driver of a vehicle in case of an accident or collision, to render assistance to a person injured.

It is apparent that if Section 12606, General Code, were so construed that the mere stopping by a driver of the motor vehicle would be a sufficient compliance with the statute the very purpose of the statute would in many instances be defeated, for in some cases a person may be so injured that it would be impossible for him to leave the scene of the accident in order for him to make a request for information, unless the driver returned to the scene of the accident, and in some cases it might be impossible, because of the severity of the injuries sustained for a person to request the information required by the statute until after some time had elapsed, or until some person arrived upon the scene of the accident. Whether or not the stopping by a driver of a vehicle upon the highway after an accident is sufficient compliance with the statute, depends upon the circumstances in each particular case.

In specific answer to your inquiry, I am of the opinion:

First, That under the terms of Section 12606, of the General Code, a person operating a motor vehicle upon the public roads or highways in case of an accident to or collision with persons or property, due to the driving or operation thereon of his motor vehicle, having knowledge of such accident or collision, must return to the place of the accident or collision and there remain for a sufficient time to give the person injured, or to any other person or persons a reasonable opportunity to request of him his name and address or if he is not the owner, the name and address of the owner of such motor vehicle, together with the registration number of such motor vehicle.

Second, Whether or not the stopping by a driver of a vehicle upon the highway after an accident or collision is a sufficient compliance with Section 12606, of the General Code, depends upon the circumstances in each particular case.

Respectfully,
GILBERT BETTMAN,
Attorney General.

947.

CONTRACT—FOR PURCHASE OF COAL BETWEEN BOARD OF EDUCATION AND CORPORATION HAVING SUCH BOARD'S CLERK AS A STOCKHOLDER—VOID—NO FINDING FOR RECOVERY OF MONEY PAID—EXCEPTION NOTED.

SYLLABUS:

Purchases of coal made by a board of education from a corporation, a stockholder of which is at the time of such purchase, the duly appointed clerk of said board of education, are contrary to law. However, no finding should be made for the recovery of moneys paid as the purchase price of said coal in the absence of facts showing actual fraud in the transaction relating to the purchase of the same, or that the purchase price of the coal was in substantial excess of the reasonable value thereof, since no statutory authority for such recovery exists similar to that applicable in case of municipal offices by the terms of Section 3808 of the General Code.

COLUMBUS, OHIO, September 30, 1929.

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

GENTLEMEN:—This will acknowledge receipt of your inquiry, which reads as follows:

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

A clerk of the board of education, who is not a member of the board, is a stockholder and officer in an incorporated company, which company sells coal to the board of education, either with or without competitive bidding.

Question 1. Is such sale of coal a violation of the provisions of Sec. 12910 of the General Code, and if so may the amount paid to such company be recovered under a finding made by our examiner?"

Section 12910, General Code, reads as follows:

"Whoever, holding an office of trust or profit by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education or a public institution with which he is connected, shall be imprisoned in the penitentiary not less than one year nor more than ten years."

Before the codification of 1910, Section 6969, Revised Statutes, 94 O. L. 391, read in part, as follows:

"It shall be unlawful for any person holding any office of trust or profit in this state, either by election or appointment, or any agent, servant or employe of such officer, or of a board of such officers to become directly or indirectly interested in any contract for the purchase of any property, supplies or fire insurance for the use of the county, township, city, village, hamlet, board of education or public institution with which he is connected. * * * "

The part of Section 6969, Revised Statutes, quoted above was codified as Section 12910, General Code, with some change of phraseology, as you will note. A change of phraseology such as was here made by the codifying commission and adopted by the Legislature does not serve to change the meaning of the statute. *Collins* vs. *Mulen,* 57 O. S. 289, Opinions of the Attorney General, 1927, page 2390.

A clerk of a board of education is not a public officer. *Board of Education* vs. *Featherstone,* 110 O. S. 669. He is, however, without a doubt an employe of the board of education and as such employe is in the same position so far as the prohibitions contained in Section 12910, General Code, are concerned, as is a public officer. That is to say, he is prohibited by force of the terms of the statute, from being interested in a contract for the purchase of property or supplies for the use of the board of education with which he is connected.

It becomes a question, therefore, in considering your inquiry, whether the clerk being a stockholder in a corporation which sells coal to the board of education constitutes in him such an interest in the contract as is contemplated by the statute.

