

2320.

APPROVAL, BONDS OF VILLAGE OF TERRACE PARK, HAMILTON COUNTY, OHIO—\$6,500.00.

COLUMBUS, OHIO, September 10, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2321.

APPROVAL, BONDS OF PIKE TOWNSHIP CENTRALIZED SCHOOL DISTRICT, MADISON COUNTY, OHIO—\$20,000.00.

COLUMBUS, OHIO, September 10, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2322.

FIRE INSURANCE—KINDS OF PUBLIC PROPERTY ON WHICH PROBATE JUDGE MAY WRITE INSURANCE—LIMITATION OF PREMIUM—PROBATE JUDGE MAY EXECUTE FIDELITY BOND FOR TREASURER OF A PUBLIC SCHOOL LIBRARY.

SYLLABUS:

1. *A probate judge may legally renew and write new policies of fire insurance on public school buildings, providing the premium on such insurance does not exceed \$50 on any one policy.*
2. *A probate judge may not write new or renewal policies of fire insurance on the county children's home and county home, in his county.*
3. *A probate judge, who is a trustee and official of a public school library, may legally execute a fidelity bond for the treasurer of such library, required under the provisions of Section 7638-1, General Code.*

COLUMBUS, OHIO, September 11, 1930.

HON. HARRY K. FORSYTH, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“I am enclosing herewith a letter from Charles M. Wyman, Judge of the Probate Court of Shelby County, requesting an opinion upon the various matters therein contained.

"I should appreciate an opinion from your office covering the points raised in said letter."

The letter enclosed with your communication reads as follows:

"I respectfully ask a legal opinion upon the following statement of facts: My father established an insurance agency in 1886. Upon his death, ten years ago, I continued the insurance business and renewed at their expiration policies of insurance upon public property. At present I am Probate Judge and Juvenile Judge of Shelby County. Certain insurance policies on county property are expiring, to-wit, a policy on Shelby County Infirmary—premium \$222.60. And on other policies on Shelby County Children's Home, Public Schools, etc. Incidentally, I would be connected with the Children's Home as Juvenile Judge, and to a slight degree to county home as Probate Judge.

G. C. 12910 states: 'Whoever, holding an office by election is interested in a contract of fire insurance for the use of a public institution with which he is connected, shall be imprisoned in the penitentiary not less than one year nor more than ten years.' And G. C. 12911 states: 'Whoever, holding an office by election is interested in a contract of fire insurance for the use of a public institution with which he is not connected, and the amount of such contract exceeds the sum of \$50, unless such contract is let on bids duly advertised, shall be imprisoned in the penitentiary, not less than one year, nor more than ten years.'

Questions:

1. Have I a right to renew insurance policies on public property that are expiring?
2. Have I a right to write new policies of insurance on public property?
3. Have I a right to act as agent in securing surety bonds, which are written, at home office,—for officers of official bodies of which I am a director, but which are not connected with either Probate or Juvenile Courts?

Note:

Insurance being under supervision of state, rates are the same in all companies."

Sections 12910 and 12911 of the General Code, quoted in part in the enclosed communication, read as follows:

"Sec. 12910. 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."

"Sec. 12911. 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 not connected, and the amount of such contract exceeds the sum of fifty dollars, unless such contract is let on bids duly advertised as provided by law, shall be imprisoned in the penitentiary not less than one year nor more than ten years."

The above sections were originally one section, viz. Revised Statute 6969, enacted on April 16, 1900 (94 O. L. 391), and which read 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. And it shall be unlawful for any such person, agent, clerk, servant or employe to become interested in any contract for the purchase of property, supplies or fire insurance for the use of any county, township, city, village, hamlet, board of education or public institution with which he is (not) connected when the amount of such contract exceeds the sum of fifty dollars unless the contract is let on competitive bids, duly advertised as provided by law. Any person violating the provisions of this act shall be imprisoned in the penitentiary not more than ten years nor less than one year."

At the time of the passage of the present Ohio General Code on February 14, 1910, the above Revised Statute was subdivided into Sections 12910 and 12911 as above quoted. Since that time there has been no change whatever in their status.

