

SCHOOLS AND SCHOOL DISTRICTS - Board of trustees; pecuniary interest in supplies furnished to school lunch program. Sections 75-6808 and 75-8005, R.C.M. 1947.

HELD: A member of the board of trustees of a school district is prohibited from having any pecuniary interests in supplies purchased for the school's lunch program.

Mr. James A. McCann
Roosevelt County Attorney
Wolf Point, Montana 59201

January 7, 1972

Dear Mr. McCann:

You have asked my opinion on the following factual situations and questions involving such situations:

1. A member of a board of trustees in your county is a partner in a firm which has sold food products to the hot lunch program at the school for a number of years. Your question in regard to this situation is: "May the board continue to purchase food products from the board member's firm in view of his presence on the board?"
2. A member of the board of trustees of the same school district is a distributor who would like to sell certain food products to the hot lunch program. Your question in regard to this situation is: "May the board purchase these food products from the member distributor?"

Sections 75-6808 and 75-8005, Revised Codes of Montana, 1947, are applicable to both situations. Section 75-6808, *supra*, reads in part as follows:

"It shall be unlawful for any trustee to (1) have any pecuniary interest, either directly or indirectly, in the erection of any school building, or for warming, ventilating, furnishing, or repairing the same, or (2) be in any manner connected with the furnishing of supplies for the maintenance and operation of the schools, or (3) be employed in any capacity by the school district of which he is trustee. . . ."

Section 75-8005, *supra*, reads:

"The trustees of any district offering school food services may:

“(1) enter into contracts with the superintendent of public instruction for the purpose of obtaining funds, supplies and equipment, food commodities, and facilities necessary for the establishment, operation, and maintenance of the school food services;

“(2) sell food to the pupils and adults participating in the school food services in accordance with the policies of the superintendent of public instruction;

“(3) accept any gift for use of the school food services;

“(4) allocate federal funds received in lieu of property taxation to the school food services fund in accordance with the provisions of section 75-8006; and

“(5) adopt such policies for the operation of school food services as are consistent with the regulations of the superintendent of public instruction and with the laws of Montana.

“When the trustees of any district offer school food services, they shall establish a school food services fund for the deposit of proceeds from the sale of food, gifts and other moneys specified in this section and for the expenditure of such moneys in support of the school food services.”

To answer your questions involving the application of the above-cited sections of Montana law to the questions which you have raised, it should be noted that past attorney generals' opinions interpreting section 75-6808, *supra*, and its forerunners have lent a rather strict construction to the terms of that section. In **4 Opinions of the Attorney General**, p. 122, it was held that a trustee who was also a stockholder in a company which furnished heating supplies to the school was violating the provisions of this section. In **5 Opinions of the Attorney General**, p. 415, this same holding was made relevant to a stockholder in a fire insurance company which was furnishing insurance to the school. In **9 Opinions of the Attorney General**, p. 461, a similar application was made to a stockholder in a bank wherein school funds were deposited to draw interest. Perhaps the most far-reaching opinion in this area is found in **17 Opinions of the Attorney General**, p. 159, wherein then Attorney General Freebourn stated the following concerning the forerunner of section 75-6808, *supra*:

“Section 1016 answers your fourth question, and plainly states that the trustee shall not be interested in the letting of contracts or furnishing supplies. The board of trustees of a school district stand in the relation of a trust to the patrons of the district and act in a fiduciary capacity. Their relation to the school district might be said to be the same as the relation of the

county commissioners to the county, city officers to the city, and township officers to the township. Assuming that to be true, section 444, Revised Codes of Montana, 1935, reads as follows:

“ ‘Certain officers not to be interested in contracts. 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.’

“Section 445 reads:

“ ‘Nor in certain sales. State, county, town, township, and city officers must not be purchasers at any sale, nor vendors at any purchase made by them, in their official capacity.’

“The reason for this is quite apparent. It might be said that public policy demands that a public officer cannot be permitted to place himself in a position where his personal interest will conflict with the faithful performance of his duty. It matters not how fair a contract may be, the law will not suffer him to occupy a position so equivocal and so fraught with temptation. . . .”

Under the terms of section 75-8005, *supra*, trustees of any district offering school food services have control over the funds provided from various sources to support such services. While it is not mandatory that a school in this state have such a food service, once the trustees of a district elect to establish such service they must follow the provisions of Title 75, chapter 80 of the Revised Codes of Montana, 1947, and regulations established by the superintendent of public instruction pursuant to that chapter.

It should be noted that section 75-6808, *supra*, while recodified in the last session of the legislature, was also amended to add the phrase “and operation” after the word “maintenance” in defining the restrictions involving the furnishing of supplies. While the furnishing of supplies for a school food service might not be thought of as supplies for maintenance of a school, it would appear that the legislature in adding the term “supplies for the maintenance and operations of the schools” intended to broaden the prohibitory provisions of this section so as to include such things as school food services. Once a food service is established, there can be no doubt that it becomes a part of the operation of the school.

THEREFORE, IT IS MY OPINION that a member of the board of trustees of a school district is prohibited from having any pecuniary

interest, either directly or indirectly, in the furnishing of supplies to be used in a school food service.

Very truly yours,

ROBERT L. WOODAHL
Attorney General