

Opinion No. 250.

Schools and School Districts—Insurance—Clerk of School Board
as Agent.

HELD: The Clerk of a School District may act as agent for an insurance company in securing school insurance.

February 23, 1938.

Hon. John J. Holmes
State Auditor and Ex-Officio
Insurance Commissioner
The Capitol
Helena, Montana

Dear Sir:

You have requested an opinion as to whether a clerk of a school district may act as agent for an insurance company and negotiate an insurance contract covering school property.

You have mentioned the opinion (Vol. 15, Opinions of the Attorney General, page 114), holding that it is against public policy for a member of the school board to act as agent for an insurance company in securing school insurance. With that opinion I concur.

The only question is whether the clerk of the school district would also be prohibited from acting as agent. All public offices are trusts, and officers in the discharge of their duties are held to a high standard of conduct. Their sole consideration must be right, justice, and the public good. For this reason they are forbidden to enter into any transaction that might tempt them to promote their private interests at the expense of the public. In all cases

the test of disqualification is whether or not there is a conflict of interest.

To the Board of School Trustees is given the power to insure the property of the school district (Section 1015, subdivision 7, Revised Codes of Montana, 1935). It is solely within its jurisdiction. By Section 1005 it is also given authority to hire a clerk, who must not be a member of the board. The clerk then exercises none of the executive or administrative functions appertaining to the school district. The power and authority is in the Board of Trustees. The clerk is merely an employee, a ministerial and clerical employee exercising the duties prescribed by Chapter 97, Vol. 1, Political Code. An inspection of those duties indicates that the clerk exercises none of the sovereignty delegated to the political subdivision. He merely carries out the routine duties prescribed. Then, in so far as he is concerned, there is no conflict of interest when he acts as agent for an insurance company. He must lay the offer of his principal before the trustees in the same way as any other insurance agent. He has no vote when it comes to the question of accepting his offer. He stands before the board of trustees on the same plane as any other citizen, and the fact that he is also clerk of the school district does not take away his rights when there is no conflict of interest. It is my opinion that a clerk of the school district may act as agent for an insurance company, and as such agent may contract for insurance of the property of the school district for which he acts as clerk.