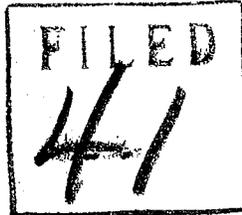


MAYORS:
CITIES OF THE 4TH CLASS:
PUBLIC OFFICIALS:
OFFICIALS OF CITIES:
CONTRACTING WITH THE
CITY:

The Board of Aldermen of a 4th class city is not authorized to pay its mayor a fee of \$30.00 for auditing the books of said city and such action violates the provisions of Section 106.300, RSMo. 1949.
May 9, 1955



Honorable Haskell Holman
Auditor of Missouri
Jefferson City, Missouri

Dear Mr. Holman:

You recently requested an official opinion of this office wherein you asked:

"Will you please furnish this department with an official opinion based upon the following questions:

"1. Is the board of aldermen of a fourth class city authorized to pay the mayor of such city a fee of \$30.00 for services performed in auditing the books of said city?

"2. Does the payment of the \$30.00 to the mayor constitute contractual relations between the mayor and the city and, if so, has the provisions of Section 106.300, RSMo 1949, been violated."

The general law on this subject clearly appears to be that public officials and members of governing bodies of the state or its subdivisions or municipalities cannot have any interest in a contract with the city or governing body of which they are a member. For a general statement of this proposition see 43 Am. Jur. Public Officers, Section 341, page 135. The law of Missouri follows this general rule as is seen from the cases cited herein infra. Further, Section 106.300, RSMo 1949, provides:

"If any city officer shall be directly or indirectly interested in any contract under the city, or in any work done by the city, or in furnishing supplies for the city, or any of its institutions, he shall be deemed guilty of a misdemeanor; and any appointed officer becoming so interested shall be dismissed from office immediately by the mayor; and upon the mayor becoming satisfied that any elective officer is so interested, he shall immediately

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suspend such officer and report the facts to the council, whereupon the council, as soon as practicable, shall be convened to hear and determine the same; and if, by two-thirds vote of the council; he be found so interested, he shall be immediately dismissed from such office."

thus, specifically prohibiting any city official (which clearly includes the mayor of a 4th class city) from being interested in any contract under the city.

As seen from the case of State ex rel. Streif vs. White (App.) 282 S.W. 147, this statute specifically applies to the mayor of the city and even though the interest in a contract may be indirect, it prohibits such contract.

In the present case the mayor has the power under the provisions of Section 79.350, RSMo 1949, to require any officer of the city to exhibit his accounts and to report to the board of aldermen thereon. Thus, the action of the mayor in auditing the books of the city would come under his official powers as mayor and certainly the mayor cannot receive compensation for services rendered under his official power as mayor in excess of the salary approved for such office. Because of these statutes this case does not come within the doctrine expressed by the Supreme Court in Pelk Tp, Sullivan County v. Spencer, (Sup.) 259 S.W. 2d. 804, where the court held the contract was voidable but not void. In that case a member of the township board had performed actual manual labor upon township roads and had been paid compensation at an hourly rate therefor. The court pointed out that such labor did not come within the purview of the duties of a member of the township board and that while public policy prevented the township official from contracting with the township for labor, that when such contract was performed on both sides it would not be disturbed; the contracts being voidable not void.

The court also pointed out that there was no specific statute applicable to townships comparable to Section 106.300, applicable to cities.

CONCLUSION

Thus, it would appear that both on the basis of public policy as embodied in the general common law, and on the basis of the specific statute (Section 106.300), that the city was not authorized

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to pay the mayor for auditing the books of the city and that such payment would violate Section 106.300.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Fred L. Howard.

Yours very truly,

John M. Dalton
Attorney General

FLH:mw