

COUNTY JUDGES:  
CRIMINAL LAW:  
CONFLICT OF INTEREST:

Section 49.140, RSMo 1969, would be violated if the financial statement of the county or any legal notices of the county were printed at the expense of the county in a newspaper owned by a member of the county court or his wife.

September 11, 1970

OPINION NO. 428

Honorable Harold Dickson  
State Representative  
District No. 121  
400 West Russell  
California, Missouri 65018



Dear Representative Dickson:

This is in response to your request for an official opinion stated as follows:

"In a third class county, would a presiding judge who also owns a newspaper be in conflict of interest if he publishes any financial statements of official notices for the county?"

"Should he be in conflict of interest, could he then transfer the newspaper to his wife and would the conflict of interest still exist?"

We believe it unnecessary to decide whether the "conflict of interest law" would be violated in such circumstances because the provisions of Section 49.140, RSMo 1969, are clearly violated when county financial statements are published in a newspaper owned by a county judge of such county or owned by the wife of such judge.

Section 49.140, RSMo 1969, which prohibits county judges from doing certain things, provides in part:

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"No judge of any county court shall, directly or indirectly, become a party to any contract to which the county is a party, . . ."

Section 49.150, RSMo 1969, provides as follows:

"Any judge of the county court who shall violate any of the provisions of section 49.140 or who shall do any of the acts or enter into any of the contracts prohibited or declared unlawful in said section, shall be punished by a fine not exceeding one thousand dollars for each offense, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment."

Section 432.070, RSMo 1969, requires all contracts with a county to be in writing. Any agreement between a county and a newspaper incurring any liability of the county to pay for printing the financial statement of the county or any legal notices, has to be in writing signed by the parties. Certainly, a county judge is prohibited under Section 49.140, supra, from entering into a contract creating any liability between the county and the newspaper he owns.

In Githens v. Butler County, 165 S.W.2d 650, our supreme court held that under the common law a contract made by a public officer with himself, or in which he is interested, is against public policy and tainted with illegality. In this case the wife of a county judge purchased real estate from the county. It was a quiet title suit in which the county claimed the deed was void. In discussing the provisions of what is now Section 49.140, supra, the court stated:

"\* \* \* The directors of a private corporation may, if there is no fraud in fact or unfairness in the transaction, contract on behalf of the corporation with one of their number. A stricter rule is laid down in regard to public corporations, and it is held that a member of an official board or legislative body is precluded from entering into a contract with that body.' 6 Williston, Contracts, §1735, p. 4895. The basis of this common law rule is that

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it is against public policy (State ex rel. Smith v. Bowman, 184 Mo.App. 549, 170 S.W. 700) for a public official to contract with himself. 'At common law and generally under statutory enactment, it is now established beyond question that a contract made by an officer of a municipality with himself, or in which he is interested, is contrary to public policy and tainted with illegality; and this rule applies whether such officer acts alone on behalf of the municipality, or as a member of a board of [or] council. \* \* \* The fact that the interest of the offending officer in the invalid contract is indirect and is very small is immaterial. \* \* \* It is impossible to lay down any general rule defining the nature of the interest of a municipal officer which comes within the operation of these principles. Any direct or indirect interest in the subject matter is sufficient to taint the contract with illegality, if the interest be such as to affect the judgment and conduct of the officer either in the making of the contract or in its performance. In general the disqualifying interest must be of a pecuniary or proprietary nature.' 2 Dillon, Municipal Corporations, §773; 46 C.J.S., §308; 22 R.C.L., § 121; State ex rel. Streif v. White, Mo.App., 282 S.W. 147; Witmer v. Nichols, 320 Mo. 665, 8 S.W.2d 63; Nodaway County v. Kidder, 344 Mo. 795, 129 S.W.2d 857.

"This basic and fundamental common law concept has been enacted into our statute law relating to county courts. Mo.R.S.A. § 2491 provides that:

'No judge of any county court in the state shall, directly or indirectly, become a party to any contract to which such county is a party, \* \* \*.'

