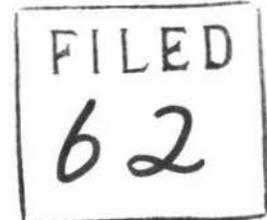


OFFICERS: Section 10811, R. S. Mo. 1939, is not violated  
PROFESSORS: by professors who assign the royalty payments  
UNIVERSITY: to organizations whereby personal gain does not  
inure to the professors.

June 11, 1948



Dr. Frederick A. Middlebush  
President, University of Missouri  
Columbia, Missouri

Dear Dr. Middlebush:

On April 9, 1948, this office rendered an opinion to the Honorable Howard B. Lang, Jr., Prosecuting Attorney of Boone County, Missouri, in which the conclusion was as follows:

"Therefore, it is the opinion of this department that a professor at the University of Missouri who accepts royalty checks from a publisher for books used in the University or one of its departments violates the provisions of Section 10811, R. S. Mo. 1939."

We are in receipt of your letter of May 27, 1948, embodying a request for an opinion as to whether or not certain proposed arrangements will exempt professor-authors of the University from the provisions of Section 10811, R. S. Mo. 1939.

The proposed arrangements may be said to be in two forms, one providing for the addition of a clause in presently existing contracts between the professors and the book publishers and, two, a clause to be inserted in future contracts which may be made between the professors and the book publishers. Inasmuch as the clauses have a similar legal effect, we will set out the pertinent portions for the purposes of this opinion as disclosed by Exhibit "A", an enclosure with your letter:

"In order to insure that I shall not be directly or indirectly interested in any sales of the book mentioned above for use in the University of Missouri, or any department thereof, I am writing to direct that, from and after the date hereof, you are to pay to

Dr. Frederick A. Middlebush

(Here will be inserted the name of the corporation, association or society which is to receive the payments. That corporation, association or society must be one which is organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net earnings of which inure to the benefit of any private stockholder or individual.) and all royalties now or hereafter due which would otherwise be payable to me under the terms of the contract mentioned above by virtue of any sales of said book which are made in the city of Columbia, Missouri by the Missouri Store Company and the Book Store of the University of Missouri. All remittances of such royalty payments are to be made by you direct to the payee just named above, and payment of such royalties as directed herein will serve as a full and complete discharge of your obligation to me as to any and all of such royalties so paid."

In your letter you state, "The proposed arrangements are the results of our efforts to attempt to make the results of faculty scholarship and research available to the students and staff of the University of Missouri while, at the same time, insuring that our professor-authors are not acting in violation of any of the statutes of the State of Missouri."

Section 10811, R. S. Mo. 1939, provides, in part:

" \* \* \* if said curators, or any one of them, or the president or any professor, teacher or other officer or employee shall keep for sale or be interested in, directly or indirectly, the sale of any school furniture or apparatus, books, maps, charts or stationery used in said university or any department thereof, \* \* \*"

In our opinion to Mr. Lang it was stated:

"When the professor receives a royalty check for books used in the University, it is our opinion that following the general rules as exemplified in the preceding cases he does have at least an indirect interest in the sale of books because of the pecuniary interest flowing to him in the form of royalty payments."

Dr. Frederick A. Middlebush

We are now confronted with the question of whether or not the proposed arrangements remove the indirect interest of the professor in the sale of the books because of the pecuniary interest flowing to him in the form of royalty payments.

In considering this problem it will be necessary to construe the application of Section 10811 to these arrangements. In the case of *Cummins v. Kansas City Public Service Co.*, 66 S.W. (2d) 920, the rule is stated, l.c. 925:

" \* \* \* The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object,  
\* \* \*"

Will the insertion of the contract provision, as set out above, be sufficient to remove the indirect interest which is forbidden by Section 10811? We believe that, since the effect of the provision will be to remove personal gain to the professor-author for the sale of books to be used in the University, the insertion of such a clause in the said contracts will be a compliance and not in violation of the Section 10811.

In the case of *Chadwell v. Commonwealth*, 157 S. W. (2d) 280, the court, in considering a "public officer contract," said, l.c. 283:

" \* \* \* Nor are we impressed with the argument that the services the daughter renders the board are services in which the defendant was directly or indirectly interested. We are of the opinion the Legislature intended such interest to be confined to monetary considerations and that the consideration must be such as would move directly or indirectly to the board member himself, and not to include mere emotional interest that a member of the board might have in the person rendering the services. \* \* \*"

In many other cases, involving "public officer contracts," which we have examined, the same general principle of law was evoked, that is, the interest that was forbidden was a monetary interest and not merely a sentimental or emotional interest.

