

4709.

APPROVAL, BONDS OF CITY OF IRONTON, LAWRENCE COUNTY,
OHIO—\$16,353.26.

COLUMBUS, OHIO, October 27, 1932.

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

4710.

MEMBER—TOWNSHIP TRUSTEES — PROHIBITED FROM ENTERING
INTO CONTRACT TO FURNISH GROCERIES UPON ORDER OF
TOWNSHIP TRUSTEES.

SYLLABUS:

A member of a board of township trustees furnishing groceries upon order of the board of township trustees and receiving compensation therefor from such board, is subject to the provisions of Sections 12910 and 12912, General Code, which prohibit a member of a board of township trustees from being interested in a contract or profits of a contract for the purchase of property or supplies for such township.

COLUMBUS, OHIO, October 28, 1932.

HON. CHARLES S. LEASURE, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—Your recent request for my opinion reads:

“Your opinion upon the following set of facts is requested for the reason that the same proposition has arisen several times in this county and it involves the proper handling of public funds.

One B. is the owner of a general store in Harrison Township, Muskingum County. He also holds the office of township trustee in the township. The trustees in handling poor relief, issue what has been termed script or orders upon grocers and other merchants for merchandise.

I should like to know whether or not the board of trustees can issue orders to needy persons for provisions upon this store which is operated by Mr. B. In my search of the Code I do not find anything directly against such. There are certain penal sections in which a township officer can have no interest in contracts or jobs of work. My inquiry is whether or not these orders to the poor for provisions come within these sections of law and are a violation of them and if there is any section of the civil code which prohibits the same.”

Section 3476, General Code, provides that the trustees of each township shall afford at the expense of such township public support or relief to all persons therein who are in condition requiring the same.

Section 12910, General Code, is as follows:

"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."

There is no doubt but that the township trustee in question is a person holding an office of trust or profit by election.

It follows from the plain language of Section 3476, General Code, that one of the duties of a board of township trustees is to issue to needy persons orders for provisions.

There is no doubt but that a contract, express or implied, would exist between the township trustees issuing such orders and the grocery store upon which the same were issued that payment would be made by the township trustees for the goods delivered on account of such orders. It follows therefrom that the township trustee in question would be interested in a contract for the purchase of property or supplies for the use of the township and, therefore, the situation which you present falls within the prohibition of Section 12910, General Code.

In this respect it is interesting to note an opinion found in 1927 O. A. G. 2089, in which the then Attorney General was called upon to consider whether or not a person agreeing to furnish meals for prisoners in the county jail would be "interested in a contract for the purchase of supplies for the county". It was stated in such opinion:—

"While Section 12910, General Code, is a penal section and must therefore be strictly construed, it seems clear to me that even though we apply the rules of strict construction to the statute, it must be said that anyone agreeing to furnish meals for prisoners in the county jail, would be 'interested in the contract for the purchase of supplies for the county' which is clearly prohibited by Section 12910, supra, and as a jail matron is an agent or servant or employe of the sheriff, a jail matron who did so contract, would be amenable to the provisions of the statute."

Section 12912, General Code, is also pertinent to your inquiry. That section provides:

"Whoever, being an officer of a municipal corporation or member of the council thereof or the trustee of a township, is interested in the profits of a contract, job, work or services for such corporation or township, or acts as commissioner, architect, superintendent or engineer, in work undertaken or prosecuted by such corporation or township during the term for which he was elected or appointed, or for one year thereafter, or becomes the employe of the contractor of such contract, job, work, or services while in office, shall be fined not less than fifty dollars nor more than one thousand dollars or imprisoned not less than thirty days nor more than six months, or both, and forfeit his office."

In view of the discussion contained herein as to the applicability of Section 12910, General Code, to the situation presented by your inquiry, it is apparent that

the state of facts mentioned in your letter also falls within the prohibition of Section 12912, General Code.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that a member of a board of township trustees furnishing groceries upon order of the board of township trustees and receiving compensation therefor from such board, is subject to the provisions of Section 12910 and Section 12912, General Code, which prohibit a member of a board of township trustees from being interested in a contract or profits of a contract for the purchase of property or supplies for such township.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4711.

APPOVAL, BONDS OF SOUTH EUCLID-LYNDHURST VILLAGE
SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO—\$2,804.21.

COLUMBUS, OHIO, October 28, 1932.

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

4712.

WORKMEN'S COMPENSATION—RIGHT OF POLICEMEN AND FIRE-
MEN TO PARTICIPATE WHERE THEY HAVE A PENSION FUND—
DEPENDENTS ENTITLED TO BENEFITS REGARDLESS OF MONEY
RECEIVED FROM OTHER SOURCES.

SYLLABUS:

1. *The Industrial Commission is authorized to pay compensation to dependents of employees as the term "employee" is defined in the Workmen's Compensation Law of Ohio.*
2. *Policemen and firemen of villages are employees within the meaning of the Workmen's Compensation Law of Ohio regardless of whether or not said village has provided a policemen or firemen's fund.*
3. *Policemen and firemen of cities who are eligible to participate in a policemen or firemen's pension fund because of the particular injury or disability suffered are not employees within the meaning of the Workmen's Compensation Law, unless said policemen or firemen are paid from said fund an amount less than the compensation that is provided by the Workmen's Compensation Law of Ohio for a like injury and disability.*
4. *All dependents of injured employees who die as a result of injuries sustained in the course of employment are entitled to benefits provided for by the Workmen's Compensation Law of Ohio. There is no provision for deducting from*