

"Secretary of state dental board entitled to per diem fee as member of board, in addition to salary as secretary."

In the opinion at page 219, the following appears:

"You inquire, also, whether, under section 5 of the dental law, the secretary of the state dental board is entitled to receive compensation as a member, in addition to such salary as may be fixed by the board for him as secretary. The secretary is required by section 3 to be a member of the board. While the question is not free from doubt, I am of the opinion that the secretary is entitled to compensation as a member of the board, in addition to salary as the secretary."

As to the policy of permitting one person to serve as secretary and as a member of the Board of Barber Examiners, I express no opinion since the legislature has in plain terms permitted this, and it follows that he is entitled to compensation for both positions. However, it might be said that the secretary is paid on an annual basis and the amount he is to receive may be fixed with the view that he is also to receive his per diem compensation as member of the board. No opinion is expressed upon the policy of allowing the secretary to receive compensation from both positions, this being a matter which has been determined by the legislature.

In reference to your second question, it is apparent that a member of the Board of Barber Examiners is eligible to serve as secretary of such board. Not only is a member eligible to serve as secretary, but, under the clear language of the act, a member of the board is the only one eligible to serve as secretary. Section 2 of the act reads in part as follows:

*"The board shall organize by electing a president and a secretary from its members, who shall hold their respective offices for one year. * * *"*
(Italics the writer's.)

It is therefore my opinion, in specific answer to your inquiries, that, under the provisions of Amended Senate Bill No. 129 of the 90th General Assembly, the Secretary of the Board of Barber Examiners must be a member of such Board and is entitled to his annual salary as secretary in addition to his per diem compensation as member, as provided in section 4 of the act.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1758.

APPROVAL, LEASE TO LANDS IN ELK RUN TOWNSHIP, COLUMBIANA COUNTY, OHIO, FOR THE RIGHT TO MINE AND TAKE COAL.

COLUMBUS, OHIO, October 23, 1933.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication submitting for my examination and approval a certain lease in duplicate executed by you under the authority of section 3209-1, General Code, to one Frank A. Sweeney. By the lease instrument here in question, there is leased and demised

to the lessee above named the right to mine and take coal from a certain 46-acre tract in Section 16 School Lands in Elk Run Township, Columbiana County, Ohio, the surface rights in which are now held by said lessee under a previous lease executed to him for a stated term; and subject to certain conditions providing for an earlier termination of the lease, the lease here in question by its terms is to be in force and effect as long as said lessee holds the lease of the surface of said lands.

This lease provides for the payment of a royalty of ten cents per ton, run of mine, for all coal mined by the lessee under the lease, with provision for a minimum production of 500 tons of coal annually.

Upon examination of this lease, I find that the same has been executed and acknowledged in the manner provided by law and that the terms of the lease are in conformity with the provisions of the section of the General Code under the authority of which the same is executed. In this connection, it is noted that there is a recital in the lease that the same is executed under the authority of an act of the General Assembly of Ohio amending section 3209 of the General Code, passed February 16, 1914. The recital in the lease as to this should be that the same is executed pursuant to the authority of section 3209-1, General Code, as amended by the act of July 20, 1914, 105 O. L., page 6. Subject to this correction in the lease to be made by you, the same is herewith approved, as is evidenced by my approval endorsed upon the lease and upon the duplicate copy thereof, both of which are herewith returned.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1759.

PUBLIC DANCE—DEFINED AND DISCUSSED—PERMIT REQUIRED
WHEN—MAYOR HAS DISCRETIONARY POWER TO ISSUE.

SYLLABUS:

1. *Where a proprietor of a restaurant maintains a floor for dancing, employs an orchestra, permits dancing and advertises in a newspaper that a dance is to be held but does not charge any admission other than the cost of food and refreshments, such constitutes a "public dance" within the meaning of section 13393, General Code. A person conducting a public dance without a permit may be prosecuted under section 13393-2, General Code.*

2. *A mayor is vested with discretionary power and authority to either issue or refuse to issue a permit for a public dance.*

COLUMBUS, OHIO, October 24, 1933.

HON. ERNEST L. WOLFF, *Prosecuting Attorney, Norwalk, Ohio.*

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

"I desire your official opinion concerning the proper construction of Section 13393 of the General Code in connection with the following state of facts: M. is the owner and proprietor of a restaurant known as 'The M.' in the City of N., Ohio. In connection with his restaurant he maintains a floor for dancing purposes upon Saturday nights and possibly