In an opinion of the Attorney General, found in Annual Report of the Attorney General for 1911-12, Vol. 1, page 227, it was stated:

"These sections together constitute Section 6969 Revised Statutes. In their present form they afford some doubt as to whether the phrases 'with which he is connected' in Section 12910 and 'with which he is not connected' in Section 12911, modify any of the preceding nouns excepting the word 'institution.' If, however, they do not modify any of the preceding nouns the two sections are mutually inconsistent. I am satisfied that this point is doubtful enough at least to permit of comparison of the two sections being in *pari materia*, and also of the original Section 6969 Revised Statutes. In the said original section, the language is such as to make it perfectly apparent that these two phrases modify all the nouns immediately preceding them respectively.

Nevertheless there still remains some ambiguity in Section 12911 because of the use of the article ('the' before the word 'county.') The corresponding word in Section 6969 was 'any' and the effect of that section, as embodied in the engrossed bill which was passed by the General Assembly, was to make it unlawful for any public officer to have any contract with any political subdivision unless that contract was let on bids. Section 12911 corrects that defect in the former Section 6969, and in my judgment the mere use of the word 'the,' although it makes the meaning somewhat obscure, does not vitally affect it. Under Section 12911 any public officer commits a crime if he sells fire insurance for an amount exceeding fifty (\$50.00) dollars to any public institution or political subdivision unless the contract is let on bids duly advertised as provided by law."

I am in accord with the views of the above opinion with regard to the construction of the above sections. It now becomes necessary to apply the above construction to the facts now before me. It is to be noted that Article IV, Section 7 of the Ohio Constitution provides in part that:

"There shall be established in each county, a Probate Court, which shall be a court of record, open at all times, and holden by one judge, elected by the electors of the county, who shall hold his office for the term of four years, and shall receive such compensation, payable out of the county treasury, as shall be provided by law. * * * "

Moreover, it is provided by Section 1580, General Code, that:

"Quadrennially, one probate judge shall be elected in each county, who shall hold his office for a term of four years, commencing on the ninth day of February next following his election."

Finally, in Part First, Title 10, Division III, Chapter I, under the heading entitled "Salaries of County Officers", Section 2992, provides in part:

"Each probate judge shall receive one hundred dollars for each full one thousand of the first fifteen thousand of the population of the county, * * * "

The effect of the above constitutional provision and statutes is to make a Probate judge a county officer. Having determined that a Probate judge is a county officer; it is now proper to consider the first two questions submitted, which resolve themselves into the following question: May a Probate judge of a county renew and write new policies of fire insurance on public property, such as the county infirmary, the county children's home and public schools?

Under the terms of Section 12910, General Code, supra, as construed by the aforementioned opinion, it is obvious that a Probate judge being a county officer may not be interested in a contract for the purchase of fire insurance for the use of the county with which he is connected. Now, it is quite plain that fire insurance for the use of the county infirmary and county children's home would be for the use of a county. See Sections 2419 and 3077, General Code. County funds are expended to maintain such institutions. However, fire insurance for the use of city, village, exempted village or rural school buildings would not be for the use of the county. A school district, supervised by its board of education, is a separate subdivision, recognized in said Sections 12910 and 12911, General Code. Thus, it is quite obvious that the Probate judge involved in this opinion may not write new policies of insurance on a county children's home or a county infirmary. As for renewal policies, the result would be the same.

It is stated in 26 Corpus Juris, page 109, Section 108A of the general heading "Fire Insurance" that "a renewal is in effect a new contract of insurance." Unanimous authority from the states of Illinois, Maine, Michigan and New York are cited in support of this statement. Of course, a renewal is in a sense a continuation of former insurance. However, the above principle that a renewal is a new contract is succinctly stated in the case of *Brady vs. Northwestern Insurance Co.*, 11 Mich. 425, at page 444;

"We have no doubt that each renewal of the policy was a new contract. Each was upon a new consideration, and was optional with both parties. At the expiration of the year over which the original policy extended, the obligation of insurer was ended, and it was only by the concurrence of the will of both parties that the obligation could be continued. This concurrence is manifested by the payment of a consideration by the one party and a renewed promise by the other; and an obligation revived or continued under

such circumstances, is an original obligation. It must be asked for by the one, and may be assumed or refused by the other; and the policy, which is the evidence is therefore only continued by the positive act of both parties."

