

1296.

ROADS AND HIGHWAYS—SPECIAL CASE IN WHICH TOWNSHIP TRUSTEES WITHOUT AUTHORITY TO ENTER INTO CONTRACT FOR ROAD CONSTRUCTION WORK.

*Township trustees, proceeding in accordance with sections 3298-1 to 3298-15n, for the construction of a highway, are without authority to enter into an arrangement whereby the work is to be undertaken by a contractor at the estimate, and the contractor paid for all his labor and material and other expenses and charging for himself a fair daily wage, returning to the township treasury any money that may be left after paying the items named.*

COLUMBUS, OHIO, May 28, 1920.

HON. CHESTER A. MECK, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR:—Your letter of recent date is received, reading:

“A trustee of a certain township in this county went out of office last January and he now wants to build a road for that township, taking the same at the estimate and paying for all his labor and material and other expenses and charging for himself, a fair daily wage, returning any money that is left after paying these things, to the township treasury.

This is a road on which bonds were sold but no bids could be obtained for its construction, that is, except the bid of this one former trustee who is desirous of seeing the road built and who offers to return to the township treasury any moneys which are not needed in its construction charging for himself a fair daily wage. If this were done would it be in violation of section 12912 of the General Code which is as follows:

“Whoever, being an officer of a municipal corporation or member of the council thereof or the trustee of a township, is interested in the profits of a contract, job, work or services for such corporation or township, or acts as commissioner, architect, superintendent or engineer, in work undertaken or prosecuted by such corporation or township during the term for which he was elected or appointed, or for one year thereafter, or becomes the employe of the contractor of such contract, job, work, or services while in office, shall be fined not less than fifty dollars nor more than one thousand dollars or imprisoned not less than thirty days nor more than six months, or both, and forfeit his office.”

In response to a request for further information, you have indicated in your letter of May 13, 1920, that the proposed road improvement is not maintenance and repair; and you have also stated in your letter of May 22, 1920

“that the road in question was actually offered at public bidding and that the ex-trustee filed a formal bid at the estimate and that that was the only bid received. The improvement was carried through as a new road proceeding and all preliminary steps complied with and bonds were issued on the road and sold during the trustee's term.

The arrangement proposed by the trustee as set out in my letter of May 7th, is not suggested by him upon the ground that section 12912 G. C., forbids the acceptance of a formal bid, but is made just as I say, it was the only bid and it was at the estimate and when the road was up according to public letting.”

It is plain that the former township trustee in suggesting the arrangement above described, is assuming that such arrangement is unobjectionable, except to the extent that it may be made objectionable in his case by section 12912 G. C. In other words, it is being assumed by the former township trustee that a person who does not come within the description of section 12912 G. C. might lawfully enter into the arrangement. No provision of statute has been found which gives ground for such an assumption. Highway construction work, as distinguished from current maintenance and repair, may be carried on by township trustees only upon competitive bids as provided by section 3298-15f,—there is no authority in the trustees to proceed by force account as they may in the case of maintenance and repair (see section 3373).

The suggested arrangement, if entered into, would have all the elements of a contract.

Since, in view of what has been said, the arrangement suggested is not in itself permissible, and may not be legally entered into in any event, the question whether the township trustee if he entered into the arrangement would be violating section 12912 becomes immaterial, and is not herein passed upon.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

1297.

**TAXES AND TAXATION—HOW PROPERTY IS TO BE LISTED FOR TAXATION WHEN MERCHANT OR MANUFACTURER INCORPORATES HIS BUSINESS BETWEEN FIRST DAY OF JANUARY AND SECOND MONDAY OF APRIL.**

*If a merchant or manufacturer who has been in business for several years between the first day of January and the second Monday in April incorporates his business in good faith, the corporation is not required to list such property for taxation on the average or any other basis for the year 1920; and the individual is not obliged to list such property, unless he has received in lieu thereof and holds on tax listing day the stock of the company or other non-taxable securities, in which event under section 5376 G. C. he will be obliged to list the monthly average value for the time he held or controlled them of the effects converted into stock or other securities to the extent that he holds such non-taxable securities on tax listing day.*

COLUMBUS, OHIO, May 28, 1920.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Acknowledgment is made of the receipt of your letter requesting the opinion of this department upon the following question:

“If a merchant or manufacturer who has been in business for several years between the first day of January and the second Monday in April incorporates his business, will the return for taxation for the year 1920 be made by the individual or the corporation? If by the individual, as of what date should the property be listed? If by the corporation, as of what date should it be listed?”

In answering this question it will be assumed that the reorganization of the business has been made in good faith. The general rule is that a corporation is