With respect to the bond of Florence E. Kelley, it appears to be in proper form in accordance with the section of the General Code, quoted, supra, with the exception that the word "her" should be substituted for the word "his" in the eighth line of the bond after the phrase "Now, if the said Florence E. Kelley shall, during", and in the oath the words "Assistant Auditor" should be inserted before the words "Bureau of Motor Vehicles" and the word "appointed" should be inserted where the words "Assistant Auditor" now appear and in their place.

Finding said bonds to have been properly executed in accordance with the above statutory provision, with the exceptions of the errors pointed out, I hereby approve the same as to form, in anticipation of such errors being corrected, and return them herewith.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3865.

DISTRICT BOARD OF HEALTH—MAY NOT APPOINT MEMBER AS SANITARY INSPECTOR UNDER SECTION 1261-22, G. C.

SYLLABUS:

A District Board of Health may not appoint one of their own members as Sanitary Inspector under the provisions of Section 1261-22, *General Code, even though he may be compensated from Federal funds.*

COLUMBUS, OHIO, January 26, 1935.

HON. ROBERT F. JONES, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

> "By virtue of authority of the United States Public Health Service a member of the county health board has been appointed Sanitary Inspector for Allen County. His salary is paid with Federal funds. For one month he has served as Sanitary Health Inspector (Federal office, compensated with Federal funds), and also as member of the county health board (compensated with county funds). He has been a member of the county health board for several years continuing to the present time.
>
> Question: May such member of the county board of health hold the position of Sanitary Inspector in his county where his compensation for the latter position is paid by the Federal Government?"

In a subsequent communication I am informed that the person in question was not appointed Sanitary Inspector by the Federal Government but rather is an appointee of the District Board of Health under the provisions of Section 1261-22, General Code. I am informed likewise that he receives his orders and instructions from the District Health Commissioner, and that the only relationship that the Federal Government has in this connection is that he is paid from Federal funds. The question therefore presents itself as to whether or not a District Board of Health may appoint one of their own members as Sanitary Inspector and compensate him from Federal funds.

Section 1261-16, General Code, provides for the establishment of various health districts throughout the state. Section 1261-17, General Code, provides that in each health district there shall be appointed five members who shall constitute the District Board of Health. The members of the Board of Health receive no compensation for their services but are reimbursed for their necessary and lawful expenses incurred in attending the meetings of the Board. Section 1261-22, General Code, provides as follows:

> "In any general health district the district board of health may upon the recommendation of the health commissioner appoint for whole or part time service a public health nurse and a clerk and such additional public health nurses, physicians and other persons, as may be necessary for the proper conduct of the work. Such number of public health nurses may be employed as is necessary to provide adequate public health nursing service to all parts of the district. The district health commissioner and other employes of the district board of health may be removed for cause by a majority of the board. The board of health of each district may provide such infant welfare stations, prenatal clinics and other measures for the protection of children as it may deem necessary. It may also provide for the prevention and treatment of trachoma and may establish clinics or detention hospitals and provide necessary medical and nursing service therefor."

It is to be noticed that nowhere in Section 1261-22, supra, is there any intimation that the District Board of Health may not employ one of their own members under the provisions of this section. There is, however, a general rule of policy which prevents a member of a board of commission from appointing himself to a position under such board or commission. The general rule is stated in 46 Corpus Juris 940, as follows:

> "It is contrary to the policy of the law for an officer to use his official appointing power to place himself in office, so that, even in the absence of a statutory inhibition, all officers who have the appointing power are disqualified for appointment to the offices to which they may appoint * * *."

The above stated principles have been followed by the Ohio courts. In the case of *Ohio ex rel. Louthan* vs. *Taylor,* 12 O. S. 130, it was held as disclosed by the syllabus:

> "Where a member of the board of directors of a county infirmary was, by said board, appointed to the office of superintendent of the county infirmary, he still continuing to hold the office of director—Held,
>
> That the duties of the two offices are incompatible, and can not be legally held by the same person at the same time; and such appointment was therefore, illegal and void."

