

SCHOOLS: A member of a school board of an urban district,
OFFICERS: who is elected secretary or treasurer
COMPENSATION: of the board, is prohibited from receiving
SCHOOL DISTRICTS: compensation for services as secretary or
treasurer.

OPINION NO. 340

November 4, 1974



Dr. Arthur L. Mallory
Commissioner of Education
Sixth Floor, Jefferson State Office Building
Jefferson City, Missouri 65101

Dear Dr. Mallory:

This is in response to your request for an opinion from this office as follows:

"Is the treasurer or secretary of an urban school district prohibited from receiving compensation for serving as treasurer or secretary of the district if he is also a member of the board of directors of said urban school district?"

"The present treasurer of the School District of Kansas City, Missouri, an urban school district within the definition as set out in Section 160.011 R.S.Mo., is also a member of the Board of Directors of the School District of Kansas City, Missouri. The Board of Directors, prior to his election as treasurer, established a salary to be paid to the individual serving as treasurer. A question has now arisen as to whether it is proper under the Missouri statutes for him to accept the compensation offered."

Section 162.461, RSMo, provides that each urban school district is a body corporate ". . . possessing the same corporate powers and being governed by the same general laws as other six-director school districts, except as otherwise provided by law."

Section 162.521, RSMo, provides as follows:

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"Within ten days after the biennial election in any urban district, the board shall meet, the duly elected members be qualified and the board organized by the election of a president, vice president, secretary and treasurer. The secretary and treasurer may or may not be members of the board. The term of office of the secretary and treasurer shall be for two years and until their successors are elected and qualified. But either of them may be removed by the board for cause." (Emphasis supplied)

Section 162.551, RSMo, provides as follows:

"The treasurer and secretary of each urban district shall receive as full compensation for their services salaries fixed by the board before their election; but no compensation shall be paid to either the secretary or treasurer while they are in default in the making, filing or publishing of their reports and settlements, as the law directs."

The question is whether a member of the school board who is elected as treasurer or secretary of the board is entitled to compensation under Section 162.551.

Since Section 162.461 provides that urban school districts possess the same corporate powers and is governed by the same general laws as other six-director school districts, except as otherwise provided by law, we must look to see what provision, if any, is made under the statute regarding the secretary and treasurer of a six-director district.

Section 162.391, RSMo Supp. 1973, provides as follows:

"No member of any board of education of a six-director district shall hold any office or employment of profit from the board while a member thereof. The secretary and treasurer if not members of the board may receive reasonable compensation for their services."

This act became effective July 1, 1974. It amended Section 162.391, RSMo, which allowed a member of the board in any

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district containing a city having less than twenty-five thousand inhabitants to receive reasonable compensation as secretary or treasurer of the board. Under Section 162.391 although a board member may be elected secretary or treasurer, he is prohibited from receiving any compensation for acting as secretary or treasurer of the board.

A member of a public school board is a public officer. The right of a public officer to be compensated by salary for the performance of duties imposed upon him by law does not rest upon any theory of contract, express or implied, but is purely a creature of statute. A right to compensation for discharge of official duties is purely a creature of statute, and a statute which is claimed to confer such right must be strictly construed against the officer. Felker v. Carpenter, 340 S.W.2d 696 (Mo. 1960). The Supreme Court of Missouri in Nodaway County v. Kidder, 129 S.W.2d 857, 861 (Mo. 1939), declared that a contract between an individual and a public body of which he is a member is void as against public policy:

"Appellant's alleged contract was also void as against public policy regardless of the statute. A member of an official board cannot contract with the body of which he is a member. The election by a Board of Commissioners of one of its own members to the office of clerk and agreement to pay him a salary was held void as against public policy. Town of Carolina Beach v. Mintz, 212 N.C. 578, 194 S.E. 309; 46 C.J. 1037 Sec. 308."

Although this does not apply if compensation is allowed by statute, it does indicate the fundamental principles of law that generally apply to public officials as distinguished from private individuals.

In determining the meaning in application of statute, the duty of the court is to determine the legislative intent, taking the words used in their plain or ordinary and usual sense. State v. Brady, 472 S.W.2d 356 (Mo. 1971).

Since the authority of an urban school board is determined by statute, the question is whether Section 162.391 or Section 162.551 applies when a member of the school board is elected secretary or treasurer of the board in urban school districts. In determining this matter, the rules of statutory construction that the primary purpose is to determine the intent of the legislature and that statutes providing for compensation to public officials are to be strictly construed against the officers, it

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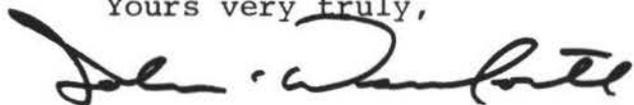
is our view that Section 162.391 is controlling when a member of the board of a urban district is elected secretary or treasurer. Section 162.521 provides that a member of the board may be elected secretary or treasurer, but it does not expressly say that he is to be compensated for such service. Section 162.551 does provide that the treasurer and secretary of an urban district shall receive full compensation for their services, but it does not expressly state that this applies when a member of the board is elected secretary or treasurer. Section 162.391 provides that a member of the board may be elected secretary or treasurer of a six-director district but expressly provides that if he is a member of the board he is not to receive any compensation for his services as secretary or treasurer. It is our view that these statutes are not in conflict and that the intent of the legislature in enacting these statutes did not intend for a school board member, who acts as secretary or treasurer of the board, to receive compensation for such services.

CONCLUSION

It is the opinion of this office that a member of a school board of an urban district, who is elected secretary or treasurer of the board, is prohibited from receiving compensation for services as secretary or treasurer.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General