

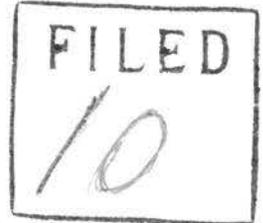
SCHOOL BOARDS: Member cannot contract in private capacity with board.

(September 1964 -- See statute 165.157, RSMo 1963
Supp. making, selling or providing commodities a
misdemeanor.)

June 30, 1948

Honorable Fred C. Bollow
Prosecuting Attorney
Shelby County
Shelbina, Missouri

FILED 10



Dear Mr. Bollow:

This is in reply to your letter of recent date requesting
the opinion of this department, and reading, in part, as follows:

"I have some citizens in the County who earnestly insist that the members of a school board have no right or authority under the law to sell any supplies of any kind or character to the school. The town has a population of less than 25,000, in fact, less than 2,000 and they have purchased considerable material for redecorating the school; in fact, they have purchased considerable thereof from one of the members of the Board of Directors. I can find no authority under which said purchase could be held to be illegal, unless it be Section 10501, Laws 1945, Page 1649, Section 1. Said Section prohibits any member of the Board from 'Holding any office or employment of profit from said Board while a member thereof.' Could it possibly be said that the term employment for profit could be construed to mean that the board member had no right to sell such supplies to the board. * * *"

The question presented is whether or not a member of the public school board of a city having less than 25,000 inhabitants can contract with such school board for the sale of materials for the redecoration of a school building within such district.

Section 10501, Mo. R.S.A. (Laws of 1945, page 1649), provides, in part, as follows:

"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:
* * *"

Aside from a consideration of the above statute in regard to this question, it is necessary that we look to the public policy of the state in accordance with which our actions must be motivated. A school district is a public corporation, and a member of the school board of such a school district occupies a fiduciary relationship to the district. State v. Nolte, 169 S.W. (2d) 50, l.c. 55. In that connection we cite the case of State of Missouri, at the relation of James E. Smith, v. Thomas K. Bowman, 184 Mo. App. 549, wherein the following appears at pages 557, 558:

" * * * In Woods v. Potter, (Cal.) 95 Pac. 1125, 1127, the court said: 'Members of city councils occupy a position of trust, and are bound to the same measure of good faith towards their constituents that a trustee is to his cestui que trust. (Andrews v. Pratt, 44 Cal. 309.) The mere fact that a member of such a body acts as such in connection with any matter in which he is interested vitiates the transaction. (Finch v. Riverside, 87 Cal. 597, 25 Pac. 765.) It will be presumed that under such circumstances self-interest prevents the individual member from protecting the rights of the public against his own.'

"A great statesman has voiced the basic principles governing official conduct by declaring that: 'A public office is a public trust.' Like a trustee, such officer must not use the funds or powers entrusted to his care for his own private gain or advancement. To allow him to do otherwise is against public policy. It is

of the utmost importance that every one accepting a public office should devote his time and ability to the discharge of the duties pertaining thereto without expectation of personal reward or profit other than the salary fixed at the time of accepting the same; and that he should do so, except for a most weighty reason, to the end of his term. Certainly the trend and policy of our law in this respect is to remove from public officials, so far as possible, all temptation to use that official power, directly or indirectly, to increase the emoluments of such office; and so they are forbidden to become interested in contracts let by them, or to have their salaries increased or decreased, or to accept offices created by themselves."

Another similar situation was ruled on by the Supreme Court in *Witmer v. Nichols*, 8 S.W. (2d) 63, where the following statement is found at page 65:

"On the face of the allegations the conclusion could well be drawn that Nichols, knowing that the school board was desirous of securing a high school site on Armour's land near the southwest corner of Sixty-Fifth Street and Wornall Road and that it was unable to do so, bought the entire tract for himself, and then sold the district a site, thereby obtaining the personal benefits and advantages pointed out in the petition. Notwithstanding, the petition seems to have been drawn on the theory that Armour sold the district the school site, but that the sale and conveyance of the site was part and parcel of a scheme engineered by Nichols whereby the latter not only succeeded in boosting the value of the land he already owned but was enabled to acquire another tract on more advantageous terms than he could otherwise have obtained. This view was adopted by the pleader, no doubt, in order to avoid the effect of the decision in *Bedell v. Nichols* (Mo. Sup.) 292 S. W. 21, where the

facts were in evidence and where, on the facts, it was held that Nichols was not a party to the contract of sale. 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."

The above rule in the Witmer case is referred to with approval in the recent Springfield Court of Appeals case of Smith v. Hendricks, 136 S.W. (2d) 449, l.c. 457.

It is well settled that the public policy of Missouri is declared in the decisions of the Supreme Court. In the case of Griffith v. Mutual Protective League, 205 S.W. 286, it was said at page 291:

" * * * The public policy of a state is to be found as expressed in its Constitution and laws, and in the decisions of its highest court, and not from general considerations of the supposed public interests and policy of the state beyond what such sources of information make known to the court. Vidal v. Girard, 2 How. 127, 11 L. Ed. 205; Hartford F. Ins. Co. v. Chicago, M. & St. P. R. Co., 175 U.S. 91, loc. cit. 100, 20 Sup. Ct. 33, 44 L. Ed. 84, and cases there cited. * * *"

The policy of the state, with regard to the contracting with an official board by a member of that board, is very definitely expressed by the Supreme Court of Missouri in the case of Nodaway County v. Kidder, 129 S.W. (2d) 857, where that court said at page 861:

"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."

It is clear then that the trend and policy of our law is to remove from public officials all temptations to use their official power, directly or indirectly, for their own private gain or advancement.

Conclusion.

In view of the foregoing authorities, it is the opinion of this department that a member of the public school board of a city having less than 25,000 inhabitants cannot legally contract with such school board for the sale of materials for the redecoration or improvement of a school building within the jurisdiction of such public school board.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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