

City Council may not appoint Councilman to remunerate his position under City contract.

September 26, 1933

FILED NO. 72

Hon. H. M. Phillips
Mayor
Palmyra, Missouri



Dear Sir:

This department is in receipt of your request for an opinion as to the following state of facts:

"Palmyra is building a new sewer line and the City is paying all of the cost of the trunk line.

The Council voted for one of the Councilmen to oversee the job at \$3.50 per day. There has been quite a bit of criticism for hiring one of the Councilmen for the work. What I want to know is can he serve as Councilmen and oversee this work on a salary for the City, legally."

In an opinion from this office to the Hon. T. J. Harper, Prosecuting Attorney of Stone County dated February 11, 1933 with reference to the right of Commissioners to employ themselves, this conclusion was reached:

"* * *It is the opinion of this department that it would be unlawful as against public policy for the member of your Special Road District Board to be employed by the Board or engage themselves as the employee and draw compensation for working upon the highway of the road district in which he is serving as Commissioner."

This conclusion was also reached in an opinion from this office to Hon. J. B. McGuffin, Prosecuting Attorney of Lawrence County, dated March 31, 1933, with reference to the right of commissioners to accept contracts for work performed in their districts.

In the case of State vs. Bowman, 184 Mo. App. 549, the Court had before it the question of whether or not a member of the City Council of Springfield, Missouri, could be appointed City Clerk. The Court said:

"* * *Other reasons might be given, but it is sufficient to say, and we so hold, that it is against the policy of the law to allow a member of the appointing body, in a case like this, where the appointive office is a lucrative one, to become the beneficiary of the appointment.* * *"

We are not without abundant authority for this ruling. The case of Meglemery v. Weissinger, (K6.) 131 S. W. 40, 31 L.R.A. (N.S.)575, is a leading case on this subject. The editorial note to that case says: 'The adjudged cases upon the validity of appointment to office made from the membership of the appointing body hold uniformly that such appointments are illegal and to be generally discountenanced.' In that case it was held that the fiscal court of a county, empowered to appoint a bridge commissioner, a salaried officer, could not appoint one of their own number. No specific statute or constitutional provision is cited as prohibiting such action. The court held the appointment void as against public policy, and said: 'Nor does the fact that his term expired within a few days after his appointment, or the fact that his duties would be prescribed and his compensation allowed by a body of which he was not a member, or the fact that he was not present with the court when his appointment was made, have the effect of changing this salutary rule. The fact that the power to fix and regulate the duties

"and compensation of the appointee is lodged in the body of which he is a member is one, but not the only, reason why it is against public policy to permit such a body charged with the performance of public duties to appoint one of its members to an office or place of trust and responsibility. It is of the highest importance that municipal and other bodies of public servants should be free from every kind of personal influence in making appointments that carry with them services to which the public are entitled and compensation that the public must pay. And this freedom cannot in its full and fair sense be secured when the appointee is a member of the body and has the close opportunity his association and relations afford to the place the other members under obligations that they may feel obliged to repay.' Other cases to the same effect will be found, giving the same and other reasons for so holding. (Smith v. City of Albany, 61 N.Y. 444; Gaw et al. v. Ashley et al., (Mass) 80 N.E. 790; The People v. Thomas, 33 Barbour's Repts. 287; Ohio ex rel. v. Taylor, 12 Ohio St. 130; Kinyon v. Duchene, 21 Mich. 497.* * *"

It is therefore the opinion of this office that it would be unlawful for the City Council to appoint a Councilman to oversee the building of the new sewer line and receive compensation therefor. The attendant evils to any other conclusions would be such as to undermine the very principles of our government and would be in direct conflict with public policy.

Respectfully submitted,

JOHN W. HOFFMAN, JR.
Assistant Attorney General.

APPROVED:

Attorney General.