

in their offices. Such bond shall be conditioned upon the faithful observance of all the provisions of this act and shall also indemnify any person who may be damaged by a failure on the part of the applicant for a real estate broker's license to conduct his business in accordance with the requirements of this act (G. C. Sections 6373-25 to 6373-51). Any person claiming to have been damaged by any misrepresentation or fraud on the part of a real estate broker or by reason of the violation of the terms of this act, may maintain an action at law against the broker making such misrepresentations or perpetrating such fraud or violating the provisions of this act, and may join as parties defendant the sureties on the bonds herein provided for. Such bonds shall be in the form prescribed by the board of real estate examiners and approved by them."

While there is an apparent duplication of licenses in the instance you suggest, I do not feel warranted in concluding that the legislature did not have this in mind. The bond given to the commissioner of securities under Section 6373-3 of the Code and that given to the real estate examiners under Section 6373-35, would seem to comprehend protection against exactly the same things. I do not feel, however, that I would be justified in holding that giving one of the bonds should be sufficient. The legislature has spoken and it is quite possible that, in its judgment, it would be wise to provide additional security where the property dealt in is not located in this state.

I am therefore of the opinion that any person, firm or corporation, dealing within this state in real estate located elsewhere, must qualify as a dealer under the provisions of Sections 6373-15, et seq., of the General Code, and must also secure a license as a real estate broker and such real estate salesmen's licenses as may be necessary under the provisions of Sections 6373-25 to 6373-51 of the General Code. In such a case it is necessary that proper bond be given both to the commissioner of securities and the board of real estate examiners, as provided by law.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

951..

VILLAGE COUNCIL—EMPLOYMENT OF LEGAL COUNSEL—CONTINGENT CONTRACT TO OBTAIN CLAIM FROM GENERAL ASSEMBLY IS VOID.

SYLLABUS:

1. *Contracts for the employment of legal counsel for a village must be authorized by and in accordance with an ordinance or resolution of the village council which must be duly passed and entered upon the journal of proceedings of that body.*

2. *A contract of employment by a village with an attorney at law, for the purpose of obtaining an allowance by the General Assembly of a claim, in which contract the payment for the services rendered is contingent upon the allowance of such claim, is void under Anti-Lobby Law.*

COLUMBUS, OHIO, September 3, 1927.

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

GENTLEMEN :—Permit me to acknowledge receipt of your request for my opinion, as follows:

"Some years since the village of ----- paved a street on which canal lands abutted and levied an assessment against said lands which was not paid at that time. In January, 1927, the village council made an agreement with a firm of attorneys by which it was agreed that such attorneys should receive twenty-five per cent of the amount which could be obtained from the State of Ohio in payment of this assessment in consideration of their using their services to procure the passage of a bill appropriating the sum claimed, to-wit: \$14,507.00.

This amount was appropriated by the last legislature and has since been paid to the village, but council has raised the question of its authority to pay twenty-five per cent thereof to the attorneys in question.

Your views in connection with this matter will be appreciated."

Upon request you have supplied a copy of the purported ordinance authorizing and prescribing the terms of the agreement referred to in your communication, which ordinance reads as follows:

"Ordinance No. 150

Providing for the employment of special counsel to appear before the Sundry Claims Board and other State Departments to prosecute a claim of the village of ----- against the State of Ohio.

Be it ordained by the council of the village of -----, State of Ohio.

Section 1. That special counsel shall be provided by this village to prosecute a claim to the Sundry Claims Board and such other branches of the state government as is necessary to obtain the allowance of the claim of the village of ----- against the State of Ohio for the state's share of the cost of improving Canal Street within the village of -----, which said improvement bounds and abuts for 2800 lineal feet along state property, namely, the Ohio Canal, and which improvement was completed in the year 1919.

Section 2. That the mayor and the clerk are hereby authorized to enter into a contract with -----, attorney at law, -----, Ohio, for the prosecution of the aforesaid claim as provided by law, and receive as compensation therefor not to exceed twenty-five (25) per cent of the amount allowed by the State of Ohio for the village of -----, as a result of such claim.

Section 3. The aforesaid person, -----, attorney at law, shall have the power to present the aforesaid claim in its entirety and in the manner and form that in his judgment he deems best, and do all things necessary or incident thereto in the name of the village of ----- and its legally constituted representative. And that his employment in regard to this claim shall continue until final action is taken by the proper authorities on said claim, that is to say, until the same is finally determined by either denying or allowing the same in whole or in part.

Section 4. This ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed December 27, 1926.

-----, Mayor.

Attest:

-----, Clerk."

