

used for the purpose of paying disability or superannuation allowances, the conclusion must be reached that the provisions of the Public Employes' Retirement System Act are not applicable to employes of public libraries not maintained by public funds.

Therefore, in specific answer to your question it is my opinion that, "employes of libraries within the State of Ohio who call themselves 'public libraries' and who serve public interests but who are not actually maintained by tax funds" do not come within the amended provisions of the Retirement Law.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2854.

MEMBER BOARD OF EDUCATION—WHERE EMPLOYE OF CORPORATION SUCH COMPANY CANNOT SUBMIT SEALED BIDS FOR CONTRACTS TO FURNISH SUPPLIES TO BOARD—SEE SECTIONS 4757 AND 12910, GENERAL CODE.

SYLLABUS:

A company whose local manager is also a member of the board of education cannot submit sealed bids for contracts to furnish supplies to the board of education when competitive bidding on such contract is not required by law, as a contract made under such circumstances comes within the provisions set forth in Sections 4757 and 12910, General Code.

COLUMBUS, OHIO, August 22, 1938.

HON. THEODORE TILDEN, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR: This will acknowledge your recent communication. Your letter reads as follows:

"A member of the City Board of Education is employed as branch manager of a corporation, operating a retail lumber yard in the city. The Board of Education, in purchasing lumber, takes sealed bids for all lumber purchased, and awards the sale to the lowest bidder. So long as this manager is a member of this Board of Education, can this lumber company legally file bids to sell the City Board of Education material, and be awarded the sale, if they are the low bidder?"

The local manager of the company is not a stockholder of the corporation, does not have any bonus arrangement with the corporation, and works on a straight salary basis.”

There are two sections of the General Code which expressly prohibit the interest of school board members in school board contracts. Sections 4757 and 12910, General Code, provide as follows:

Section 4757. “Conveyances made by a board of education shall be executed by the president and clerk thereof. No member of the board 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. No contract shall be binding upon any board unless it is made or authorized at a regular or special meeting of such board.”

Section 12910. “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.”

You will observe that neither of the statutes in question creates any exception in case of competitive bidding. I assume from your question that the contract to which you refer is one involving less than the amounts fixed in Section 7623, General Code, for which no competitive bidding is required by law.

There have been many rulings issued by this office in regard to matters coming within the sections above quoted and other related sections which prohibit the interest of public employees and officers in public contracts.

The code sections in question employ clear and definite language. They are, moreover, so drawn as to include by their words practically all officers and all types of contracts. In applying these sections this office has been faced with many hard situations. However, where legislative intent is clearly and definitely expressed, this office is bound to give effect to it and cannot, however liberal it may wish to be, nullify, change or amend by its rulings the express provisions of a statute.

In all the long list of cases and situations occasioning application of these sections to public contracts made with corporations or firms whose officials and employes are public officials, there has been only one basis

upon which the Courts have been willing to create an exception and this is in the instance where competitive bidding is required by law. The history of this exception and the logic which lies back of it, may be found in *Richardson vs. Trustees*, 6 N. P. (N. S.) 505. A review of this case and of the rulings of Attorneys General based upon it were discussed in an Opinion of the Attorney General for 1937, No. 1649.

If we are to accept this authority given in the opinion and the practice derived from it, the exceptions to the statutes discussed can be permitted only in cases where competitive bidding is required by law. It then follows that where competitive bidding is not required by law, no legal exception is created.

In an Opinion of the Attorney General for 1934, Volume I, No. 2341, the effect of advertisement and competitive bidding not required by statute is discussed. This opinion holds that when no provision of law requires advertisement and competitive bidding the fact that it is actually done does not take a contract out of the section which prohibits interest of officials in public contracts exceeding \$50.00 in amount, unless duly advertised as provided by law.

The section under discussion in the Opinion is 12911, General Code, a part of the group of sections prohibiting interest of public officials in public contracts and in that sense a sister section to Sections 4757 and 12910, *supra*, now under consideration.

A recent ruling from this office given in an Opinion of the Attorney General for 1938, No. 2273, further affirms the ruling given in No. 2341, *supra*. The second syllabus of No. 2273 provides as follows:

“2. A member of a board of education who serves as director of a bank which is a depository for active school funds violates the provisions of Section 4757, General Code, since the Uniform Depository Act does not require advertisement or competitive bidding for such contracts.”

In view of these former rulings and the unmodified precedent of decision back of them the very plain prohibition given in Sections 4757 and 12910, *supra*, cannot be ignored or altered by this office.

It is therefore my opinion that a company whose local manager is also a member of the board of education cannot submit sealed bids for contracts to furnish supplies to the board of education when competitive bidding on such contract is not required by law; as a contract made under such circumstances comes within the provisions set forth in Sections 4757 and 12910, General Code.

Respectfully,

HERBERT S. DUFFY,

Attorney General.