

OFFICERS:
UNIVERSITY:
PROFESSORS:

Professor who accepts royalty checks
for books used in the University
violates Section 10811.

April 9, 1948



Honorable Howard B. Lang, Jr.
Prosecuting Attorney
Boone County
Columbia, Missouri

Dear Mr. Lang:

This is in reply to your request for an opinion, which reads as follows:

"Mr. A, a professor at the University of Missouri, writes a book using his knowledge, research, and experience in a technical field in the preparation of his manuscript. This book is turned over to a publisher, who publishes this book, either in book form, or in mimeographed pamphlet form, which is sold through the regular channel of retail book stores to students at the University of Missouri and in other universities where the sale of this book or pamphlet can be promoted. The publisher of the book pays to Mr. A, the professor, a regular publishers royalty, which is based on the number of copies of the book or pamphlet that are sold.

"Question: Is Mr. A violating the provisions of Section 10811 by accepting these royalty checks from the publisher?"

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

"If any member of the board of curators, president, professor, teacher or other officer or employee of the state university shall be directly or indirectly interested in any contract for furnishing

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supplies for said university or any of the departments thereof, or in any work to be done upon any of the buildings of said university or repairing of the same, or ornamenting the grounds thereof or fencing the same, or 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, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction be fined not less than two hundred dollars or imprisoned in the county jail where said offense is committed not less than three months, or by both such fine and imprisonment." (Underscoring ours.)

Section 10811 is a penal statute and as such should be strictly construed. However, the rule of strict construction must not be followed if by doing so the scope and purpose of the act would be narrowed so as not to include cases which are obviously within its provisions. *Abbott v. Western Union Tel. Co.*, 210 S.W. 769. The first underscored part of Section 10811 follows very generally the language used in similar statutes prohibiting the personal interest of a public officer in a contract which is let by the group of which he is a member. The second underscored part of Section 10811 goes even farther than the provisions generally used in these public officer contracts. By the very words themselves it forbids interest, directly or indirectly, by the named officers or employees in the sale of miscellaneous articles used in the University or any of its departments.

We will assume for the purposes of this opinion that the professor used as an example in your request is not keeping for sale and is not directly interested in the sale of books in which he has a pecuniary interest. Therefore, if there is any violation of Section 10811 it must be because the professor is indirectly interested in the sale of books. We have been unable to find cases which are directly in point with the question, but we believe that the cases arising under the public officer contracts are similar in defining "indirectly interested."

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In the case of Stockton Plumbing & Supply Co. v. Wheeler, 229 Pac. 1020, the facts were that one Charlesworth was a member of the city council of the city of Stockton and at the same time was employed as a sheet metal foreman by the petitioner at the time the petitioner was awarded a contract for the doing of certain work. The court held that the personal interest of a public officer in a contract may be indirect only, still such interest would be contrary to public policy because "a public officer in the discharge of his duties as such should be absolutely free from any influence other than that which may directly grow out of the obligations that he owes to the public at large." (l.c. 1024)

In Yonkers Bus, Inc. v. Maltbie, et al., 23 N.Y.S. (2d) 87, at page 91, the court said:

"Interest, 'direct or indirect' in a contract may include an interest the fruition of which is postponed or implicit as well as one which is immediate and in stated terms."

In Witmer v. Nichols, 320 Mo. 665, 8 S.W. (2d) 63, the Supreme Court of Missouri had before it a case in which a member of the school board was held to be indirectly interested in a contract for the sale of land to the school board. Although the pecuniary gain to the board member was only indirect, mainly by virtue of a rise in value of land in which he was interested, the court said:

" * * * 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."

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 the books because of the pecuniary interest flowing to him in the form

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of royalty payments. We are further of the opinion that the provisions of this act contemplate books which are required to be used by the students in the regular classroom work, those which are listed as required outside reference and also those books which are suggested as supplementary or additional reading matter or reference in connection with the books which are actually listed by the University. This, for the reason that we believe the object intended to be accomplished by the statute was to obviate the possibility of the various named officers and employees of the University taking advantage of their position to promote by indirect means the use of such books. It should be noted that the opinion is limited in its application to the books used in the University of Missouri and has no reference to those used at other colleges or universities which may adopt the same.

While we take cognizance of the established practices of professors writing books to be used in connection with their class lectures, we must also recognize that the questions of the wisdom, practice, policy or expedience of a statute which might tend to discourage the practice of these writings are for the Legislature alone. We must accept the law as it is written.

CONCLUSION

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.

Respectfully submitted,

JOHN R. BATY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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