(2) There is no obligation or mandatory duty on the part of the Director of Highways and Public Works to keep in repair or maintain extensions or continuations of inter-county highways or main market roads, located within cities or villages, but the Director of Highways and Public Works, under the provisions of Section 1224-2, supra, upon the application of the county commissioners or township trustees, and with the consent of the council of such municipal corporation, may maintain and repair such highways. Likewise, the Director of Highways and Public Works, when acting without the cooperation of the county commissioners or township trustees, but subject to the obtaining of the consent of the council of a municipal corporation, may maintain and repair such highways and pay the entire cost thereof out of funds available to the state for such purposes.

(3) Under the provisions of Section 3 of Article XVIII of the Constitution of Ohio, a municipal corporation may establish such police regulations pertaining to traffic and otherwise upon state highways, located within such municipalities, as are not inconsistent with general laws.

A municipal corporation may not determine which of two state highways, located within such municipality, is a main thoroughfare, for the reason that under the provisions of Section 6310-30, General Code, all main market and inter-county highways, located within the state, are main thoroughfares.

Under Section 6310-32, General Code, local authorities, however, may designate, by ordinance, what vehicles shall have the right of way at the intersection of main thoroughfares.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1064.

LIBRARIAN—SCHOOL DISTRICT PUBLIC LIBRARY—MEMBER OF BOARD OF EDUCATION WHO HELPED APPOINT LIBRARY TRUSTEES MAY NOT SERVE.

SYLLABUS:

A member of a board of education which has appointed a board of library trustees under authority of Section 7635, General Code, cannot legally be employed by such board of trustees as librarian for the school district public library.

COLUMBUS, OHIO, September 27, 1927.

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

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

> "Under the provisions of Section 7635 of the General Code, the board of education of any city, village or rural school district may provide for the establishment, control and maintenance in such district of a public library, free to all the inhabitants thereof, and appoint a board of trustees to manage and control such library. Section 7637, G. C., empowers the board of library trustees to employ a librarian and assistants.

Question: May a member of a board of education participating in the appointment of the board of trustees of the library, be legally employed by such board of trustees as librarian?"

The sections of the General Code relating to the establishment, maintenance and control of a school district public library are Sections 7635 to 7640-1, inclusive, the sections pertinent to the inquiry here presented providing, *inter alia,* as follows:

Sec. 7635. "The board of education of any city, village or rural school district, by resolution, may provide for the establishment, control and maintenance in such district, of a public library, free to all the inhabitants thereof. It shall provide for the management and control of such library by a board of trustees to be elected by it as herein provided."

Sec. 7636. "Such board of library trustees shall consist of seven members, who must be residents of the school district. No one shall be eligible to membership on such library board who is or has been for a year previous to his election, a member or officer of the board of education. The term of office shall be seven years, except that at the first election the terms must be such that one member retires each year. Should a vacancy occur on the board, it shall be filled by the board of education for the unexpired term. The members of the library board must serve without compensation and until their successors are elected and qualified."

Sec. 7637. "In its own name, such library board shall hold the title to and have the custody, and control of all libraries, branches, stations, reading rooms, of all library property, real and personal, of such school district, and of the expenditure of all monies collected or received from any source for library purposes for such district. It may employ a librarian and assistants, but previous to such employment their compensation shall be fixed."

Sec. 7639. "Such board of library trustees annually, during the month of May, shall certify to the board of education the amount of money needed for increasing, maintaining and operating the library during the ensuing year in addition to the funds available therefor from other sources. The board of education annually shall levy a tax of not to exceed one and one-half mills for such library purposes, which tax shall be in addition to all other levies authorized by law, and subject to no limitation on tax rates except as herein provided."

Since there is no statute which specifically prohibits a library board created by virtue of the provisions of Section 7635, supra, from employing or appointing one of the members of the board of education which appointed the members of the library board as librarian or assistant librarian, resort must be had to the general principles of common law to determine whether or not such an appointment would be within the powers of the appointing board.

In 29 Cyc. 1381 the following principle of law is stated:

"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 office to which they may appoint."

And in 23 American and English Encyclopedia of Law (Second Edition), it is said as follows: (Page 348)

"On the ground of public policy it has been held that the person or a member of a collective body invested with the appointing power cannot be appointed and an appointment to the office of a member of the body invested with the appointing power is especially unauthorized when the vote of such appointee was necessary to secure his appointment."

An examination of the cases in which a similar question has arisen discloses a consistent general attitude of the courts to the effect that it would be contrary to public policy and the general welfare to uphold an appointment to a public office of one who is a member of the board making the appointment, or to uphold a contract of public employment with one who participates in or who is a member of the board with whom the contract of employment is made. In some of the instances which have arisen there are special statutes which are held to be violated, but most, if not all, of such statutes have been enacted in aid of the common law and are merely declaratory thereof; that is, such statutes put in specific statutory form what the common law frowns upon. Most of the cases, however, place the invalidity of such appointments upon broad grounds of public policy unaffected by any statutory enactment.

The direct question has never been passed upon by the courts of Ohio. A similar question, however, was presented in the case of *State ex rel., Louthan* vs. *Taylor,* 12 O. S. 130. This was an action in mandamus in which the defendant in error had been appointed to the office of superintendent of the county infirmary by the board of directors thereof of which he was a member and it appeared that he gave the casting vote in his favor. The court announced its decision in a brief statement in which it said that it concurred with counsel for the relators in their view of the law of the case. The law as contended for by the relator's counsel was that when the board of directors was given authority to appoint a superintendent this necessarily meant that the person appointed should be different from those who appoint. It is a fair inference from the report of the decision that the court adopted this view.