"The next section of the statute makes the violation of the statute a misdemeanor. Mo. R.S.A. § 2492.

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"The cases cited in the preceding paragraphs deal with instances of an official being 'directly' interested in the contracts, actions or dealings with the public body of which he was a member. Here the question is whether the public official is so 'indirectly' interested as a party to a transaction with a county court of which he was a member as to invalidate it. In fact the question is whether the relationship of husband and wife is a disqualifying interest within the meaning of the statute and common law prohibition against an official's becoming indirectly interested in a public contract. The two opposing lines of cases are collected in the following: Thompson v. School Dist. No. 1, 252 Mich. 629, 233 N.W. 439, 74 A.L.R. 792; O'Neill v. Auburn, 76 Wash. 207, 135 P. 1000, 50 L.R.A., N.S., 1140; 6 Williston, Contracts, p. 4898.

"An indirect interest may be so remote as to not avoid a bargain between an official and the public body he represents, consequently when the interest is not direct there is more reason for considering each case on its special facts. 6 Williston, Contracts § 1735; Thompson v. School Dist. No. 1, 252 Mich. 629, 233 N.W. 439, 74 A.L.R. 790.

"Here the respondent urges that she purchased the land in question with her own separate funds and that under our statute her husband cannot interfere with her separate real property. § 3390, R.S.Mo. 1939, Mo.R.S.A. § 3390. But the husband is under a duty to and is liable for his wife's support (Nielsen v. Richards, 75 Cal.App. 680, 243 P. 697) and in this state he is entitled to dower in his wife's real estate, Mo. R.S.A. §§ 319, 324 either of which are pecuniary interests and disqualifying under statutes requiring such an interest even though it is indirect. Nuckols v. Lyle, 8 Idaho 589, 70 P. 401; Beakley v. City of Bremerton, 5 Wash.2d 670, 105 P.2d 40.

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Though the husband may have no present interest in his wife's separate estate there can be no question but that because of the relationship he does have such a beneficial interest in her property and affairs as to be 'indirectly' interested in any contract to which she is a party. Clark v. Utah Construction Co., 51 Idaho 587, 8 P.2d 454. But aside from these pecuniary reasons it is obvious, it seems to us, that a county judge's wife may not purchase real estate from the county and court of which her husband is a member acting in a quasi-judicial capacity. Though the bargain may be ever so fair it places the officer in a position which might become antagonistic to his public duty. Throop, Public Officers, § 607; 22 R.C.L., § 121; Goodyear v. Brown, 155 Pa. 514, 26 A. 665, 20 L.R.A. 838, 35 Am. St.Rep. 903. Under most circumstances, if not all, it is simply against public policy for the wife of a county judge to purchase land from a county when the sale requires the vote and opinion of her husband as a member of the court passing on the transaction. Clark v. Utah Construction Co., supra; Sturr v. Elmer, 75 N.J.L. 443, 67 A. 1059."

The court held the contract void and cancelled the deed.

Although the husband as a member of the county court voted for the sale of the land by the county to his wife, we believe that is immaterial. As we view this Section 49.140, it is not a question of whether he participated by voting but whether he indirectly became a party, due to the fact his wife was the purchaser.

We believe the decision of the court would have been the same even though he had not participated in the transaction. It was held in Wood v. Elliott, 29 Pitt. Leg.J. (Pa.) 334; Bay v. Davidson, 133 Iowa 688 and Stover v. Baraugh of Elmer (N.J.) 67 A. 1059, that contracts between a municipal corporation and the wife of a public officer are void as against public policy even though the husband did not participate or vote.

#### CONCLUSION

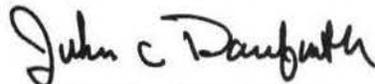
It is the opinion of this office that Section 49.140, RSMo

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1969, would be violated if the financial statement of the county or any legal notices of the county were printed at the expense of the county in a newspaper owned by a member of the county court or his wife.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Very truly yours,



JOHN C. DANFORTH  
Attorney General