While the Probate judge under consideration may not write new policies, or renewal policies on the county children's home, or county infirmary, he may write insurance on school property, since such property is not property of the county with which he is connected, if the premium in a policy does not exceed fifty dollars, under the terms of Section 12911, General Code, supra.

Touching the last mentioned conclusion, it was held in Opinions of the Attorney General for 1919, Vol. 1, page 629, as set forth in the syllabus:

"Under Section 12911 an officer of trust is prohibited from being interested in any contract for purchase of property by a county or other political subdivision or a public institution with which he is not connected, if the amount of such contract exceeds the sum of \$50.00, unless the contract is let on bids advertised according to laws requiring such contracts to be advertised."

The above opinion followed similar holdings in Annual Report of the Attorney General for 1912, Vol. II, page 1238; Annual Report of the Attorney General for 1914, Vol. II, page 1201; and Opinions of the Attorney General for 1916, Vol. II, page 1276.

In the last mentioned opinion it was said at page 1276:

"I might add that I know of no provision in law for advertising and receiving bids for fire insurance."

It might be well to state that in the 1912 Opinion cited above, it was stated at page 1239:

"In the opinion which I have enclosed herewith (Annual Report of Attorney General for 1911-1912, Vol. I, page 227, 228), I have construed the question of fire insurance in reference to the amount of such contract to relate to the premium, that is, the interest of the company and not of the agent, and that, therefore, if the premium on a policy exceeds the sum of fifty (\$50.00) dollars, the contract must be let on bids duly advertised as provided by law."

Summing up your first two questions, I am of the opinion that the Probate judge may renew and write new policies of fire insurance on public school property if the premium on a policy does not exceed \$50 (fifty dollars), but may not in any manner sell fire insurance on the county infirmary (now called county home by virtue of Section 2419-3, General Code) or children's home.

Coming now to your third question, I might say that I have received supplementary information since receiving your communication to the effect that the official body referred to in the third question of your enclosed communication is the public library, established, I presume, under Sections 7635, et seq., General Code. Such public library is administered by a board of library trustees of seven members appointed by the board of education maintaining the library. Under Section 7638-1, it is provided that the treasurer of the library shall give bond. The exact question then becomes as follows: May a Probate judge who is a trustee and official of a

board of school library trustees execute a fidelity bond for the treasurer of said school library?

With respect to this question, it is to be noted that Section 7638, General Code, provides in part:

“ * * * No member of the library board shall be interested, directly or indirectly, in any contract made by the board. * * * ”

The furnishing of bonds is the result of private contract between the individuals, with which the library board has nothing to do, other than to determine the amount and form before it is executed, under Section 7638-1, General Code, and pay the premium by virtue of Section 9573-1, General Code. It can hardly be said that the furnishing of the bond by the treasurer constitutes a contract made by the board, within the meaning of the above noted provision of Section 7638, General Code, *supra*.

It seems that the Legislature has, in the case of municipal officers, provided by Section 3808, General Code, that:

“No member of the council, board, officer or commissioner of the corporation, shall have any interest in the expenditure of money on the part of the corporation other than his fixed compensation. * * * ”

Hence it would appear that inasmuch as a municipality pays the premiums on the bonds of its officers and employes, if any municipal officer would execute a bond for another officer or employe of the corporation, he would be having an interest in an expenditure of the municipality other than his fixed compensation in violation of Section 3808, General Code.

However, Section 7638, General Code, is not as broad as Section 3808, General Code, and the interest of the library board member who executes the bond cannot be said to arise from a contract made by the library board. Hence the board member incurs no liability.

Moreover, it will be noted that bonds are not included in the subjects prohibited in Sections 12910 and 12911, General Code, those statutes being confined to the furnishing of property, supplies and fire insurance.

In view of the above discussion, I am of the opinion that the third question submitted, must be answered in the affirmative.

Respectfully,

GILBERT BETTMAN,

Attorney General.

2323.

APPROVAL, BONDS OF CITY OF GALLIPOLIS, GALLIA COUNTY, OHIO
—\$15,000.00.

COLUMBUS, OHIO, September 11, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.