Accompanying the purported ordinance is a letter from the solicitor of the village in which he states:

"I might add that there is no record here to show the passage of such ordinance and it bears a number which is borne by an ordinance of an earlier date and upon a different subject."

The council of a village may employ legal counsel for the village under the provisions of Section 4220 of the General Code, which reads as follows:

"When it deems it necessary, the village council may provide legal counsel for the village, or any department or official thereof, for a period not to exceed two years, and provide compensation therefor."

Section 4224, General Code, must also be considered in connection with your question. It provides as follows:

"The action of council shall be by ordinance or resolution, and on the passage of each ordinance or resolution the vote shall be taken by 'yeas' and 'nays' and entered upon the journal, but this shall not apply to the ordering of an election, or direction by council to any board or officer to furnish council with information as to the affairs of any department or office. No by-law, ordinance or resolution of a general or permanent nature, or granting a franchise, or creating a right, or involving the expenditure of money, or the levying of a tax, or for the purchase, lease, sale or transfer of property, shall be passed, unless it has been fully and distinctly read on three different days, and with respect to any such by-law, ordinance or resolution, there shall be no authority to dispense with this rule, except by a three-fourths vote of all members elected thereto, taken by yeas and nays, on each by-law, resolution or ordinance, and entered on the journal. No ordinance shall be passed by council without the concurrence of a majority of all members elected thereto."

This last quoted section clearly provides that any action which the council takes must be entered upon the journal and such journal must show the ordinance or resolution passed and the vote taken thereon.

The solicitor of the village advises that there is no record to show that the ordinance hereinabove quoted was passed by the council. This, of course, is a question of fact, but unless the journal of proceedings of the village council does show the passage of such ordinance it is not of any force or effect.

Your attention is also directed to Section 6256-3 of the General Code, which reads as follows:

"No person, firm, corporation or association shall be employed with respect to any matter pending or that might legally come before the general assembly or either house thereof, or before a committee of the general assembly or either house thereof for a compensation dependent in any manner upon the passage, defeat, or amendment of any such matter, or upon any other contingency whatever in connection therewith."

Said section is part of the Anti-Lobby Law of this state and it prohibits the employment of lobbyists and others upon a contingent basis. The ordinance submitted is a contract in which the attorney in question was employed to obtain, through allowance of the Sundry Claims Board, an appropriation by the General Assembly for the purpose of paying the village a part of the cost of paving a street along state property. The compensation which he was to receive for such services was not to exceed "twenty-five per cent of the amount allowed by the State of Ohio for the village

of -----, as a result of said claim." The contract is one in which the compensation was dependent upon the allowance of the claim by the General Assembly. It is such a contract as is prohibited by the provisions of Section 6256-3, supra, and therefore is illegal and void.

It is therefore my opinion that

(1) Contracts for the employment of legal counsel for a village must be authorized by and in accordance with an ordinance or resolution of the village council which must be duly passed and entered upon the journal of proceedings of that body.

(2) A contract of employment by a village with an attorney at law, for the purpose of obtaining allowance by the General Assembly of a claim, in which contract the payment for the services rendered is contingent upon the allowance of such claim is void.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

952.

APPROVAL, BONDS OF THE VILLAGE OF TORONTO, JEFFERSON COUNTY, OHIO—\$31,500.00.

COLUMBUS, OHIO, September 6, 1927.

*Industrial Commission of Ohio, Columbus, Ohio.*

953.

APPROVAL, LEASES TO OFFICE ROOMS IN CINCINNATI, CLEVELAND, LIMA, AKRON, MARTINS FERRY AND ZANESVILLE, OHIO, FOR USE OF THE DEPARTMENT OF INDUSTRIAL RELATIONS.

COLUMBUS, OHIO, September 6, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval certain leases, as hereinafter set forth, granting to you as Director of Highways and Public Works, for the use of the Department of Industrial Relations, certain office rooms in several cities, as follows:

Lease from Val Duttonhofer, Jr., of Cincinnati, Ohio, for Rooms 97 and 98 on the ninth floor of the Duttonhofer building, Cincinnati, Ohio. This lease is for a term of eighteen (18) months, beginning on the 1st day of July, 1927, and ending on the 31st day of December, 1928, by the terms of which the state will be required to pay two hundred and forty dollars (\$240.00) per month on the first day of each and every month in advance.

Lease from The Brotherhood of Locomotive Engineers Building Association of Cleveland, Ohio, for Rooms 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1138, 1139, 1142 and 1143 on the eleventh floor of the Brotherhood of Locomotive Engineers Bank Building, Cleveland, Ohio. This lease is for a term of eighteen (18) months, begin-