

783.

BOARD OF ELECTIONS—POSITION OF MEMBER OF BOARD IS AN OFFICE OF HONOR, PROFIT OR TRUST AS CONTEMPLATED BY SECTION 12917 G. C.

SYLLABUS:

*A person convicted of violation of the extortion statutes under sections 12916 and 12917 G. C., and where a part of the penalty imposed by the court is to deprive the defendant of the right to hold any office of honor, profit or trust for seven years thereafter, is ineligible to serve as a member of the board of elections, either judge or clerk, during this period of seven years.*

COLUMBUS, OHIO, October 3, 1923.

HON. E. STANTON PEARCE, *Prosecuting Attorney, Steubenville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting the opinion of this department as follows:

“A certain officer in this county was indicted and convicted of a violation of the extortion statutes, sections 12916 and 12917 of the General Code, and a part of the sentence imposed by the court was removal from office and depriving him of the right to hold an office of honor, profit or trust for seven years thereafter.

Can such person be appointed and serve as clerk, judge or member of a precinct election board?

In other words, is the position as a member of an election board, an office of honor, profit or trust as contemplated by section 12917?”

Section 12916 G. C. on the subject of extortion is as follows:

“Whoever being an officer under the constitution or laws of this state, knowingly asks, demands or receives a reward, other than is allowed by law, to execute his official duty, or knowingly charges, asks, demands or receives greater fees or costs than are allowed by law for such official duty, or engages in, or permits another in his employ to engage in a business, which by reason of his office, he is prohibited from doing, shall be fined not more than two hundred dollars or imprisoned not more than twenty days, or both, and forfeit his office.”

Section 12917 G. C., making a person convicted under the above section ineligible to office, is as follows:

“A person convicted under the next preceding section shall also be incapable of holding an office of honor, profit or trust for seven years thereafter.”

Your inquiry is directed to the question as to whether the position of member of an election board, either judge or clerk, is an office of honor, profit or trust, as contemplated by section 12917 G. C.

Section 4853 G. C. provides for the appointment of “four judges and two clerks of elections, residents of the precinct, who shall constitute the *election officers* of such precinct.”

The next section provides for the terms of judges and clerks, which is one year from the date of their appointment, which contemplates that it is an office and for a specified term.

Section 4855 G. C. requires the judges and clerks to take an oath of office swearing "that if, in the discharge of my *official duties* I gain knowledge as to how an elector voted", etc.

Section 4858 G. C. provides that judges and clerks of election "may be summarily removed from office at any time by the board of deputy state supervisors for neglect of duty, malfeasance or misconduct therein."

Upon a careful consideration of the above mentioned sections, it is clearly my opinion that the position as a member of the board of elections, either judge or clerk is that of an office of honor at least and for a definite specified term.

These election officials are to conduct and hold all elections in their precinct that may be ordered during their specified term of one year. It is their duty to pass upon the right of suffrage of the citizens of that particular precinct during the particular year of their appointment and term of office.

You are therefore advised that it is my opinion that to thus sit in judgment and to decide the right of suffrage of the citizens is an office of honor, and one who has been found guilty of violation of the extortion statutes and as a part of the penalty forbidden to hold any office of honor, profit or trust for seven years thereafter is ineligible to hold office as a member of the board of elections in his precinct during this period of seven years.

Respectfully,

C. C. CRABBE,  
Attorney-General.

784.

ROADS—TOWNSHIP TRUSTEES AUTHORIZED TO CONSTRUCT OR REPAIR CULVERTS—SUBJECT TO CONDITIONS AND LIMITATIONS OF SECTIONS 3370 AND 3371-1 G. C.

SYLLABUS:

1. *Township trustees are authorized to maintain or repair road culverts.*
2. *In connection with township roads, such authority is subject to the conditions and limitations as are contained in Section 3371-1 of the General Code, as follows: (1) Such maintenance and repair shall be subject to the general supervision and direction of the county surveyor; (2) All expenditures made by them for such maintenance and repair purposes shall, where the amount involved exceeds fifty dollars, receive the approval of the county surveyor before payment is made; and also as are contained in Section 3373 of the General Code, as follows: When they proceed by contract they shall, in case the amount involved exceeds two hundred dollars, (3) Let the contract to the lowest responsible bidder after advertisement as is in said section provided, (4) The contract shall be performed under the supervision of a member of the board of township trustees or the township highway superintendent; if they proceed by force account, (5) The work shall be done under the direction of the board of township trustees or the township highway superintendent. and, (6) All purchases of materials, machinery and tools, shall, where the amount involved exceeds five hundred dollars, be made from the lowest responsible bidder after advertisement made in the manner provided in said section.*
3. *In connection with county roads or inter-county highways or main market roads, in addition to the conditions and limitations set out in paragraph two of this syllabus, they must also obtain the approval of the county commissioners or the director of highways and public works, as the case may be, as provided in Section 3370 of the General Code.*