

2176.

DIRECTOR OF PUBLIC SERVICE—RESIGNATION—APPOINTMENT BY SUCCESSOR AS STREET CONSTRUCTION FOREMAN.

*SYLLABUS:*

*The provisions of Section 12912, General Code, do not preclude a director of public service of a city from resigning and immediately thereafter being appointed by his successor as foreman in charge of street construction and repair.*

COLUMBUS, OHIO, May 29, 1928.

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

GENTLEMEN:—This will acknowledge your letter dated May 23, 1928, which reads:

“Section 12912, G. C., prohibits an officer of a municipal corporation from acting as commissioner, architect, superintendent or engineer in work undertaken or prosecuted by such corporation during the term for which he was elected or appointed or for one year thereafter.

Question: May the director of public service of a city resign and immediately thereafter be appointed by his successor as foreman in charge of street construction and repair?”

Section 12912, General Code, to which you refer, provides:

“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.”

Your attention is directed to a former opinion of this department, addressed to you, which appears in Volume 1, Opinions of the Attorney General for 1917, page 10, the syllabus of which reads as follows:

“The one year provision of Section 12912 G. C. serves merely as a prohibition against an officer described therein acting as commissioner, architect, superintendent or engineer in work undertaken or prosecuted by such corporation or township within one year after his term had expired.

A position of street inspector is not one of the prohibited positions under said one year provision of said section.

A former director of public service may act as street inspector within one year after his term of office expires, no matter whether his compensation is paid by the city or the contractor, or paid by the city and afterwards deducted from the estimate allowed the contractor on his contract.”

See also the opinion of this office reported in Volume 2, Annual Report of Attorney General for 1912, at page 1743, the syllabus of which reads:

"There is nothing in the statutes to prohibit a councilman of a city from resigning and immediately receiving an appointment as street commissioner, under the public service department."

The following language, after quoting Section 12912, General Code, appears therein:

"The purpose of this section is to prevent an officer of a municipality from having any interest in the profits of any contract or work done for the city. It specifically prohibits such officer from acting as commissioner, architect, superintendent or engineer in work undertaken by the municipality during the term for which he was elected or appointed and for one year thereafter. The statute seeks to prevent any officer from securing any interest in any contract with the municipality, so that he might not be tempted to use his official position to further the interests of a contractor or of himself.

It is not the purpose of the statute to prevent an officer from holding another office in the village or city, at the expiration of the term of his first office, even though the second office has duties which pertain to work undertaken by the municipality. Likewise this section does not prevent an officer resigning a position in the city government and accepting appointment to another office in the service of the city."

Both of the opinions above referred to are approved and quoted in an opinion which appears in Volume 1, Opinions of the Attorney General for 1922, at page 530, addressed to you, the syllabus of which reads:

"Under the provisions of Section 12912, G. C., a member of council of a municipality may upon the expiration of his term of office as councilman and within the one year limitation prescribed by the section, qualify and act as director of public service of the same city, said section prohibiting such an officer only from acting as commissioner, architect, superintendent, or engineer in work undertaken or prosecuted by the corporation during the term for which he was elected or for one year thereafter."

Your attention is further directed to Opinion No. 1863, dated March 19, 1928, addressed to you, the syllabus of which reads:

"A member of a village council, who resigns from such body, may immediately be lawfully appointed street commissioner for the village."

The former opinions of this office, regarding questions similar to the one you now present, are reviewed therein. Your attention is directed to the discussion that appears in the opinions referred to, which I deem unnecessary to repeat at length herein. Suffice it to say I concur in the conclusions therein reached.

Answering your question specifically, it is my opinion that a director of public service of a city may resign and immediately thereafter be appointed by his successor as foreman in charge of street construction and repair.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*