Said Section 12910, General Code, and cognate sections of the Code, have been considered in a number of opinions of this office, with the universal holding that in whatever manner the officer or employe is interested in the contract, such contract is void.

In 13 Corpus Juris, at page 434, in considering generally the illegality of contracts entered into by public officers charged with the letting and making of public contracts, it is said:

"Another class of agreements which are within the rule are those be-

tween a state, a county, or other municipal corporation for the doing of work or the furnishing of supplies with one of its own officers or with a company or body of men of which such officer is one, or in which he is interested.

In many jurisdictions statutes declaratory of the common-law rule have been passed, expressly prohibiting public officers from being interested in any contract for the furnishing of supplies, etc., to the corporation of which they are officers, and contracts entered into by them in violation of such a statutory provision are a fortiori illegal.

The rule prohibiting a public officer from being personally interested in a contract under his supervision or control has been extended so as to prevent him from letting such a contract to a corporation of which he was an officer or a stockholder."

In Page on the Law of Contracts (2nd Edition), at page 414, it is said:

"By some statutes, a corporation the stockholders of which are city officials cannot contract with such city. A statute which forbids a public officer to have any interest in a public contract, or which forbids him to have any interest, directly or indirectly, renders invalid a contract with a corporation of which he is a stockholder, or an officer. The fact that the public officer in question has nothing to do with making the contract and does not know that it is made, does not render it valid."

The Supreme Court of Michigan, in the case of *Ferle* vs. *City of Lansing,* 189 Mich. 501, held that, under a municipal charter providing under penalty that no person holding an elective or appointive office in the city government should be interested in any contract with the city, a contract, by which the superintendent of public works of the city purchased supplies from the corporation in which an officer of the city is a stockholder, was void, although the stockholder had no official connection with the purchase and had no knowledge that it was made. The court in its opinion in this case said:

"It is true that this prohibition in the charter prevents the city from making purchases of a corporation of which any officer of the city, or member of its council, is an officer or stockholder. This was determined, on principle, in *Consolidated Coal Co.* vs. *Michigan Employment Inst.,* 164 Mich. 235, 129 N. W. 193. A sale is a contract, and a form of contract in which the evil sought to be remedied by the charter is most frequently apparent. And, as said in *Hardy* vs. *Gainesville,* 121 Ga. 327, 48 S. E. 921: 'A stockholder in a private corporation clearly has an interest in its contracts; and if the city cannot make a contract with the officer himself, it cannot make it with a corporation in which such officer is a stockholder.'

The charter does not, in so many words, say that a contract made by the city shall be void if any member of the council or city official is interested in it; but it is void, nevertheless, inasmuch as the charter imposes a penalty for the making of such a contract.

'A statute which imposes a penalty upon an act by implication ordinarily prohibits such act. A penalty usually implies a prohibition, although there are no prohibitory words in the statute.' Elliott, Contr., Section 666; Re Reidy, 164 Mich 167, 129 N. W. 196; *Case vs. Johnson,* 91 Ind. 477; Bishop, Contr. 2d ed. Sec. 471; Dill. Mun. Corp. 4th ed., Sec. 773, and cases cited.

And a contract made void by charter or by statute cannot be ratified,—

there is nothing to ratify,—nor can any recovery be had upon it. The courts will leave the parties as it finds them; and if it is a contract of sale, an action cannot be maintained for the value of goods delivered under it. *Consolidated Coal Co.* vs. *Michigan Employment Inst.,* supra; *Milford* vs. *Milford Water Co.,* 124 Pa. 610, 3 L. R. A. 122, 17 Atl. 185; *Berka* vs. *Woodward,* 125 Cal. 119, 45 L. R. A. 420, 72 Am. St. Rep. 31, 57 Pac. 777; *Ensley* vs. *Holingsworth & Co.,* 170 Ala. 396, 54 So. 95; *Nunemacher* vs. *Louisville,* 98 Ky. 334, 32 S. W. 1091. Nor will the courts inquire whether the terms of the contract are fair or unfair. The purpose of the prohibition is not only to prevent fraud, but to cut off the opportunity for practicing it.

