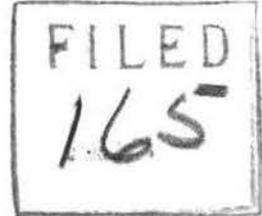


July 21, 1964



Honorable Frank Bild
Missouri Representative
13th District
9234 Gravois
St. Louis 23, Missouri

Dear Mr. Bild:

In your request for an opinion dated April 10, 1964, you inquire whether it is lawful for a member of the board of directors of a school district having six members on its board to work on the job as a journeyman plumber for a master plumber who has a subcontract to do the plumbing work in the building of a new school building for the school district. You also indicate that the contracts for the construction work were let on the basis of public bids and were awarded to the lowest bidder.

Previous opinions of this office, in fuling on questions somewhat similar to the one you have submitted, have based their rulings on the public policy of the state as enunciated by our appellate courts. We enclose herewith copies of the following opinions for your convenience:

Opinion dated September 24, 1937 to Honorable Edward T. Eversole, Prosecuting Attorney of Jefferson County.

Opinion dated June 30, 1948, to Honorable Fred C. Bollow, Prosecuting Attorney of Shelby County.

Opinion dated May 15, 1953, to Honorable James T. Riley, Prosecuting Attorney of Cole County.

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The substance of the opinions and the authorities which they cite is that a school board member is not permitted to have any direct or indirect pecuniary interest in the contracts entered into or made by the school board. The opinion to Bollow enunciated the rule that "the policy of our law is to remove from public officials all temptations to use their official power, directly or indirectly, for their own private gain or advancement". That opinion cites the case State of Missouri ex rel Smith vs. Bowman, 184 Mo. App. 549, where the court states "Certainly the trend and policy of our law in this respect is to remove from public officials, so far as possible, all temptation to use that official power, directly or indirectly, to increase the emoluments of such office; and so they are forbidden to become interested in contracts let by them, * * *".

Clearly direct employment is prohibited under these rules. The problem here presented, however, really is whether an employee of a subcontractor, which employee is a school board member, has an "indirect" interest in the contract. Neither the opinions enclosed nor the case cited, present this precise question. The difficult problem is how indirect or remote the interest of the director may be to present an unacceptable conflict. By way of example, would there be an unacceptable conflict if a laborer who dug part of a ditch for a sewer line or a truck driver for a lumber company which delivered some materials to the job site violate the state public policy.

Each case must be decided upon its own facts and no generalizations can be made as to what is an "indirect" conflict of interest except when applied to the facts of each case.

It, therefore, seems to me that the plumber here or his employer should not be denied the right to work on the job because of the remote interest of the journeyman plumber in the contract. However, a situation could arise involving acceptance of the work on the ground of alleged faulty material or the workmanship of the plumber involved, in which event, the director should not participate in the acceptance of the work. It could be also, under the facts,

