

Therefore, it is my opinion that a chief probation officer can not receive a salary in excess of the amount appropriated, as provided in Sections 5625-29 and 5625-32 of the General Code, by the county commissioners.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1169.

TOWNSHIP TRUSTEES—EMPLOYMENT OF MINOR SON OF A TRUSTEE  
TO PERFORM WORK FOR THE TOWNSHIP, DISCUSSED.

SYLLABUS:

1. *In case of employment of the minor son of the township trustee to perform work for the township, for which the son is to be paid from township funds, a presumption exists that the father is interested in the profits of his son's labor. This presumption is rebuttable by showing that the minor son is emancipated and that the father is not in fact interested in the profits of his son's contract, job, work or services.*

2. *The employment of the minor son of a township trustee to perform labor for the township of which he is trustee and for which the son is to be paid from township funds, is not necessarily a violation of Section 12912, General Code. To sustain a conviction under Section 12912, it would be necessary affirmatively to prove beyond the existence of a reasonable doubt that the township trustee, in the employment of his minor son to do township work, was interested in the profits of his son's services, and the presumption referred to in the paragraph above would be overcome by showing complete or partial emancipation of the son.*

3. *Where a minor child of a township trustee, to-wit, a boy of about fifteen years of age, is not emancipated and is employed to perform work for the township, using at times his father's team, the father, being under the law entitled to the services and earnings of such minor child, is interested in the profits of the son's work or services for such township in violation of Section 12912 of the General Code.*

4. *The provisions of Sections 3294 and 3372, General Code, wherein it is provided that a township trustee shall not receive for his services as such trustee an aggregate sum of more than \$250.00 in any one year, has reference to the aggregate amount of fees and daily stipends to be paid to such trustee, as provided by law.*

COLUMBUS, OHIO, October 19, 1927.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

“In re: Sections 3294, 3372, 12912, General Code.

A township trustee draws the limit of \$250.00 for road work. His son is employed, a boy of fifteen or sixteen years, not emancipated, does road work, using at times his father's team, and puts in a bill for services, being in excess of \$100.00. Admitting that the boy, in good faith performs real serv-

ice and earns what is allowed to him, is not the payment to him of money, inasmuch as his father is entitled to his earnings by reason of infancy, a violation of the spirit—if not the letter—of the above listed sections of the Code?

As a matter of fact, there is some question as to whether or not the boy's father is not practically using the boy's name and doing the work in the boy's name and using said name as a subterfuge to get around the above sections of the law.

The reason for submitting this question at this time is due to the fact that every once in a while I have the above proposition put to me or one quite similar to it. It is a practice that, in my opinion should be stopped and I would like your opinion as to the legality of such transactions."

Sections 3294, 3372 and 12912, General Code, read as follows:

Sec. 3294. "Each trustee shall be entitled to one dollar and fifty cents for each day of service in the discharge of his duties in relation to partition fences, to be paid in equal proportions by the parties, and two dollars and fifty cents for each day of service in the business of the township, to be paid from the township treasury. The compensation of any trustee to be paid from the treasury shall not exceed two hundred and fifty dollars in any year including services in connection with the poor. Each trustee shall present an itemized statement of his account for such per diem and services, which shall be filed with the clerk of the township, and by him preserved for inspection by any persons interested."

Sec. 3372. "When the trustees of any township determine to proceed in either the first or the second method hereinbefore provided, the trustee or trustees designated to have charge of the maintenance and repair of roads and culverts within the township, or within a road district thereof, shall receive two dollars and fifty cents for each day of service in the discharge of such duties, but the total compensation of any township trustee to be paid from the treasury under this and all other sections of the General Code shall not exceed two hundred and fifty dollars in any year."

Sec. 12912. "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."

You state in your letter that the son of the township trustee in question is a boy fifteen or sixteen years of age, is not emancipated and that at times he uses his father's team.

It is well settled that the father, as the head of the family, is entitled to the services and earnings of his child so long as the latter is legally under his custody or control and is not emancipated. As stated by Blackstone (1 Bl. Com. 453), the father "may indeed have the benefit of his children's labor while they live with him, and are maintained by him; for this is no more than he is entitled to from his apprentices or servants." This right, like that of custody, rests upon the parental duty of maintenance,

and furnishes some compensation to the father for his own services rendered the children. See Schouler on Marriage, Divorce, Separation and Domestic Relations, 6 Ed. Vol. 1, page S13. On page S14 of the same work this writer says:

"The father is in this country, as a general rule, entitled to the services of minor children and to their wages if working for another only during minority, and the minor child has no right to assign his wages to another so as to bar the parent of this right."

And on page 820 of the same work the following statement of the law is given:

"The parent may recover the wages of the minor child in an action for work and labor, and not in the name of the child unless waived, or unless the child has been emancipated and the employer may set off the reasonable value of necessaries furnished the child.

The right of action to recover for the services of a minor is presumed to be in his father. And the father may charge services rendered by his son, as a master for his apprentice or hired laborer, and consider it his own work. The defendant has the burden of proving any special contract set up, as that the minor's services were in remuneration for board and care for him."

