

Irrigation Districts—Commissioners—Employment—Contracts.

Section 7174 R. C. M. 1921, as amended by chapter 157 laws 1923, prohibits a commissioner of an irrigation district from performing services as an engineer for said district at a stated amount per day as that employment is contractual in nature and contrary to public policy.

William P. Flynn, Esq.,
7 Seventh Street,
Miles City, Montana.

August 25, 1927.

My dear Mr. Flynn:

You have requested my opinion whether it would be unlawful for you, as a commissioner of the Tongue and Yellowstone Rivers Irrigation District, to do engineering work for said district and put in your regular engineering charges of \$8.00 per day.

Section 7173 R. C. M. 1921, as amended by chapter 157 laws of 1923, provides in part as follows:

“No commissioner or any other officer named in this act shall in any manner be interested directly or indirectly in any contract awarded or to be awarded by the board, or in the profits derived therefrom; * * *”

That your relation to the board in connection with this work would be contractual in nature cannot be disputed and the legality of your employment therefore depends upon whether or not it is of such a nature as to come within the prohibition of the statute. In the case of *Commissioners vs. Philadelphia County*, 2 Serg. & R. Penn. 193, the court in discussing a similar situation said:

“The meaning of the law, where the words are ambiguous may be best known by considering the mischief which it was intended to prevent. Now it is certain, that there is danger in permitting a body of men entrusted with the public money, to purchase from themselves the articles required for the public service.”

Part of the duties of the board of commissioners of an irrigation district is to have general supervision over the employees of the district, and should you undertake to do the engineering work for said district, it necessarily follows that you would find yourself in the position of being both the employer and the employee, and it is at once apparent that such a relationship would be contrary to public policy, for as stated in the case of *Beebe vs. Sullivan County*, 142 N. Y. 641, 37 N. E. 566:

“The principle that it is contrary to good morals and public policy to permit municipal officers of any county to enter into contractual relations with a municipality of which they are officers, applies with particular force to members of a board

such as a Board of supervisors, which not only makes the contract but subsequently audits the bill.”

It is therefore my opinion that the provisions of section 7174, *supra*, prohibit a commissioner of an irrigation district performing services for said district for a per diem wage, for the reason that it is part of the commissioner’s duties to supervise the work of the employees of the district and to audit and allow the claims for services performed, and to permit a commissioner to assume the position of employer and employee would be contrary to public policy.

Very truly yours,

L. A. FOOT,
Attorney General.