In *Kinyon* vs. *Duchene,* 21 Mich. 498, the court held an appointment by a board of supervisors of one of the members of the board as drain commissioner was void and said:

"Whether they vote for their own appointment does not affirmatively appear, but they had as much right to do so as the others had to vote for them."

In *Commonwealth* vs. *Douglass,* 1 Bin (Pa.), 77, the court said:

"One having a discretionary authority to appoint a fit person to a public office appointing himself seems a solecism in terms and it cannot be deemed the fulfillment of his duty."

In the case of *Wood* vs. *Town of Whitehall,* 197 N. Y. S. 789, the town board had been vested with the power to appoint a police justice and this board appointed one of its own members. The appointment was held to be illegal although it was not necessary to count the vote which the appointee cast for himself in order to give him a majority. The court in this case said:

"It seems clear that it would be contrary to public policy and the general welfare to uphold such an appointment. When public officers such as mem-

bers of a town board are vested by the legislature with power of appointment to office a genuine responsibility is imposed. It must be exercised impartially with freedom from a suspicion of taint or bias which may be against public interest. An appointing board cannot absolve itself from the charge of ulterior motives when it appoints one of its own members to an office. It cannot make any difference whether or not his own vote was necessary to the appointment. Such appointment should be held void on broad grounds of public policy. It is against good conscience that a board with appointing power should appoint one of its members to office. Such a practice even when not forbidden by specific enactment and when the vote of the appointee is not necessary to the appointment is against public morals. It cannot but result in evil."

To the same effect are the cases of *Meglemery* vs. *Weissinger,* 140 Ky. 353; 31 L. R. A. (N. S.) 575; *Gaw* vs. *Ashley,* 195 Mass. 173; *State ex rel. Doyle* vs. *Board of Education,* 54 N. J. Law, 313; *Ellis* vs. *Lemon,* 86 Mich. 468; and *State ex rel.* vs. *Hoyt,* 2 Oregon, 246.

It might be contended in this case that the librarian to be selected by the board of trustees is a mere employe and is not a public officer and for that reason the principles laid down in the cases to which I have called your attention would not apply, but it is my opinion that it makes no difference whether the person selected is a public officer or whether a mere contract of employment is entered into.

In the case of *Beebe* vs. *Supervisors of Sullivan County,* 64 Hun. 377, affirmed by the Court of Appeals of New York in a memorandum opinion found in 142 N. Y. 631 a contract had been made by a board of supervisors to employ one of its members as attorney to prosecute certain actions in which the county was interested. The employment was held void. In this case there was an employment as distinguished from a public office yet the court laid down certain principles which are applicable here. The court said:

"The illegality of such contracts does not depend upon statutory enactments. They are illegal at common law. It is contrary to good morals and public policy to permit municipal officers of any kind to enter into contractual relations with municipalities of which they are officers."

It will be noted that none of the cases above cited are directly in point, the difference being that in the cases cited the appointing board attempted to appoint one of its own number to office, while in the instant case the appointing board desires to employ a member of the board which appointed the members of the appointing board. It seems clear upon principle, however, that if it be contrary to public policy to permit an appointing board to appoint one of its own members to an office, the same public policy would prevent a board from appointing to office, or employing in a public capacity, a member of the board charged with the duty of appointing the appointing board.

Moreover, an employment as librarian for the school district library would seem to be incompatible with the office of member of board of education of such district. It will be observed that by the terms of Section 7637, supra, the compensation of the librarian and assistants is fixed by the board of library trustees. Under the provisions of Section 7639, supra, the board of library trustees is directed, annually during the month of May, to certify to the board of education the amount of money needed for increasing, maintaining and operating the library during the

ensuing year, and the board of education is directed to levy a tax of not to exceed one and one-half mills for such library purposes. As held in the case of *State ex rel.* vs. *Gebbard,* 12 O. C. C. (N. S.) 25:

> "Offices are considered incompatible when one is subordinate to or in any way a check upon the other; or when it is physically impossible for one person to discharge the duties of both."

What amount is received by the librarian as compensation and what monies are spent by him as librarian, would of course depend to a very substantial extent upon the revenue derived from the tax levy made by the board of education by virtue of Section 7639, supra. The board of education, therefore, does have a check upon the board of library trustees and its employes, and for this reason alone employment as librarian is in my opinion incompatible with membership on the school district board of education.

It is therefore my opinion that a member of the board of education which has appointed a board of library trustees under authority of Section 7635, General Code, cannot legally be employed by such board of trustees as librarian for the school district public library.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1065.

TAX AND TAXATION—DELINQUENT LANDS FORFEITED TO STATE—HOW SOLD.

SYLLABUS:

Delinquent lots and lands forfeited to the State of Ohio for non-payment of taxes and assessments, prior to March 21, 1917, *should not be sold under the provisions of Section* 5718, *General Code, but such forfeited lands should be sold either under the provisions of Sections* 5744 *to* 5758, *General Code, inclusive, or sold under the provisions of Sections* 2667 *and* 2670, *General Code.*

COLUMBUS, OHIO, September 27, 1927.

HON. WILLIAM B. JAMES, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent communication in which you ask the following:

> "May lands which were forfeited to the State of Ohio for non-payment of taxes prior to the enactment of Sections 5704-5727, inclusive, as now in force, be sold under the provisions of Section 5718, or do the provisions of Section 5748, et seq., still apply?"

Sections 5704 to 5727, inclusive, of the General Code, to which you refer, were enacted by the General Assembly on March 21, 1917, (107 O. L. 733) and former