

CITIES: A member of the common council of the City of
CONTRACTS: St. Joseph may accept payment from the Social
PUBLIC POLICY: Welfare Board of Buchanan County for trans-
WELFARE BOARD: portation of a patient to a hospital at the
request of said board.



August 10, 1954

Honorable John E. Downs
Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

Attention: Mr. Frank D. Connett, Jr.

Dear Mr. Downs:

By letter dated July 13, 1954, you requested an
opinion of this office as follows:

"* * * The Department of Public Health
and Welfare operates on funds appro-
priated to it by the City of St. Joseph
and the County of Buchanan. One of the
members of the St. Joseph City Council,
John E. Rupp, is an operator of a funeral
home and ambulance service. At the re-
quest of The Department of Public Health
and Welfare, when they could find no one
else to do it, Mr. Rupp took a patient
to Mt. Vernon, Missouri. The charge for
this was \$70.00. Our problem is this -
may Mr. Rupp, being a member of the St.
Joseph City Council, accept payment for
this trip?"

In a subsequent letter you stated:

"The department involved in my letter of
July 13, is a social welfare board of
the County of Buchanan. It was formed
under what is now Section 205.770 R.S.
Missouri, 1949. Although it gets its
funds on which to operate from both
the city and the county, it does not
seem to be under the control of either."

Honorable John E. Downs:

According to the official manual, State of Missouri, 1953-54, St. Joseph is a city of the first class, and apparently does not have the alternative form of government. Turning, therefore, to Chapter 73, RSMo 1949, the following provision is found:

73.490. "If any city officer shall be directly or indirectly interested in any contract under the city, or any work done by the city, or in furnishing supplies for the city or any of its institutions, he shall be deemed guilty of a misdemeanor; and any appointive officer becoming so interested shall be dismissed from office immediately by the mayor; and upon the mayor becoming satisfied that any elective officer is so interested, he shall immediately suspend such officer and report the facts to the common council, whereupon the common council, as soon as practicable, shall be convened to hear and determine the same; and if, by a four-fifths vote of the common council, he be found to be so interested, he shall be immediately dismissed from such office. No officer shall hold two appointments under the city government at the same time."

Assuming a member of the common council to be a "city officer" within the meaning of the above section, it is necessary to determine whether the Social Welfare Board of Buchanan County is an institution of the city.

Section 205.770, RSMo 1949, which authorizes the establishment of the board reads as follows:

"1. In any county of the second class in this state there may be created and established by order of the county court of any such county a board which shall be styled 'The Social Welfare Board of the County of

"2. All powers and duties connected with and incident to the betterment of social and physical causes of dependency, the relief and care of the indigent, and the care of sick dependents, with the exception

Honorable John E. Downs:

of the insane and those suffering with contagious, infectious and transmissible diseases, and excepting those persons who may be admitted to the county poorhouses of such counties, shall be exclusively invested in and exercised by said board.

"3. Said board shall have power to receive and expend donations for social welfare purposes and shall have exclusive control over the distribution and expenditure of any public funds set aside and appropriated by such counties and by any city located in any such county for the relief of the temporarily dependent. Said board shall have power to promote the general welfare of the poor within the limits of such counties by social and sanitary reforms, by industrial instruction, by the inculcation of habits of providence and self-dependence, and by the establishment and maintenance of any activities to these ends. Said board shall have power to sue and be sued, complain and defend in all courts, to assume the care of or take, by gift, grant, devise, bequest or otherwise, any money, real estate, personal property, right of property, or other valuable things, and may use, enjoy, control, sell or convey the same for charitable purposes, to have and to use a common seal and alter the same at pleasure.

"4. Said board may make bylaws for its own guidance, rules and regulations for the government of its agents, servants and employees, and for the distribution of the funds under its control."

