

officers of a corporation who successfully pass the examination can actively prosecute the corporate business of buying and selling real estate for others and performing the other acts defined by Section 6373-25, as constituting the one so engaged as "real estate broker". It may well be that an individual may be heavily interested financially in a corporation engaged in the real estate brokerage business without pretending to have experience therein or the time to devote attention thereto. In such an event, it is natural that if the interest be a predominant one, the individual would desire to be the president of a corporation, at the same time leaving the active management of its affairs to others.

You are, of course, familiar with the fact that Section 6373-31 of the Code, in the portion thereof which I have not quoted, makes specific provision with respect to an inactive partner in a firm. It is my conclusion that the Legislature intended that a similar rule should apply to officers of corporations seeking licenses as real estate brokers.

Accordingly, by way of specific answer to the question raised, I am of the opinion that where a corporation makes application for a license as a real estate broker, the name of the president of the corporation must appear in the application, but such president need not pass the examination and a license shall issue to the corporation in the event that any officer named in the application is successful in passing the examination.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3106.

CONSTABLE—MUST BE ELECTOR OF TOWNSHIP IN WHICH HE IS APPOINTED.

SYLLABUS:

A constable appointed to fill a vacancy under the provisions of Section 3329, General Code, or a special constable appointed under the provisions of Sections 3331 or 1732, General Code, must have the qualifications of an elector in the township in which such appointment is made, or said appointment is invalid.

COLUMBUS, OHIO, January 5, 1929.

HON. D. H. PEOPLES, *Prosecuting Attorney, Pomeroy, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

"As Prosecuting Attorney of Meigs County, I would like to have the opinion of your office as to whether a person can be appointed Constable in a township other than the one in which he resides, and also if he can serve civil or criminal papers in townships other than the one from which he is appointed.

This is the situation here: One of the Justices in Salisbury Township had the Trustees of Salem Township, which is not adjoining to Salisbury, appoint J. L., who lives in Salisbury Township as a Constable, and he is making no attempt to work in Salem Township, but is serving papers out of the Salisbury Township Justice's office to the exclusion of the three regularly elected Constables in Salisbury Township."

From the statements in your letter it appears that an attempt was made to appoint the party you mention as Constable in a township of which he was not a resident, and in which he was not an elector.

Section 3329, General Code, pertinent to consider herein, provides:

"When, by death, removal, resignation, or non-acceptance of the person elected, a vacancy occurs in the office of constable, or when there is a failure to elect, the township trustees shall appoint a suitable person to fill such vacancy until the next biennial election for constable, and until a successor is elected and qualified. If there is no constable in a township, the constable of an adjoining township in the county shall serve any process that a constable of such township is authorized by law to serve."

Section 3331, General Code, provides for the appointment of constables for special purposes enumerated therein. Section 1732, General Code, provides:

"At the request of a party, and on being satisfied that it is expedient, a justice may specially depute a discreet person of suitable age, not interested in the action, to serve a summons or execution, with or without an order to arrest the defendant, or to attach property. Such deputation must be in writing on the process."

It appears that the appointment to which you refer, in view of the circumstances mentioned, was an attempt to make an appointment to fill a vacancy in pursuance to the provisions of Section 3329, *supra*.

It is believed that in connection with your inquiry Section 4 of Article XV of the Ohio Constitution should be considered, which provides in substance that no person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector. Section 4 of Article X of the Ohio Constitution provides that township officers shall be elected by the electors of each township at such time, in such manner and for such term, not exceeding three years, as may be provided by law.

From the foregoing, it clearly appears that a regularly elected constable must be an elector of the township in which he is elected. It follows that one appointed to fill a vacancy in pursuance to the provisions of Section 3329, *supra*, must likewise be a qualified elector, because in all respects he becomes a regular constable, and acts in place of the constable regularly elected. Under Section 3330, General Code, he is required to take an oath and give a like undertaking as is required of constables regularly elected.

Under the provisions of Section 3332, General Code, a special constable appointed under the provisions of Section 3331, *supra*, is required to take an oath, and has the same authority, is subject to the same penalties and is entitled to the same fees as other constables. Likewise, special constables appointed under the provisions of Section 1732, *supra*, have the same authority and are subject to the same obligations as a regular constable, although no fees may be taxed for their services.

In the case of *Parkinson vs. Crawford*, 13 O. N. P. (N. S.) 73, in an opinion by Kinkead, Judge, a comprehensive discussion was made in reference to the status of special constables, considering all of the sections hereinbefore mentioned. While the question therein primarily involved only appointments made under Section 1732, General Code, the opinion traces the history of the legislation, showing that the special sections authorizing the appointment of special constables were all enacted

at the same time and have practically the same status. In this opinion it was clearly inferred that a special constable appointed under either of the sections hereinbefore quoted, must have the qualifications of an elector. In that case the court dismissed an attachment proceeding because the evidence disclosed that the special constable appointed to serve the process was not a resident of the township from which the justice issuing the same was elected. The fifth branch of the head-notes of said case is as follows:

“Proof that the special constable, appointed to serve the process, was not an elector of the township in which the action was brought, is ground for discharge of an attachment based upon such service.”

From the foregoing, it must be concluded that a person cannot be appointed either as a constable to fill a vacancy under the provisions of Section 3329, General Code, or as a special constable under the provisions of Sections 3331 or 1732, General Code, unless he possess the qualifications of an elector.

You are therefore specifically advised that the person whom you mention in your communication may not legally be appointed constable in a township in which he does not reside, or in which he has not the qualifications of an elector.

In view of the conclusion that I have reached, it is unnecessary to consider the other phase of your question in reference to the service of civil or criminal papers in townships other than the one from which he is appointed, for the reason that if he cannot be legally appointed constable in the township in which such an attempted appointment was made it necessarily follows that he is unqualified to serve process in any township.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3107.

TAX AND TAXATION—EXEMPTION OF PUBLIC COLLEGES INCLUDES PROPERTY OCCUPIED, RENT FREE, BY PRESIDENT AND PROFESSORS.

SYLLABUS:

Section 5349, General Code, exempting from taxation “public colleges and academies and all buildings connected therewith, and all lands connected with public institutions of learning, not used with a view to profit”, is not limited to such buildings and property as may be used exclusively for literary and educational purposes but includes all property with reasonable certainty used in furthering or carrying out the necessary objects and purposes of such institutions. College property consisting of residences occupied, rent free, by the president or professors thereof, though not used exclusively for educational or literary purposes, are exempt from taxation under said section.

COLUMBUS, OHIO, January 5, 1929.

The Tax Commission of Ohio, Columbus, Ohio.

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