At page 134 the following appears:

> "* * * The word appoint, when used in connection with an office, ex vi termini, implies the conferring of authority upon another. It was not necessary, therefore, that the statute should, in express terms, prohibit the infirmary

directors from appointing one of their own number superintendent; for the language, 'the board of directors shall appoint a superintendent,' necessarily means that the person appointed shall be different from those who appoint."

To the same effect, see the case of *State, ex rel. Henry* vs. *Newark,* 6 O. N. P. 523.

In an opinion to be found in the Annual Report of the Attorney General for 1911-1912, Vol. II, page 1089, it was held as disclosed by the first branch of the syllabus:

"Contrary to the general rule of policy that a member of a board may not hold a salaried position under such board, special provision of statute makes it possible for a member of a board of education to serve as its clerk and receive the salary for both positions."

The following appears at page 1090:

"* * * There is a principle of public policy which prohibits a member of an administrative board from holding a salaried position thereunder. This principle, however, is expressly waived, so to speak, by section 4747, above quoted. The authority to prescribe compensation for the clerk is clearly vested in the board by section 4781, General Code, which reads:

'The board of education of each school district shall fix the compensation of its clerk * * * which shall be paid from the contingent fund of the district * * *.'"

In an opinion to be found in the Annual Report of the Attorney General for 1913, Vol. II, page 1600, it was held as disclosed by the syllabus:

"A person employed as a lineman on the electric light and water works plant, and while holding this position is elected a member of the board of trustees of public affairs, and inasmuch as the board of public affairs employs, fixes the wages of and pays the linemen, the same party should not occupy both positions."

In an opinion to be found in Opinions of the Attorney General for 1917, Vol. II, page 1876, the following appears at page 1878:

"An examination of our statutes will disclose the fact that in a number of instances the legislature has given its express consent to the appointment or election of a member of a board as its secretary or clerk, and it would seem that, inasmuch as they have done this, they meant to withhold such consent in all other cases.

For this reason, and on the authority of the position taken by this department in the past as above outlined, I would advise you that the offices of member of the board of trustees of public affairs of a village and the clerk of the board of trustees of public affairs are incompatible."

The above stated principles were followed in Opinions of the Attorney General for 1920, Vol. I, page 163; Opinions of the Attorney General for 1930, Vol. II, page 917.

In an opinion to be found in Opinions of the Attorney General for 1933, Vol. II, page 1622, it was held as disclosed by the syllabus:

"A member of the soldiers' relief commission may not be employed as an investigator under the provisions of section 2933-1, General Code."

The only difference between the present situation and the above quoted authorities is that the employe is to be paid with Federal funds. I do not feel that this factor would change the conclusion that it would be against public policy for the Board to appoint one of their own members as Sanitary Inspector.

In view of the above authorities, and without further prolonging this discussion, it is my opinion that a District Board of Health may not appoint one of their own members as Sanitary Inspector under the provisions of Section 1261-22, General Code, even though he may be compensated from Federal funds.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3866.

DISAPPROVAL, BONDS OF GREEN TOWNSHIP RURAL SCHOOL DISTRICT, FAYETTE COUNTY, OHIO, $3,384.22.

COLUMBUS, OHIO, January 26, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.
Re: Bonds of Green Twp. Rural School Dist., Fayette County, Ohio, $3,384.22.

GENTLEMEN:—I have examined the transcript of the proceedings relating to the above bond issue.

These bonds are issued under authority of House Bill No. 11 of the third special session, as amended by Amended House Bill No. 140 of the second special session of the 90th General Assembly. The amount of the net floating indebtedness as certified by the State Auditor under date of January 5, 1935, is $3,384.22. The transcript shows that this district issued indebtedness funding bonds under House Bill No. 17 of the first special session of the 90th General Assembly in the sum of $5,136.00, of which amount at least $4,366.47 are actually in excess of the limitations for unvoted indebtedness.

Since this amount is greater than the amount of the floating indebtedness of said district as certified by the Auditor of State, it follows that this district cannot issue bonds under this act.

Respectfully,

JOHN W. BRICKER,
Attorney General.