

**Special Road Districts—Directors—Contracts—Treasurer
—Duties—Bond.**

The directors of a special road district may not contract with themselves to furnish materials and supplies in connection with work under their jurisdiction or perform labor for compensation upon the highways over which they have jurisdiction. The treasurer of the district must give a bond as a condition precedent to the discharge of the duties of his office.

Mr. John G. Allee,
County Attorney,
Broadus, Montana.

April 14, 1932.

My dear Mr. Allee:

You have requested my opinion whether the directors of a special road district may furnish material and supplies in connection with the

construction, repair and maintenance of highways under their jurisdiction and perform labor on said highways and receive from the district funds payment for said materials and supplies so furnished and labor performed.

Section 444, R.C.M. 1921 prohibits members of the legislative assembly, state, county, city, town, or township officers from being interested in any contract made by them in their official capacity or by any body or board of which they are members. The members of the board of directors of special road districts are not specifically enumerated in this statute, nor is there any other statute specifically forbidding these directors from being interested in contracts which the board of which they are members let.

However, the rule is that a public office is a public trust and that the holder thereof cannot use it directly or indirectly for a personal profit and he will not be permitted to place himself in a position in which personal interest may come into conflict with the duty which he owes to the public. At the common law public officers were denied the right to make contracts in their official capacity with themselves or become interested in contracts made by them in their official capacity. Statutes prohibiting public officers from having an interest in contracts executed in their official capacity are but declaratory of the common law.

Section 446, R.C.M. 1921 is declaratory of the common law in so far as it applies to the officers mentioned therein and evinces the policy of the state to forbid officers making contracts with themselves or becoming interested in contracts made by them in their official capacity. The fact that directors of special road districts are not specifically mentioned therein does not indicate that the legislature intended that these officers should be permitted to make contracts with themselves.

The reason they were not specifically mentioned in section 446 is probably due to the fact that that section was enacted prior to the enactment of the law creating special road districts and the office of director. It might be that a director would be held to be a county officer within the meaning of that section due to the fact that he discharges duties relating to the highways of the county within his district, but whether or not it would be so held it is my opinion that the public policy of the state as evinced by section 446, R.C.M. 1921, and under the common law relating to the subject, which has not been abrogated by any statute of this state, these directors may not contract with themselves to furnish materials and supplies in connection with work under their jurisdiction or perform labor upon the highways under their jurisdiction and receive compensation therefor.

The treasurer of the district is required by section 1654, R.C.M. 1921, to give a bond to his district in the sum of \$500 before entering upon his duties as treasurer conditioned as provided in said section. Until this bond is given the person selected by the board as treasurer must not assume to act as such as the statute is plain that the giving of the bond is a condition precedent to the discharge of the duties of his office.

Very truly yours,

L. A. FOOT,

Attorney General.