

Range 8 East, Logan County, Ohio, and being a renewal of a lease granted by the State of Ohio to one S. W. Lyon, by lease dated November 12, 1907.

Upon examination of this lease, I find that the same has been properly executed by the conservation commissioner and by Dessie L. Blue, the lessee named in the lease.

From an examination of the provisions of the lease and of the conditions and restrictions therein contained, I find that the same is in conformity with section 471, General Code, under the authority of which this lease is executed, and with other sections of the General Code relating to leases of this kind.

I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

881.

SOLDIER'S RELIEF COMMISSION—MEMBER THEREOF MAY HAVE INTEREST IN STORE SELLING SUPPLIES TO VETERANS RECEIVING AID WHERE NO AGREEMENT THAT VETERANS MAY NOT HAVE INTEREST IN STORE SELLING SUPPLIES TO COUNTY HOME.

SYLLABUS:

1. *A member of a soldiers' relief commission having an interest in a store that sells supplies to veterans receiving aid under section 2934, General Code, does not violate section 12910 or 12911, General Code, where there is no agreement that the veterans should make the purchases from this particular store.*
2. *A member of a soldiers' relief commission may not, by virtue of section 12910, General Code, have an interest in a store selling supplies to the county home.*

COLUMBUS, OHIO, May 26, 1933.

HON. EDWIN S. DIEHL, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“A member of the Soldiers' Relief Commission of Defiance County is a partner in a market dealing in groceries and meats. Necessaries for the relief of soldiers are distributed by Ward and Township Committees. These necessaries are purchased from practically every grocery and meat market in the City of Defiance.

In the ward where is located the Perry Street Market in which a member of the Relief Commission has a financial interest the committee of that ward has permitted needy veterans to purchase necessaries from the Perry Street Market. These purchases are made with and without knowledge on the part of the member of the Relief Commission that they are made in fact for the Soldiers' Relief Commission.

Under Section 12910 a person holding an office of trust or profit by election or appointment is deemed guilty of a felony if interested in a contract for the purchase of property, supplies, etc., for county, township, etc. purposes.

I might add further that the superintendent of the County Home has made like purchases for that institution with this particular market without any thought or knowledge on his part that one of the Members of the firm operating said market was holding an office of trust in the county.

Kindly give me your opinion as to whether or not this member of the Soldiers' Relief Commission can be held strictly accountable for the purchases made by the Soldiers' Relief Commission at the market in which he is financially interested when such purchase of necessaries are certified for payment by the ward committee and the provisions are acknowledged as having been received by the Veterans receiving same. Also state whether in your opinion such purchases on the part of the Soldiers' Relief Commission and the Superintendent of the County Home are illegal purchases.

* * * * *

Sections 12910 and 12911 of the General Code 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 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 insur-

ance 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 in 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 these statutes. As these two sections are penal in their nature, they should be strictly construed.

By virtue of sections 2930, et seq., General Code, there is a soldiers' relief commission appointed in each county. The commission consists of three members, each serving a definite term of three years. A commissioner is appointed each year by the judge of the common pleas court in the county. The county commissioners are required to allow them their actual expenses and a fair compensation for their services. The soldiers' relief commissioners appoint township and ward committees. They pass on the application of needy soldiers and certify to the commissioners the amount necessary for such relief within certain limitations. Those entitled to such soldiers' relief receive compensation either from the township trustees or the county treasurer.

It is clear that a member of a soldiers' relief commission holds a position of trust by appointment within the meaning of sections 12910 and 12911, General Code. However, in the first situation presented in your inquiry, there does not appear to be any contract, express or implied, entered into by this member of the soldiers' relief commission. In a subsequent communication, you state that the veterans may purchase meats, groceries, etc., from any store that they may select, that there is no agreement made nor does the ward committee or relief commission request that purchases be made from any particular grocery. In view of this discussion, I am of the opinion that the transactions involved in your first question are legal and do not constitute a violation of section 12910 or 12911, General Code.

Coming now to your second question, relative to purchases made by the superintendent of the county home from the market in which a member of the soldiers' relief commission has an interest. At the outset I might say that it has been argued with some effect that section 12910, General Code, only applies where the individual is both the seller and the purchaser. See a discussion on this point in 12 O. L. R. 69. However, this view has since been rejected. Section 12910 applies where an officer is interested in a contract with a political subdivision or public institution with which the officer is connected. In this connection, I wish to call your attention to an opinion of my immediate predecessor found in Opinions of the Attorney General for 1930, page 1434, where an analogous question to the one presented in your inquiry was passed upon. The second branch of the syllabus of that opinion is as follows:

"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."

At page 1437, the following language is found:

“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 (county home) 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 section 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 (county home). As for renewal policies, the result would be the same.”

(Words in parenthesis, the writer's.)

This opinion is pertinent to your question inasmuch as a member of the soldiers' relief commission of the county is interested in a store that is selling supplies to the county home.

In the case of *Doll vs. State*, 45 O. S. 449, the court in a consideration of the provisions of section 6969, R. S., now sections 12910 and 12911, General Code, said:

“To permit those holding offices of trust or profit to become interested in contracts for the purchase of property for the use of the state, county, or municipality of which they are officers, might encourage favoritism, and fraudulent combinations and practices, not easily detected, and thus make such officers, charged with the duty of protecting those whose interests are confided to them, instruments of harm. The surest means of preventing this, was to prohibit all such contracts.”

In view of the above and in specific answer to your questions, it is my opinion that,

1. A member of a soldiers' relief commission having an interest in a store that sells supplies to veterans receiving aid under section 2934, General Code, does not violate section 12910 or 12911, General Code, where there is no agreement that the veterans should make the purchases from this particular store.

2. A member of a soldiers' relief commission may not, by virtue of section 12910, General Code, have an interest in a store selling supplies to the county home.

Respectfully,

JOHN W. BRICKER,

Attorney General