Further powers are given the board by Section 205.780:

"Said board shall have the exclusive power to make all suitable provisions for the relief, maintenance and support of all indigent persons within said county and within any city in said county who may appropriate for the support of said board, and to make suitable provisions for the care and maintenance to the sick dependents and those who

Honorable John E. Downs:

are unable to support themselves; to enforce the laws of the state, the ordinances of such cities located within said county, in regard to the indigent, and to make such rules and regulations in the conduct of its business not inconsistent with the laws of the state of Missouri and the ordinances of such cities; to have exclusive control, care and management of all public hospitals owned or operated by said counties or said cities, except those for the care of the insane and those suffering with contagious, infectious and transmissible diseases; to recommend to the common council of said city the passage of such ordinances as said board may deem necessary for the welfare of the indigent of said city; to have the power to appoint competent physicians and surgeons, who shall hold their office at the pleasure of said board, at a salary to be fixed by said board, and said physicians and surgeons shall perform such duties as may be prescribed by said board, and shall render medical attendance to all those who may come within the provisions of this law; said board shall have the power and it shall be the duty of said board to employ and discharge all persons or officers in their judgment necessary to carry out the matters over which said board is given jurisdiction or control."

Provision for selection of the members of said board is made by Section 205.790:

"1. Said board shall be non partisan and nonsectarian in character, and the members and officers thereof shall receive no compensation as such.

"2. Said board shall consist of the mayor of such cities and the presiding judge of the county court of such counties, who shall be ex officio members thereof, and

Honorable John E. Downs:

six other members, three of whom shall be appointed by the county court of such counties, who shall hold office, one for one year, one for two years and one for three years, whose terms of office shall be designated by such county court, three by the mayor and common council of such cities, who shall hold office, one for one year, one for two years and one for three years, whose terms of office shall be designated by the mayor.

"3. Whenever the term of office of any member so appointed expires, the appointment of his successor shall be for three years. All such appointments shall date from the first of June following their appointment.

"4. Vacancies from any causes shall be filled in like manner as original appointment. The mayor may, for misconduct or neglect of duty, remove any member appointed by him in the manner required for removal of officers of such cities. The county court may, by a majority vote, for misconduct or neglect of duty, remove any member appointed by them."

Examination of the above sections pertaining to the Social Welfare Board disclose that only the County Court can create the board, and that the only control which the city has over the board is the appointment of half of the board members, and the appropriation or withholding of city funds for use by the board. The city can neither create nor abolish the board, but can only determine whether it wishes to contribute funds for the operation of the board. The placing of the power of establishment and abolition of the board in the County Court clearly indicates that the board is not an institution of the city. Thus, Section 74.490, supra, is not applicable.

In addition to Section 74.490, however, the public policy of Missouri prohibits contracts between an official

Honorable John E. Downs:

board and one of its members. This policy was expressed by the Supreme Court in Githens vs. Butler County, 350 Mo. 295, 165 S.W. (2d) 650, 1.c. 652:

"* * * 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, Sec. 1735, p. 4895. The basis of this common law rule is that 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, Section 773; 46 C.J., Section 308; 22 R.C.L. Section 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."

The council member unquestionably has an interest in

Honorable John E. Downs:

the subject contract, but said member did not contract with his board. Instead the contract was with another independent board. A member of the common council of the City of St. Joseph has only a very remote control, if any, over the letting of contracts by the county Social Welfare Board. He merely has his one vote on the council to appoint one half of the members of the Social Welfare Board, and has one vote as to whether the city should appropriate funds for use by the board. He has no other control in the letting of contracts by said board. Since the power to let the contracts in question and the performance of the contract were not placed in the same hands, the council member was not faced with a conflict between his private interest and the interest of the public. Therefore, the contract was not void as being in conflict with the public policy in this isolated case, when the Welfare Board could find no one else to transport the patient. Our conclusion might be different if this type of contract were to be recurrent.

CONCLUSION.

In the premises, therefore, it is the opinion of this office that a member of the common council of the City of St. Joseph may accept payment from the Social Welfare Board of Buchanan County for transportation of a patient to a hospital at the request of said board.

This opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General

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