School Trustees — Authority to Pay Themselves for Transporting Their Own Children.

A Trustee of a school district is not permitted to draw pay for the transportation of his own children to school.

E. D. Gerye, Esq.,
County Attorney,
Hysham, Montana:

My dear Mr. Gerye:

I have your letter in which you inquire as to the legality of School Trustees paying themselves compensation for transporting their own children to school.

Subdivision 3 of Section 507 of Chapter 76 of the Laws of 1913 provides that:

> "Whenever the trustees of any school district * * * deem it for the best interest of such district and the pupils residing therein they may expend any moneys belonging to their district for the purpose of paying for the transportation of pupils from their homes to the public school or schools maintained in such district."

Section 509 of the same chapter provides in part:

> "It shall be unlawful for any school trustee to have any pecuniary interest, either directly or indirectly, in the erection of any school house, or for warming, ventilating, furnishing or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the schools, or to receive or to accept any compensation or reward for services rendered as trustees, except as hereinbefore provided. * * *"

This section was doubtless intended to cover every case of contract between the Board and its individual members, but does not include any reference to transportation, doubtless for the reason that, at the time this law was passed, the law providing for transportation of pupils had not been enacted. However, such contracts are contrary to public policy and under some jurisdictions absolutely void.

Weitz v. Des Moines, 78 Ia. 37, 42 N. W. 577; 87 Ia. 81, 54 N. W. 70;
Miller v. Sullivan, 32 Wash. 115;
Alexander v. Johnson, 41 N. E. 811;
35 Cyc. 954;
Independent School Dist. No. 5 v. Collins (Id.) 98 Pac. 857.

While the question has not been passed upon directly in this State, the same principle was involved in the case of State ex rel. Klick v. Wittmer, 50 Mont. 22. In that case the City Council had appointed one of its members to the position or office of City Purchasing Agent, which office had been created and the salary fixed by the Council. The court, in holding that the acceptance of the office of City Purchasing Agent operated as a resignation as Councilman, used the following language:

"We think the office thus created and defined is clearly (1) incompatible with the office of alderman. Offices are 'incompatible' when one has power of removal over the other (29 Cyc. 1382; Attorney General v. Council, 112 Mich., 145, 37 L. R. A. 211, 70 N. W. 450), when one is in any way subordinate to the other (State v. Jones, 130 Wis. 572, 118 Am. St. Rep. 1042, 10 Ann. Cas. 696, 8 L. R. A. (n. s.) 1107, 110 N. W. 431), when one has power of supervision over the other (State v. Taylor, 12 Ohio St. 130; Cotton v. Phillips, 56 N. H. 220; State v. Hilton, 80 N. J. L. 528, 78 Atl. 16), or when the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both (Mechem on Public Officers, sec. 422; State v. Anderson, 155 Iowa, 271, 136 N. W. 128; State v. Thompson, 122 N. C. 493, 29 S. E. 720; State v. Goff, 15 R. I. 505, 2 Am. St. Rep. 921, 9 Atl. 226; Magie v. Stoddard, 25 Conn. 565, 68 Am. Dec. 375; People v. Commissioners, 76 Hun, 146, 27 N. Y. Supp. 548; State v. Buttz, 9 S. C. 156). The relations between the office of alderman of Great Falls and that of purchasing agent, as created by the ordinance above referred to, are within all these specifications. The office of purchasing agent was not created under Title III of Part IV of the Political Code (Rev. Codes, secs. 3216-3218); the city council may therefore, by a bare majority vote, abolish it at any time and discharge the person appointed to fill it (Rev. Codes, sec. 3220). Thus the incumbent of it, if he be an alderman, may, in certain circumstances, exercise absolute control over the existence and tenure of his office, or, in the desire to save his office threatened by abrogation, he may be induced to assent to measures the virtue of which he does not perceive. Again, as to a portion of his duties he is an agent of the council and subject to its supervision. It may disavow or curtail his general policy, reject his recommendations, or dis-

allow the bills incurred by him; in any event, as member of the council he is placed in the position of supervising and affirming his own acts. Finally, if he be alderman as well as agent, he may pass upon, and possibly determine, the amount and sufficiency of his own bond. Further discussion is not necessary to establish that the holding of these offices by the same person is contrary to public policy."

The reasons given in the above opinion seem to be applicable to the case of a School Trustee taking a contract for transporting pupils, and if it is against public policy to let the contract to a member of the Board in any case, all the more would the rule be applicable where the contract is for the transportation of the Trustee's own children.

It is, therefore, my opinion that the transportation of his own children to school by a Trustee for pay allowed by the Trustees is not permissible because against public policy, and that school funds may not legally be paid to a Trustee for that purpose.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.