Numerous other authorities might be cited to the same effect, and since it is the law that a father is entitled to the services of his minor child where such child has not been emancipated, or to the earnings of such child in case he be employed by a person other than the parent, it seems clear upon the facts stated in your letter that as a matter of law the father referred to is interested in the profits of his child's work or services performed for the board of township trustees, and the employment of such unemancipated son is illegal.

A similar question was considered by this department in an opinion rendered under date of May 1, 1923, and reported in Opinions of Attorney General, 1923, page 236. The syllabus of that opinion reads as follows:

"The general presumption is that the employment of a minor son or a member of a board of education is such an employment or contract as would be illegal under the provisions of Section 4757 upon the ground that said parent, as a member of the board of education, would have a pecuniary interest in said contract.

Under penal Section 12932, General Code, the employment by a board of education of a minor son of a member of said board of education would raise the same general presumption of pecuniary interest as in the first question under Section 4757 and would be a violation of said. penal section."

In the opinion, which was in answer to the following communication:

"Section 4757 of the General Code is in part as follows:

'No member or a board (of education) shall have directly or indirectly any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as clerk or treasurer.'

(1) Would the employment of a minor son of a member of a board of education be such an employment or contract as would be illegal under the provisions of this section upon the ground that a member of the board would have a direct or indirect pecuniary interest therein?

(2) Would such employment be a violation of Section 12932, G. C., in that the board member would be pecuniarily interested?"

it was said as follows:

"Your first question arises under Section 4757, G. C., of which you quote the pertinent part and which involves an analysis of the language 'have directly or indirectly any pecuniary interest.'

To determine the existence or non-existence of such an interest would necessitate a careful examination of the facts and surrounding circumstances in any given case. Under the statement submitted, the general presumption would be that the parent (member of the board of education) of the minor son would be responsible for the care and maintenance of such minor son and would also be entitled to his earnings. \* \* \*

Your second question has reference to Section 12932, General Code, which 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.'

This section as it applies in the instant case, stripped of unnecessary words, would read as follows:

'Whoever, being a member of a board of education acts in a matter in which he or she is pecuniarily interested, shall be fined,' etc.

The general presumption in your first question that the parent would be pecuniarily interested in a contract by such board employing a minor son of a member of such board, it would seem that the same general presumption would obtain under the penal section above quoted. This Section 12932, G. C., is a penal one and to obtain a conviction under it a pecuniary interest in a given matter by a member of a board of education must be proven beyond a reasonable doubt and the general presumption might be overcome by other facts.

In answer to your second question, you are advised that under Section 12932, General Code, the employment by a board of education of a minor son of a member of such board, such member acting in favor of such employment, would raise the same general presumption of pecuniary interest as in your first question under Section 4757, and would be a violation of Section 12932."

With reference to the other sections of the General Code referred to in your communication, your attention is directed to the fact that township trustees are not paid a regular fixed salary. Their compensation is based on fees and the amount of time they devote to the affairs of the township, which time is paid for by the day. In both Sections 3294 and 3372, supra, it will be observed that provision is made for the payment of a fixed amount per day for the doing of certain things and that the sum total of these daily stipends and other fees allowed to the trustee for the doing of township work shall not exceed \$250.00 per year. It is my opinion that the aggregate amount fixed in the statutes, which the trustee may be paid, means the sum total of the several fees and day's stipends fixed by law and that consideration of this yearly aggregate sum which the trustee may be paid does not enter into a consideration of the question presented in your letter.

In view of the foregoing, and answering your question specifically, it is my opinion that in case of employment of the minor son of a township trustee to perform work for the township, for which the son is to be paid from township funds, a presumption exists that the father is interested in the profits of his son's labor. This presumption is rebuttable by showing that the minor son is emancipated and that the father is not in fact interested in the profits of his son's contract, job, work or services.

The employment of the minor son of a township trustee to perform labor for the township of which he is trustee and for which the son is to be paid from township funds, is not necessarily a violation of Section 12912, General Code. To sustain a conviction under Section 12912, it would be necessary affirmatively to prove beyond the existence of a reasonable doubt that the township trustee, in the employment of his minor son to do township work, was interested in the profits of his son's services, and the presumption referred to in the paragraph above would be overcome by showing complete or partial emancipation of the son.

Where a minor child of a township trustee, to-wit, a boy of about fifteen years of age, is not emancipated and is employed to perform work for the township, using at times his father's team, the father, being under the law entitled to the services and earnings of such minor child, is interested in the profits of the son's work or services for such township in violation of Section 12912 of the General Code.

The provisions of Sections 3294 and 3372, General Code, wherein it is provided that a township trustee shall not receive for his services as such trustee an aggregate sum of more than \$250.00 in any one year, has reference to the aggregate amount of fees and daily stipends to be paid to such trustee, as provided by law.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

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1170.

APPROVAL, BONDS OF THE VILLAGE OF MILTON, MIAMI COUNTY—  
\$18,000.00.

COLUMBUS, OHIO, October 19, 1927.

*Industrial Commission of Ohio, Columbus, Ohio.*

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1171.

APPROVAL, BONDS OF THE VILLAGE OF SOUTH EUCLID, CUYAHOGA  
COUNTY, OHIO—\$41,000.00.

COLUMBUS, OHIO, October 19, 1927.

*Industrial Commission of Ohio, Columbus, Ohio.*