

SCHOOLS:

Member of school board cannot contract with school district as being in violation of the public policy of the state.

July 17, 1950

Honorable Homer L. Swenson
Prosecuting Attorney
Wright County
Mountain Grove, Missouri



Dear Sir:

Your letter at hand requesting an opinion of this department, which reads:

"In a certain consolidated school district in this County (Wright) the Board of Education consists of six members. Four of the directors are engaged in businesses as follows: Motor Car Dealer, Grocery Store, Oil & Gas and General Merchandise. The Motor Car dealer exercises the exclusive right to sell all the products that he offers for sale to the district as does the Groceryman, Oil & Gas dealer and General Merchant. This method of operation, to the exclusion of other merchants, has caused complaints to be made to me by reputable citizens and taxpayers of the above mentioned school district.

"This sort of thing presents a difficult problem to me and while I know that such conduct is not proper I have been unable to decide on what procedure to follow.

"I believe if I could present an opinion from your office as to the legality of the above mentioned practices that I could satisfy all concerned and eliminate this problem.

"Your opinion as to the legality of school directors using their positions for personal gain and also the procedure to follow in an effort to eliminate it is respectfully requested."

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In your letter you inquire as to the legality of an arrangement whereby members of the board of directors of a school district are selling certain products and items of merchandise to the school district to the exclusion of other merchants.

Regarding the matter of a school director entering into a contract with the school district, we find the rule to be generally stated in Volume 47, Am. Jur., Section 49, page 330, as follows:

" * * * As a general rule, however, the confidential and fiduciary relation of a director to the district which he represents precludes him from placing himself in a position where his own personal interests may conflict with those of the school district. For this reason, it is generally held unlawful for a director to enter into a contract with the school district in which he has a personal and individual interest, or to continue after election as a director in a contract relation previously assumed; a contract so made by a director will not be enforceable. While the matter is usually regulated by statutes either abolishing or limiting the right to contract, the general rule, being based on public policy, may apply even in the absence of statute."

There further appears to be some statutory authority that would apply to the school district in question which would prohibit members of the school board from profiting through any contractual relation with the school district while they remain members of the board. Thus, Section 10501, R.S.A., in part, provides:

"No member of any public school board of a city, town or village in this state having less than twenty-five thousand inhabitants shall hold any office or employment of profit from said board while a member thereof except the secretary and treasurer, who may receive reasonable compensation for their services: * * *"

The law as expounded by the Supreme Court of Missouri has generally conformed to the above rule, in that the court has held that contracts between a school district and a member of its board of directors are against public policy.

In the case of *Witmer v. Nichols*, 8 S.W. (2d) 63, the court, in considering a factual situation wherein a member of the board

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of directors of a school district was instrumental in arranging for the sale of certain lands to the school district, said at l.c. 65:

" * * * But on either theory of fact the transactions, in so far as the school district was involved, contravened public policy. Nichols as a member of the board of directors owed the school district an undivided loyalty in the transaction of its business and in the protection of its interest; this duty he could not properly discharge in a matter in which his own personal interests were involved. The principle is so well settled that we do not deem it necessary to cite authorities."

In the case of Smith v. Hendricks, 136 S.W. (2d) 449, which was an action instituted by resident taxpayers of a school district to recover back money paid to a member of the school board for driving a school bus, the court held that the taxpayers, suffering no pecuniary damages, could not institute such an action. However, in considering the right of the state to bring such an action, the court said at l.c. 459:

" * * * If the State, as in the Weatherby case, were suing to recover the money unlawfully paid the respondent, it would undoubtedly have the right to do so even though it would result in obtaining the services of the respondent without compensation. This because the employment and the payment of respondent violated the public policy of the State, as plainly expressed in the statute. The fact that the district has suffered no loss, but has received services equal to the value of the money paid to the respondent, would constitute no defense in such an action. * * *"

In the case of Nodaway County v. Kidder, 129 S.W. (2d) 857, an action was instituted against one of the members of the county court to recover back money paid him by the county court under an alleged contract. At l.c. 861 the court again stated the general rule:

"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. * * *"

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In view of the foregoing authorities it would appear that the contracts entered into between the members of the school board and the school district, such as you have described in your letter, would be illegal as being in violation of law and the public policy of the state.

Regarding future action that might be taken, it is our thought that suit could be instituted against these individuals to recover back money illegally paid them under an invalid contract.

CONCLUSION

In the premises, it is the opinion of this department that members of the board of directors of a school district are precluded from contracting with the school district in such a manner as will result in their personal gain.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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J. E. TAYLOR
Attorney General