

Trustees of School District—Use of Position for Personal Benefit — Bank Deposits — Failure of Trustees to Redeem Bonds Though Money on Hand.

Section 1016 of the Revised Codes of 1921 construed as preventing any School Trustee from dealing directly with the district in any contractual relation.

Sections 1229 and 1230 of the Revised Codes of 1921 construed as making it mandatory for the County Treasurer to pay off bonds as they mature out of the sinking fund, and that mandamus lies to compel him to do so.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

My dear Miss Trumper:

You have submitted to this office a letter from Mr. C. G. Manning, Superintendent of School District No. 1 of Fergus County, in which Mr. Manning asks the following question:

"1. Is it the intent of Section 509 of the School Laws of 1921-1922 to prohibit a Trustee from using his position as Trustee for personal benefit?"

This section which appears in the Revised Codes of 1921 as Section 1016, provides, in part, as follows:

"It shall be unlawful for any school trustee to have any pecuniary interest, either directly or indirectly, in the erection of any schoolhouses, 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 intended to prevent any Trustee from dealing directly with the district in any contractual relation specified therein, and any contract in violation of this provision, directly or indirectly, would be void.

School District No. 2 v. Richards, 62 Mont. 141, 205 Pac. 206.

Irrespective of the provisions of this section, however, a trustee in all his dealings with the district acts in a fiduciary capacity and is amenable to the rule which forbids an agent or trustee to place himself in such an attitude toward his principal or cestui que trust as to have his interest conflict with his duty.

Russell v. Tate, 52 Ark. 541, 13 S. W. 130, 20 Am. St. Rep. 193, 7 L. R. A. 180;

Hornung v. State, 116 Ind. 458, 19 N. E. 151, 2 L. R. A. 510.

Your second question is:

"Can a Trustee be held as having a pecuniary interest where the amount of money in the interest and sinking fund of the school district has increased from year to year until the sum of \$100,000 has accumulated, which sum is deposited in local banks by the County Treasurer, while at the same time the school district has outstanding bonds bearing 6 per cent interest which have passed their redeemable period. The Trustees who are interested in the bank in which the funds are deposited refused to take up the outstanding bonds or to invest the sinking fund as required by statute, the inference being that they are receiving a pecuniary benefit by reason of the fact that the bank pays 2½ per cent on the balances of county deposits, while the bank loans out the money at from 10 per cent to 12 per cent."

In answering this question, I wish to call to your attention the following provisions of the statute. Section 1230 of the Revised Codes of 1921 provides, in part, as follows:

"When the sum in said sinking fund shall equal or exceed the amount of any bond then due, the county treasurer shall give notice to each bondholder, if known to him, and shall post in his office a notice that he will, within thirty days from the date of such notice, redeem the bonds then payable, giving the numbers thereof, and preference shall be given to the oldest issue; and if, at the expiration of the said thirty days, the holder or holders of said bonds shall fail or neglect to present the same for payment, interest thereon shall cease; but the treasurer shall at all times thereafter be ready to redeem the same on presentation, and when any bonds shall be so purchased or redeemed, the county treasurer shall cancel all bonds so purchased, and redeem by writing across the face of such bond or bonds, in red ink, the word 'Redeemed,' and the date of such redemption."

While Section 1229 of the Revised Codes of 1921 provides:

"The county commissioners, at the time of making the levy of taxes for county purposes, must levy a tax for that year upon the taxable property in such district for the interest and redemption of said bonds, and such tax must not be less than sufficient to pay the interest of said bonds for that year

* * * and to pay annually a portion of the principal of said bonds, equal to a sum produced by taking the whole amount of said bonds outstanding and dividing it by the number of years said bonds have to run; and all moneys so levied, when collected, must be paid into the county treasury to the credit of such district, kept in a separate fund, and be used for the payment of principal and interest on said bonds, and for no other purpose."

Under the foregoing provisions of the statute, it is the duty of the County Commissioners to create a sinking fund for the payment of all bonds of the school district, and when the same has sufficiently accumulated, it is the duty of the County Treasurer to pay such bonds as have matured out of the sinking fund. The provisions of these sections are mandatory, and should the Treasurer refuse to perform the duty enjoined upon him, mandamus would lie to compel him to do so. As to the right of a taxpayer to bring an action, see the recent case of School District No. 2 v. Richards above cited.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.