

Of course, in considering the bids submitted, the offer to construct the electric service line from the street to the building cannot be considered in awarding the contract; that is, in considering all the proposals the offer to construct such service line must be eliminated.

Specifically answering your question, it is my opinion that a proposal which contains an additional or informatory bid outside of the work covered by the approved form of the proposal, but which can be eliminated without affecting in any way the competitive character thereof, is not invalid because of such addition, within the contemplation of Section 2317, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1565.

TOWNSHIP TRUSTEE BOND—APPROVAL—ELECTION—VALIDITY OF
ELECTION OF OFFICIAL AT POLLS—OPINIONS NO. 1560 AND 1390
APPROVED AND FOLLOWED.

SYLLABUS:

1. *There is no authority for the examination and approval of the bonds of newly elected township trustees by any officer or officers other than a justice of the peace. Where, however, there is no justice of the peace to approve the bond of newly elected township trustees, each of such trustees should enter into a bond with two good and sufficient sureties residents of the same township with the trustee, as required by Section 3269, General Code, (or with a duly authorized guarantee company as surety, as authorized by Section 9571, G. C.) and file the same with the township clerk for record. When such bond is so entered into and filed, said trustees are authorized to enter upon the duties of their office and no vacancy would be created therein. Opinion No. 1560 of January 10, 1928, approved and followed.*

2. *Whether or not a judge of elections, whose name was not printed on the ballot, and who was elected a member of a board of education is, under Section 5092, General Code, ineligible to serve depends upon the facts in each particular case. If such judge of elections had been engaged in actively promoting his candidacy for such office he would be ineligible. If on the other hand he did not seek or aspire to the office or actively promote his candidacy, he would be eligible, notwithstanding the fact that he had served as a judge of the election in which he was elected. Opinion No. 1390 of December 17, 1927, approved and followed.*

COLUMBUS, OHIO, January 11, 1928.

HON. W. J. JONES, *Prosecuting Attorney, McArthur, Ohio.*

DEAR SIR:—I am in receipt of your letter of January 4, 1928, which reads as follows:

“Would like to have your opinion as to who can approve the bonds of newly elected township trustees in a township where there is no justice of the peace.

Section 3269 of the General Code provides that township trustees before qualifying shall have their bonds approved by the justice of the peace.

Also request an opinion on the following:

Does Section 5092 of the General Code preclude a judge of the board of elections from serving on the board of education when such election to the board of education was had by writing his name in on the ballot. The interpretation I want is whether or not a person's name that is written in on the ballot is to be termed a candidate, within the above section."

This department has had occasion recently to pass upon the two questions presented in the above request, the first in Opinion No. 1560, rendered under date of January 10, 1928, to the prosecuting attorney of Huron County, and the second in Opinion No. 1390, rendered under date of December 17, 1927, to the Secretary of State. The syllabus of Opinion No. 1560 reads as follows:

"1. By the terms of Section 3269, General Code, bonds of newly elected township trustees are required to be approved by a justice of the peace of the township in which such bonds are given, and there is no authority for the examination and approval of such bonds by any other officer or officers.

2. In case there is no justice of the peace to approve the bond of newly elected township trustees, each of such trustees should enter into a bond with two good and sufficient sureties residents of the same township with the trustee, as required by Section 3269, General Code, (or with a duly authorized guaranty company as surety, as authorized by Section 9571, G. C.) and file the same with the township clerk for record. When such bond is so entered into and filed, said trustees are authorized to enter upon the duties of their office and no vacancy would be created therein."

In the opinion, after quoting authority to the effect that the purpose of requiring examination and approval of a bond was to afford some means by which the public might be assured that the bond tendered was sufficient in form and amount and properly executed and to the effect that where by reason of the execution and filing of a bond an officer had been inducted into office the sureties on said bond cannot avoid liability because of defective approval or lack of approval, the question as to whether or not the bond of a township trustee could be approved by any other officer or officers was considered, it being said:

"I find no section of the Code authorizing the approval of the bond of a township trustee by any officer or officers other than a justice of the peace of a township in which the bond is given. The better weight of authority is to the effect that the examination and approval of a bond are acts requiring the exercise of judgment and discretion and are quasi-judicial in their nature. This was the holding in the case of *Davies, Aud. vs. State, ex rel.* 11 O. C. C. (N. S.) 209, 212, in which the court said:

'A deputy auditor, Mr. Otto Sanzenberger, attempted to approve the bond of Scherer, but we are quite clear in our view that the approval of an official bond is an act requiring such judgment of the officer attempting to exercise such approval that it cannot be done by a merely ministerial officer, and we do not think that a deputy auditor is clothed with the power attempted here to be exercised.'

