

5408.

LIBRARIAN — SCHOOL DISTRICT PUBLIC LIBRARY—MAY
NOT BE ONE OF LIBRARY TRUSTEES.

SYLLABUS:

A board of library trustees, organized under the provisions of Sections 7635, et seq., General Code, may not appoint one of their own members as librarian for the school district public library.

COLUMBUS, OHIO, April 25, 1936.

HON. MANNING D. WEBSTER, *Prosecuting Attorney, Pomeroy, Ohio.*

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

“I will appreciate you rendering this office your opinion on the following:

Whether or not a Board of Library Trustees can, under their powers as mentioned in G. C. 7637, employ as a librarian one of the members of said board.”

Under the provisions of Sections 7635, et seq., General Code, the board of education of any city, village or rural school district may provide for the establishment, control and maintenance in such district, of a public library, free to all the inhabitants thereof, and appoint a board of trustees to manage and control such library.

Section 7637, General Code, referred to in your letter, empowers the board of library trustees to employ a librarian and assistants. This section reads as follows:

“In its own name, such library board shall hold the title to and have the custody, and control of all libraries, branches, stations, reading rooms, of all library property, real and personal, of such school district, and of the expenditure of all moneys collected or received from any source for library purposes for such district. It may employ a librarian and assistants, but previous to such employment their compensation shall be fixed.”

Since there is no statute which specifically authorizes such an appointment or which prohibits a library board, created by virtue of the provisions of Sections 7635, et seq., General Code, from employing or appoint-

ing one of their own members as librarian, resort must be had to the general principles of common law to determine whether or not such an appointment would be within the powers of the library board. There is, however, a general rule of policy which prevents a member of a board or commission from appointing himself to a position under such board or commission. The general rule is stated in 46 C. J. 940 as follows:

“It is contrary to the policy of the law for an officer to use his official appointing power to place himself in office, so that, even in the absence of a statutory inhibition, all officers who have the appointing power are disqualified for appointment to the offices to which they may appoint; * * *”.

The above stated principles have been followed by the Ohio courts. In the case of Ohio ex rel. Louthan v. Taylor, 12 O. S. 130, it was held as disclosed by the syllabus:

“Where a member of the board of directors of a county infirmary was, by said board, appointed to the office of superintendent of the county infirmary, he still continuing to hold the office of director—Held,

That the duties of the two offices are incompatible, and can not be legally held by the same person at the same time; and such appointment was, therefore, illegal and void.”

At page 134 the following appears:

“* * * The word appoint, when used in connection with an office, ex vi termini, implies the conferring of authority upon another. It was not necessary, therefore, that the statute should, in express terms, prohibit the infirmary directors from appointing one of their own number superintendent; for the language, ‘the board of directors shall appoint a superintendent’, necessarily means, that the person appointed shall be different from those who appoint.”

To the same effect, see the case of State, ex rel. Henry v. Newark, 6 O. N. P. 523.

In an opinion to be found in the Annual Report of the Attorney General for 1911-1912, Vol. II, page 1089, it was held as disclosed by the first branch of the syllabus:

“Contrary to the general rule of policy that a member of a board may not hold a salaried position under such board, special

provision of statute makes it possible for a member of a board of education to serve as its clerk and receive the salary for both positions”.

The following appears at page 1090:

“* * * There is a principle of public policy which prohibits a member of an administrative board from holding a salaried position thereunder. This principle, however, is expressly waived, so to speak, by section 4747, above quoted. The authority to prescribe compensation for the clerk is clearly vested in the board by section 4781, General Code, which reads:

‘The board of education of each school district shall fix the compensation of its clerk * * * which shall be paid from the contingent fund of the district. * * *.’”

In an opinion to be found in the annual report of the Attorney General for 1913, Vol. II, page 1600, it was held as disclosed by the syllabus:

“A person employed as a lineman on the electric light and water works plant, and while holding this position is elected a member of the board of trustees of public affairs, and inasmuch as the board of public affairs employs, fixes the wages of and pays the linemen, the same party should not occupy both positions.”

In an opinion to be found in Opinions of the Attorney General for 1917, Vol. II, page 1876, the following appears at page 1878:

“An examination of our statutes will disclose the fact that in a number of instances the legislature has given its express consent to the appointment or election of a member of a board as its secretary or clerk, and it would seem that, inasmuch as they have done this, they meant to withhold such consent in all other cases.

For this reason, and on the authority of the position taken by this department in the past, as above outlined, I would advise you that the offices of member of the board of trustees of public affairs of a village and the clerk of the board of trustees of public affairs are incompatible.”

The above stated principles were followed in the Opinions of the Attorney General for 1920, Volume I, page 163, Opinions of the Attorney

General for 1930, Volume II, page 917, Opinions of the Attorney General for 1933, Volume II, page 1622. A recent opinion of this office with reference to this subject is Opinion No. 5114, rendered January 25, 1936. The first branch of the syllabus of that opinion reads as follows:

“1. A public officer possessing the power of appointment or employment may not appoint or employ himself, nor may a public board possessing such power appoint or employ one of their own number, in the absence of a statute expressly authorizing such action, even though his vote is not essential to a majority in favor of his appointment or employment and although he was not present when the appointment was made.”

In view of the above, and without further extending this discussion, it is my opinion, in specific answer to your inquiry, that a board of library trustees, organized under the provisions of Sections 7635, et seq., General Code, may not appoint one of their own members as librarian for the school district public library.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5409.

APPROVAL—BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO, \$5,000.00.

COLUMBUS, OHIO, April 25, 1936.

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

5410.

APPROVAL—BONDS OF CITY OF GARFIELD HEIGHTS, CUYAHOGA COUNTY, OHIO, \$14,521.12.

COLUMBUS, OHIO, April 25, 1936.

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