

board member thereby places himself outside the provisions and penalty imposed by section 12932 of the General Code.

Therefore, under the provisions of section 12932, General Code, the mere fact alone that a member of the board of education does not cast his vote in favor of a contract employing his son or daughter is not sufficient to place such attempted contract of employment beyond the other provisions and penalties of said section.

The signing of such a contract by a board member as president of such board would be participating in the making of such contract, and would come within the inhibition of said section.

Respectfully,

C. C. CRABBE,

*Attorney General.*

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2743.

MUNICIPAL COURT ACT OF PORTSMOUTH CONSTRUED.

*SYLLABUS:*

*The municipal court of Portsmouth may not legally issue warrants directed to the sheriff of the county or the constable of a township.*

*Such warrants should be issued to the bailiff or a deputy bailiff provided for said court.*

COLUMBUS, OHIO, Sept. 1, 1925.

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

GENTLEMEN:—This will acknowledge receipt of your letter of July 16th, as follows:

“Section 1579-459 to section 1579-496, General Code, provide for a municipal court at Portsmouth, Ohio, and define its powers, duties, etc.

“Question: May a warrant be issued by such municipal court, directed to the sheriff of the county or to a constable of a township within such county.”

Section 1579-459 creates a municipal court for the city of Portsmouth and Wayne township, and calls it “the municipal court.”

Section 1579-460, General Code, provides for the salary of said “municipal judge,” to be paid from the treasury of the city of Portsmouth and the county of Scioto.

Section 13500, General Code, reads:

“The warrant shall be directed to the sheriff or to any constable of the county, or, when it is issued by an officer of a municipal corporation, to the marshal or other police officer thereof and, by a copy of the affidavit inserted therein or annexed and referred to, shall show or recite the substance of the accusation and command such officer forthwith to take the accused and bring him before the magistrate or court issuing such warrant, or other magistrate of the county having cognizance of the case, to be dealt with according to law.”

In an opinion of this department (Opinion No. 2619, directed to Hon. Thad H. Brown, secretary of state), it was held that the municipal court of East Liverpool was, in fact, not a municipal court but a district court, even though it was designated a "municipal court" of East Liverpool and its judge designated a "municipal judge," as is done in this act creating such a court for Portsmouth and Wayne township, and that such judge should be elected by the electors of both the municipality and the township.

While the judge of such municipal court is designated as a "municipal judge," he is, in fact a "district judge," in view of the opinion heretofore cited. It therefore will be observed that the general sections, section 13494, et seq., relating to the issuing of warrants by justices of the peace, police judges and mayors, will not necessarily control. Section 13500 specifically provides that when the warrant is issued by an officer of a municipal corporation it shall be issued to the marshal or other police officer thereof. This section, of course, will not apply. However, in order to determine as to whom such warrants shall be issued or may be issued, it is necessary to consider the provision of the special act establishing the municipal court of Portsmouth.

Section 1579-468, General Code, provides:

"In all criminal cases and proceedings the practice and procedure and mode of bringing and conducting prosecutions for offenses, and the powers of the court in relation thereto, shall be the same as those which are now or may be hereafter possessed by police courts or mayors in municipalities or justices of the peace, unless otherwise herein provided."

This section standing alone probably would justify the conclusion that such a court in criminal cases could exercise all of the powers relative to the issuing of warrants that are exercised by police courts, mayors or justices of the peace and therefore would authorize the issuance of warrants to any of such officers. However, section 1579-485 provides for the appointment of a bailiff and further provides that every police officer of the city shall be *ex-officio*, a deputy bailiff. The following section provides:

"The bailiff shall perform for the municipal court services similar to those usually performed by sheriffs for the court of common pleas and by constables for courts of justices of the peace."

In view of the provision of the section last quoted, it would seem that the special act specifically makes it the duty of such municipal court to issue warrants to the bailiff or a deputy bailiff, as a common pleas court issues warrants to sheriffs or a justice's court issues warrants to constables.

It is a well known principle of statutory construction, as adopted by the courts of this state, that the provisions of a special act will control over the provisions of a general act.

In view of the foregoing, it is the opinion of this department that the municipal court of Portsmouth may not legally issue warrants directed to the sheriff of the county or the constable of a township. Such warrants should be issued to the bailiff or a deputy bailiff provided for said court.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*