It follows that bonds of township trustees may only be approved by the officer designated by statute, namely, a justice of the peace of the same township."

With reference to the authority of a township trustee to enter upon a discharge of his duties upon the execution and filing of a bond where there was no justice of the peace to approve the same, a former opinion of this department, reported in Opinions, Attorney General, 1917, Vol. III, page 2450, was quoted at length and followed, and in which it was, *inter alia*, said as follows:

"From all the above it is my opinion that if the township trustees elected did all in their power to comply with the law, namely, entered into a bond with two good and sufficient sureties, resident of the township, and file the same with the township clerk, they will be authorized to enter upon the duties of their office and there could be no vacancy declared in the same."

Coming now to your second question, in Opinion No. 1390, above mentioned, it was held as follows:

"A judge or clerk of elections whose name is not printed on the ballot as a candidate for member of council, but whose name is written in, and who is actively promoting his candidacy for such office is also ineligible to the office if elected.

Where votes are cast, by writing in for member of council the name of a person who is serving as judge or clerk at the election but who has not been regularly nominated for the office of member of council, and who has not sought or aspired to such office or actively promoted his candidacy, said person is eligible to said office, if elected."

This opinion also followed a former opinion of this department, reported in Opinions, Attorney General, 1917, Vol. III, page 2111, in which it was held:

"Where votes are cast for a person for office, who was not regularly nominated therefor, and who has not sought or aspired to such office, such votes should be counted for such person, even though he is a judge or clerk in the election at which said votes are cast, and such person so receiving the highest number of votes would be eligible to the office to which he was elected, notwithstanding the provisions of Section 5092, G. C."

Specifically answering your questions it is my opinion that:

1. There is no authority for the examination and approval of the bonds of newly elected township trustees by any officer or officers other than a justice of the peace. Where, however, there is no justice of the peace to approve the bond of newly elected township trustees, each of such trustees should enter into a bond with two good and sufficient sureties residents of the same township with the trustee, as required by Sections 3269, General Code, (or with a duly authorized guaranty company as surety, as authorized by Section 9571, G. C.) and file the same with the township clerk for record. When such bond is so entered into and filed, said trustees are authorized to enter upon the duties of their office and no vacancy would be created therein.

2. Whether or not a judge of elections, whose name was not printed on the ballot, and who was elected a member of a board of education is, under Section 5092,

General Code, ineligible to serve depends upon the facts in each particular case. If such judge of elections had been engaged in actively promoting his candidacy for such office he would be ineligible. If on the other hand he did not seek or aspire to the office or actively promote his candidacy, he would be eligible, notwithstanding the fact that he had served as a judge of the election in which he was elected.

I am herewith enclosing copies of Opinions Nos. 1560 and 1390 herein referred to.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1566.

COUNTY BONDS—ADVERTISEMENT OF SALE—ADDITIONAL ADVERTISEMENT—PROVISIONS FOR, CONSTRUED.

SYLLABUS:

1. *Notice of the sale of county bonds must be advertised once a week for three consecutive weeks and on the same day of the week, the first advertisements being published at least twenty-one days before the date of sale in a newspaper having general circulation in the county where the bonds are sold.*

2. *County commissioners may, if they so deem proper, further advertise the sale of county bonds in accordance with the provisions of Section 6252 of the General Code, provided that such additional publications shall not be in excess of the three weeks provided by Section 2293-28 of the General Code.*

3. *Where such additional advertisement is authorized, it must be published in two newspapers of opposite politics at the county seat if there be such newspapers published thereat, and, in addition thereto, notices shall be published in two newspapers of opposite politics in each city of eight thousand inhabitants or more within such county.*

COLUMBUS, OHIO, January 12, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication, as follows:

“Section 2293-28, General Code, 112 O. L. 376, provides for advertising bonds for sale. It is provided that notices of the sale shall be advertised once a week for three consecutive weeks and on the same day of the week, the first advertisement being published at least twenty-one full days before the date of the sale in a newspaper having general circulation in the county where the bonds are issued. Section 6252, General Code, provides for the publication of certain advertisements and notices and such other advertisements of general interest to the tax payers as the auditor, treasurer, probate judge, or commissioners may deem proper, shall be published in two newspapers of opposite politics at the county seat if there be two such papers published thereat, and in counties having cities of 8,000 population or more, not the county seat, publication shall be made in two newspapers of opposite politics in such city.

Question 1. May the county commissioners in their discretion advertise the sale of county bonds in two newspapers of opposite politics in a city of 8,000 population, not the county seat of the county?