

2001.

APPROVAL—BONDS CITY OF NEW BOSTON, SCIOTO COUNTY, OHIO, \$27,500.00, DATED NOVEMBER 1, 1937.

COLUMBUS, OHIO, March 2, 1938.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of City of New Boston, Scioto County,
Ohio, \$27,500.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of municipal building bonds dated November 1, 1937, bearing interest at the rate of 3½% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2002.

OFFICES COMPATIBLE AND INCOMPATIBLE—PROSECUTING ATTORNEY NOT CANDIDATE FOR OFFICE AT ELECTION—CERTAIN EXCEPTIONS—MAY SERVE AS CLERK COUNTY BOARD OF ELECTIONS—PROVISO—PHYSICALLY POSSIBLE TO PERFORM DUTIES BOTH OFFICES—IF PROSECUTOR CANDIDATE FOR ELECTIVE OFFICE—EXCEPTIONS—MAY NOT SERVE AS CLERK, COUNTY BOARD OF ELECTIONS.

SYLLABUS:

1. *Members of county boards of elections are included within the terms of Sections 12910 and 12911, General Code.*

2. *A prosecuting attorney who is not a candidate for an office to be filled at an election, other than the office of delegate or alternate to*

a convention or a member of a party committee, may be appointed and serve as clerk of the county board of elections if it is physically possible to perform the duties of both officers; but such prosecutor who is a candidate for an office to be filled at an election, excepting the office of delegate or alternate to a convention or member of a party committee, may not at the same time be clerk of the county board of elections.

COLUMBUS, OHIO, March 2, 1938.

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

GENTLEMEN: Your letter of recent date is as follows:

“May we respectfully request your opinion upon the following questions:

May a member of the county board of elections sell supplies to the county without violating the provisions of Section 12910 or Section 12911, General Code?

We are aware of Opinion No. 988, dated October 5, 1929, but we are wondering if the changes in Section 4785-8, General Code, since the rendering of this opinion, would alter the conclusions reached therein.

ALSO:

May the prosecuting attorney of a county serve as clerk of the county board of elections at the same time?”

The 1929 opinion to which you refer appears in Opinions of the Attorney General for that year, Vol. II, page 1518. The syllabus is as follows:

“Members and employes of the boards of deputy state supervisors and inspectors of elections are included within the terms of Section 12910 of the General Code.”

In the consideration of the then provisions of the law relating to boards of deputy state supervisors and inspectors of elections, reference was made to an opinion appearing in Opinions of the Attorney General for 1917, Vol. II, page 1683, which held that such deputy state supervisors and inspectors were neither county, township nor municipal officers, but were state officers. An examination of the present provisions of the Election Code to which you refer relating to the appointment and duties of members of boards of elections in the various counties, discloses no

change in their status such as would justify a different conclusion than that reached in the 1929 opinion, *supra*, in which I concur. It is therefore my opinion that members of county boards of elections are included within the terms of Sections 12910 and 12911, General Code.

You next inquire as to whether or not the offices of prosecuting attorney and clerk of the board of elections of the county are compatible. There being no statutory inhibition against a person holding both of these offices, it is necessary to consider whether or not they are incompatible under the common law test, that is to say, whether one is subordinate to or in any way a check upon the other. *State, ex rel. vs. Gebert*, 12 O. C. C. (N. S.) 274.

This office has on numerous occasions considered the power of the prosecuting attorney to hold other public office or employment. It was held that a prosecuting attorney may at the same time serve as city solicitor, humane agent, and sinking fund trustee. See Opinions of the Attorney General for 1932, Vol. III, page 1479; for 1907-08, page 238; and for 1914, Vol. II, page 972. Illustrative of public offices which may not be held by a prosecuting attorney is the case of a member of the district board of health. See Opinions of the Attorney General for 1924, page 324. Such opinion is based upon the fact that the prosecuting attorney is a member of the budget commission and has a hand in reducing or adjusting the budget submitted by the board of health.

An examination of the provisions of Section 4785-10, General Code, providing that the clerk of the board of elections shall be appointed by the board to serve for a two year term and of the provisions of Section 4785-14, General Code, prescribing the duties of the clerk of the board of elections, discloses no conflict between the duties of such last named office and the duties of prosecuting attorney.

There remains to be considered Section 4785-16, General Code, which section provides as follows:

“No person shall serve as a member, clerk, deputy clerk, assistant clerk, or employe of the board of elections who is a candidate for an office to be filled at an election, except the office of delegate or alternate to a convention or a member of a party committee.”

It is apparent that the foregoing section would preclude the prosecuting attorney who is a candidate for reelection or for any other office to be filled at an election except the office of delegate or alternate to a convention or member of a party committee from serving as clerk of the board of elections. However, it does not appear that there is any inhibition in this last quoted section or elsewhere against a prosecuting

attorney serving as clerk of the board of elections if he is not a candidate for election. An opinion of this office rendered March 25, 1936, being Opinion No. 3294, held as set forth in the syllabus:

"1. A coroner who is not a candidate for election, may be a member of a county board of election, if it is physically possible to perform the duties of both offices.

2. A coroner who is a candidate for election, may not at the same time be a member of a county board of elections."

Specifically answering your question, it is my opinion that the prosecuting attorney who is not a candidate for an office to be filled at an election, other than the office of delegate or alternate to a convention or a member of a party committee, may be appointed and serve as clerk of the county board of elections if it is physically possible to perform the duties of both offices; but such prosecutor who is a candidate for an office to be filled at an election, excepting the office of delegate or alternate to a convention or member of a party committee, may not at the same time be clerk of the county board of elections.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2003.

APPROVAL—CONTRACT AND BOND, STATE OF OHIO, THROUGH THE DEPARTMENT OF PUBLIC WORKS, FOR DEPARTMENT OF HIGHWAYS, WITH EMRICH COMPANY, COLUMBUS, OHIO, HEATING WORK, PROJECT, OFFICE BUILDING, DIVISION No. 3, OHIO DEPARTMENT OF HIGHWAYS, ASHLAND, OHIO, TOTAL EXPENDITURE, \$3,492.00.

COLUMBUS, OHIO, March 3, 1938.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval a contract by and between Emrich Company, Columbus, Ohio, and the State of Ohio, acting by the Department of Public Works, for the Department of Highways, for the construction and completion of Contract for Heating Work for