who resigns from such body, may immediately be lawfully appointed street commissioner for the village.

COLUMBUS, OHIO, March 19, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your communication requesting my opinion in answer to the following question:

"May a member of the village council resign and immediately thereafter be appointed street commissioner?"

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 thereafter, 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."

Prior to the enactment of the above section in its present form on April 21, 1910, (101 v. 145) this statute (Section 6976, R. S., 94 v. 406) read as follows :

"An officer or member of the council of any municipal corporation or the trustees of any township who is interested directly or indirectly in the profits of any contract, job, work or services for the corporation or township, or acts as commissioner, architect, superintendent or engineer in any work undertaken or prosecuted by the corporation or township during the term for which he was elected or appointed, or for one year thereafter, shall be fined not more than one thousand dollars nor less than fifty dollars, or imprisoned not more than six months nor less than thirty days, or both, and shall forfeit his office."

It will be noted that the provisions of Section 12912, General Code, in its present form, wherein it provides that an officer of a municipal corporation, or member of the council thereof, shall not act as commissioner, architect, superintendent or engineer in any work undertaken or prosecuted by such corporation during the time for which he was elected or appointed, or for one year thereafter, is the same as it was in Section 6976, Revised Statutes.

In January, 1910, while Section 6976, Revised Statutes, was in force, and prior to the amendment of April 21, 1910, the then attorney general had occasion to construe it with reference to the import of the clause "or for one year thereafter." This opinion is reported in the Annual Report of the Attorney General for 1910 and 1911, at page 1033. In the course of the opinion the Attorney General said as follows :

"As your letter suggests, there are, at least, two meanings which might be attached to somewhat ambiguous language of this section. Indeed careful examination of the section will disclose that it is susceptible to other meanings. The section has been twice amended, in immaterial respects, since the codification of 1860, but an examination of the section as therein embodied will disclose that the same questions could be made upon the language of original Section 6976.

Said original Section 6976 of the codification of 1880, was a revision of Section 92 of the Municipal Code of 1869, 66 O. L. 164. Here we find the law, in its original form, as follows :

"No member of the council or any officer of the corporation shall be interested, directly or indirectly, in the profits of any contract, job, work, or services, (other than official services to be performed for the corporation) nor shall any member or officer act as commissioner, architect, superintendent or

engineer in any work undertaken or prosecuted by the corporation (during the term for which he was elected or appointed, or for one year thereafter)'.

It is a familiar principle of statutory construction that the re-enactment of a statute for the purpose of codification and revision is presumed not to change the meaning thereof, * * * It will be noted with respect to the original act that the subject 'no member of the council or any officer of the corporation' is repeated; in fact, the entire structure of the original section indicates clearly that the portion thereof which follows the parenthesis is absolutely separate and distinct from that which precedes, and that it would have been proper grammatically to have placed a period at the division point. This conclusion eliminates one of the possible meanings suggested by you, and indicates clearly that the phrase 'during the term for which he was elected or appointed, or for one year thereafter' does not modify the verb 'is interested.'

* * *

Looking still to the original section, and particularly to the latter half thereof, it will appear that the phrase 'during the term' etc., as above set forth in full, immediately follows the participial phrase 'undertaken or prosecuted by the corporation.' On the familiar grammatical principle that qualifying words and phrases should be regarded as modifying the next preceding word or phrase susceptible to qualification, it would have to be decided that the last mentioned phrase was the one to which the general assembly intended limitation as to time to apply. In other words, the prohibition against acting as commissioner, architect, etc., is not limited to one year after the expiration of the term, but it is against so acting in any work *undertaken within the year*. Thus, a municipal officer, or a member of council may not accept employment as architect, superintendent or engineer, after the expiration of one year from the end of his term if the municipal work in which he is to act in such capacity was undertaken before the expiration of such year. This, it seems to me, is the plain meaning of the original section. * * *

As above suggested, what is ascertained to be the meaning of the original law in this particular must determine the doubtful meaning of the present Section 6976. * * * "

Again, in 1912, the same question was before this department. The Attorney General in an opinion reported in the Annual Report of the Attorney General for 1912, page 1743, reviewed the opinion of the Attorney General rendered in 1910 and held:

"There is nothing in the statutes to prohibit a councilman of a city from resigning and immediately receiving an appointment as street commissioner under the public service department."

In 1914, the department again construed this statute in two opinions in line with the former opinions above cited. These opinions are reported in the Annual Reports of the Attorney General for 1914, the one in Vol. I, at page 385, the other in Vol. II, at page 1257. In the latter opinion it was held:

"A health officer of a village is not precluded by the provisions of Section 12912, General Code, from accepting an appointment as superintendent of the public works of said village immediately upon the termination of his service as such health officer."

In 1917, the then attorney general in an opinion reported in Opinions, Attorney General, 1917, page 10, said:

"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 within one year after his term had expired.

* * * * *

A former director of public service may act as street inspector within one year after his term of office expires, no matter whether his compensation is paid by the city or the contractor, or paid by the city and afterwards deducted from the estimate allowed the contractor on his contract."

And again, in 1922, this department held:

"Under the provisions of Section 12912, General Code, a member of council of a municipality, may upon the expiration of his term of office as councilman and within the one year limitation prescribed by the section, qualify and act as director of public service of the same city, said section prohibiting said officer only from acting as commissioner, architect, superintendent, or engineer in work undertaken or prosecuted by the corporation during the term for which he was elected or for one year thereafter."

I am not unmindful of the holding of the Circuit Court in the case of *State ex rel Winn vs. Wichgar, Auditor*, 17 O. C. D. 733, which was considered in several of the Attorney General's opinions hereinbefore referred to. This case was decided in 1905. The opinion is a very short per curiam opinion, and reads as follows:

"A member of the board of health of a municipal corporation is an officer of such corporation and under Lan. R. L. 10668 (R. S. 6976) (is ineligible) to the appointment of district physician by such board during the term for which he was appointed, or for one year thereafter and without rendering services under such position can not recover compensation therefor."

Inasmuch as the interpretation given to Section 6976, Revised Statutes, by the attorney general in his opinion of 1910 above cited, has been consistently adhered to by succeeding attorneys general and a like interpretation has been accorded to the language of Section 12912, General Code, in the several rulings of this department above cited, and since, in the light of the history of the statute as reviewed in the opinion of 1910 and succeeding opinions, is obviously correct, I am of the opinion that a member of the village council who resigns from such body may immediately be lawfully appointed street commissioner.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1864.

NEWSPAPER—PAPER PUBLISHED BY STUDENT BODY IS NOT NEWSPAPER WITHIN PURVIEW OF SECTION 291, GENERAL CODE.

SYLLABUS:

A paper or magazine, published by the student body, for the public schools of a county school district, issued monthly during the school year only, and containing