

upon conviction thereof in any court of competent jurisdiction, shall be fined not less than forty dollars nor more than seventy-five dollars for the first offense, and for the second and each repeated offense shall be fined not less than fifty dollars nor more than one hundred dollars, or imprisoned for six months or both, at the discretion of the court. All such fines shall be paid into the common school fund."

This section prohibits persons from embalming either by arterial or cavity treatment or prepare for burial, cremation, or transportation any dead human body unless he or she is a duly licensed embalmer.

Funk and Wagnalls Standard dictionary defines "prepare" as follows:

"To adapt, render suitable, or qualify for a particular end or purpose; make ready; fit."

It will be noted that section 1344 can be divided naturally into two parts: one which prohibits embalming by any method; and second: the preparation for burial, cremation or transportation of any dead human body. Under the definition as laid down in the dictionary for the word "prepare" it would seem that the preparation of a dead human body for the purposes of burial, cremation or transportation would be prohibited by this section. The evident purpose of such a statute is to prevent the spread of contagious diseases by the preparation of bodies by persons who are unacquainted with the duties connected with the preparation of bodies for burial. It is believed that it is not necessary that all the work of preparing a body for burial, etc., must necessarily be made by a licensed embalmer, but that such preparation shall be made under the direction and supervision of a licensed embalmer.

It is, therefore, my opinion that under section 1344 G. C. all steps necessary in the preparation of a dead human body for burial, transportation, or cremation must be made under the direction and supervision of a licensed embalmer.

Respectfully,

C. C. CRABBE,

*Attorney General.*

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2742.

MEMBER OF BOARD OF EDUCATION MAY NOT PARTICIPATE IN MAKING OF CONTRACT EMPLOYING SON OR DAUGHTER—SECTION 12932 G. C. CONSTRUED.

*SYLLABUS:*

*Under the provisions of section 12932 General Code the mere facts 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 participation in the making of such contract, and would come within the inhibition of said section.

COLUMBUS, OHIO, Sept. 1, 1925.

HON. VERNON M. RIEGEL, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication in which you submit the following inquiry:

“Does the provisions of section 12932 of the General Code of Ohio constitute an inhibition against a board’s employment of his son or daughter of a board member, when that board member does not cast a vote in favor of such employment?”

“Can the president of a board of education sign for the board a contract with his son or daughter as a teacher when such son or daughter has been employed by the board without the parent-member’s participation in the action?”

Section 12932 of the General Code of Ohio, to which you refer, reads as follows:

“Whoever, being a local director or member of a board of education, votes for or participates in the making of a contract with a person as a teacher or instructor in a public school to whom he or she is related as father or brother, mother or sister, or acts in a matter in which he or she is pecuniarily interested, shall be fined not less than twenty-five dollars nor more than five hundred dollars or imprisoned not more than six months or both.”

Examination of the above section discloses three distinct inhibitions:

- (1) Against a board member *voting for a contract to hire a son or brother, daughter or sister* of such board member;
- (2) Against a board member *participating in the making of a contract with a son or brother, daughter or sister* of such board member;
- (3) Against a board member who acts in a matter in which he or she is pecuniarily interested.

In the case you present, where a board member does not cast a vote for a contract employing a son or daughter of such board member as a teacher, such board member, by abstaining from voting, would thereby doubtless save himself in that particular respect from the penalty of the above section. However, it will be noted that the above section imposes a like penalty against a board member who participates in the making of a contract employing a son or daughter as a teacher, and the signing of such board member as president of the board of such a contract with his son or daughter would doubtless come within the inhibition of the statute.

A board member who is president of such board might “participate” in the making of such contract by being present and presiding during the session of the board at which the employment is voted, although not actually voting himself. A board member making or proposing the motion or resolution would be participating in the making of the contract, although not actually voting for such motion. A board member being clerk of such board would be “participating” in making such a contract when as such clerk he calls the roll and records the action of the other members, although not actually voting for such contract himself.

In view of the other inhibitions of the section, it is not believed that the mere fact that a member of the board of education does not cast a vote in favor of the employment of his son or daughter is sufficient to justify the conclusion that such

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.”