There can be no doubt that Mr. Rikerd was an officer of the city. The board of police and fire commissioners, in exercising control over the police and fire departments of the city, is performing very important governmental functions. And the fact that Mr. Rikerd cannot be charged personally with having violated the charter, inasmuch as he had no knowledge of the sale or delivery of the lumber, does not determine the case. Every contract with the city is made void when a member of the common council or an officer of the city has an interest in it, whether such member of the council or city official has or has not himself been guilty of procuring the contract."

Considering the provisions of Section 6969, Revised Statutes, it was held by the court in the case of *Bellaire Goblet Company* vs. *City of Findlay et al.,* 5 C. C. 418, that contracts entered into between a board of gas trustees of a municipality and an incorporated company were against public policy and void where it appeared that a member of the board of gas trustees was at the time an officer and personally interested in the corporation with whom said contracts were made.

In the Annual Report of the Attorney General for 1914, page 848, it was held:

"A corporation of which a member of the sinking fund trustees or trustees of a municipal library is a stockholder cannot legally sell merchandise to the city with which he is officially connected, or be interested in any way in contracting for the purchase of property, supplies or fire insurance while such member is in office. Such officers may not be interested in contracts during the term for which they were elected, but may after the expiration of their term."

In a later opinion found in the Annual Report of the Attorney General for 1914, page 1250, it was held that it was a violation of law for a person who owns stock in a corporation that sells goods to a city, to act as sinking fund trustee of such city. Touching the question there presented, the following language was used in said opinion:

"In answer to your second question, I beg to say that this department has always held to the opinion that a stockholder in a corporation which sells to a city, has such an interest in the sale as amounts to a violation of Section 12910, when said stockholder holds an office of trust in the municipality."

In another opinion rendered by the same Attorney General, Annual Report of the Attorney General for 1914, page 1201, it was held that it was a violation of Section 12911, General Code, for a city to purchase coal from a corporation, one of the stockholders and officers of which was a member of the board of education of the city school district in which the city purchasing the coal was located.

In Opinions of the Attorney General for 1915, page 267, it was held:

"The president of a board of education who is also a director and stockholder of material company, which material company sells its material to the principal contractor dealing with said board of education, has such an interest in said contract as is prohibited by Section 4757, G. C."

It will be noted that Section 4757, General Code, referred to by the Attorney General then provided that no member of a board of education should have directly or indirectly any pecuniary interest in any contract of the board.

In Opinions of the Attorney General for 1927, page 1326, it was held:

"A board of education is prohibited by Section 4757, General Code, from entering into a contract for the purchase of coal with a corporation of which one of the members of the board is a stockholder, even though such board member has only one share of stock and the corporation of which he is a stockholder and which is selling the coal is being operated at a loss."

In Opinions of the Attorney General for 1928, page 2005, it was held that purchases of coal made by a state institution from a corporation, a stockholder of which is at the time one of the trustees of said institution is contrary to law.

The decisions and other authorities cited above seem to be conclusive with respect to the first question submitted in your communication, and I am of the opinion that the contracts for the purchase of coal here in question were illegal.

Touching upon the second proposition, that is, whether or not a recovery may be had of the moneys paid out upon such an illegal contract as is here under consideration, your attention is directed to the 1928 opinion above referred to. In that opinion there was considered a number of purchases of coal made from a certain coal company by the board of trustees of the Ohio University. It appeared that one of the trustees was a stockholder in the coal company which had sold the coal. It was held, as before stated, that such contracts were contrary to law. With respect to the recovery of moneys paid on said contract it was said:

"However, no findings should be made for the recovery of moneys paid as the purchase price of such supplies in the absence of facts showing actual fraud in the transactions relating to the purchase of the same, or that the purchase price of the supplies was substantially in excess of the reasonable value thereof."

The above holding was based upon the principles laid down in the case of *State ex rel.* vs. *Fronizer,* 77 O. S. 7. In support thereof there were also cited the cases of *Keenon* vs. *Adams,* 176 Ky. 618, *Flowers* vs. *Logan County,* 138 Ky. 59.

I am of the opinion that the holding of the 1928 opinion above referred to is sound, and is directly applicable to the case in hand, and you are therefore advised that a finding for recovery should not be made in this case unless it appears that there has been actual fraud in the transaction relating to the purchase of the coal or that the purchase price thereof was substantially in excess of the reasonable value of the coal.

Respectfully,
GILBERT BETTMAN,
Attorney General.