

County High School Trustees, County Officers. County Officers, Must Not Be Interested in Certain Contracts. Contracts, Statutory Prohibition.

Free county high school trustees are county officers. County officers must not be interested in any contracts let by them in their official capacity or by any body or board of which they are members.

January 16th, 1914.

Hon. R. S. Steiner,
County Attorney,
Big Timber, Montana.

Dear Sir:

I have your letter of the 6th instant, requesting an opinion upon the two following propositions:

"1. Is it lawful for any county officers to write insurance on county buildings?

"2. Is it lawful for a member of the board of trustees in a county free high school to insure said high school building in an insurance company in which he is a stockholder?"

The questions upon which you desire an opinion are so clearly covered by statutory regulation that it would seem that a mere reference to the law would be sufficient. Sec. 368, Revised Codes of 1907, provides:

"Members of the legislative assembly, state, county, city, town or township officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members."

Sec. 5051 provides:

"That is not legal which is: (1) Contrary to an express provision of law; (2) contrary to the policy of express law, though not expressly prohibited; or (3) otherwise contrary to good morals."

Sec. 2104, Session Laws of the Thirteenth Legislative Assembly, at page 298, provides that the board of trustees of a free county high school shall consist of seven members, of which the county superintendent shall be one, and the remaining six members are appointed by the county commissioners. Hence, the status of a member of this board, in my judgment, is that of county officer. In *Pickett v. School District*, 25 Wis. 551 it was held to be against public policy to allow a school trustee while holding that fiduciary relation to the district to place himself in an antagonistic position and obtain a contract for himself from the board of which he is a member. The general principle upon which the proposition rested was that no man can faithfully serve two masters, and as men usually and naturally prefer their own interests to those of others, where one attempts to act in a fiduciary capacity for another, the law will not allow him while so acting to deal with himself in his individual capacity. The principle is also laid down that the duties and obligations of a school trustee are not altered from the circumstances that he is only one of a number of directors or trustees and that thereby his responsibility is diminished, and he is relieved from such incapacity, for the same principle applies to him as one of a board, as if he was acting as a sole trustee, for the relationship of principal and agent is present in such case, and out of the identity of these relations necessarily spring the same duties, the same danger, and the same policy of the law. The board of trustees being a corporate body, can act only by and through the members who are its agents, and it is the duty of such agents to act so as to best promote the interests of the school whose affairs they are conducting. Their duties are of a fiduciary character toward the public, and it appears to be a rule of universal application that none having such duties to discharge should be allowed to enter into engagements in which he has or can have a personal interest conflicting, or which may possibly conflict, with the interests of those whom he is bound to protect. And this principle is adhered to so strictly that no question is allowed to be raised as to the fairness or unfairness of a contract so entered into. In my judgment, it can make no difference that fire insurance is a protection furnished at a fixed charge or rate, irrespective of the company assuming the risk. For the mischief is still apparent; as, for instance, the element of competition between contending companies is eliminated and the company represented by the trustee invariably becomes the sole beneficiary. The trustee in such case acts not only for the company but contracts with himself as a member of such board to favor his principal and votes for the allowance of the bill which includes his commission. As said in *Berka v. Woodward* (Cal.), 57 Pac. 777:

"He cannot be permitted to place himself in any position where his personal interest will conflict with the faithful performance of his duty as trustee, and it matters not how fair upon the face of it the contract may be, the law will not suffer him to occupy a position so equivocal and so fraught

with temptation. Note the situation here presented. This material was obtained from a member of the city council, and he, as a member of that council, sits in judgment upon the validity and amount of his own claim. If he does not act, still the city is deprived of its right to his services and judgment in determining these very questions."

See also *Millford Borough v. Water Co.*, 124 Pa. 610.

Trainer v. Wolfe, 140 Penn. S. 279.

Currarie v. School District, 35 Minn. 163.

37 N. W. 992.

The foregoing discussion is based upon the assumption that the second question involves the right of a trustee of a free county high school to act as agent for the insurance company. If such trustee were merely a stockholder in the insurance company, and not its agent, a different conclusion might be reached, for it is probable that in such case a trustee would be violating no duty to sanction the contract of insurance with such company; provided, his relations to the company were none other than that of stockholder.

Concluding, I am of the opinion that both interrogatories as you submit them should be answered in the negative.

Yours very truly,

D. M. KELLY,
Attorney General.