

✓  
MUNICIPAL CORPORATIONS:

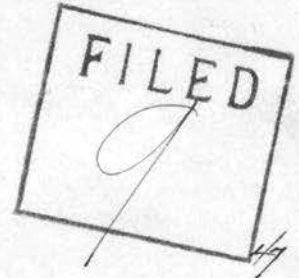
Officer directly or indirectly interested in a contract with the city, or in work done by the city, makes himself criminally liable and subject to forfeiture of office.

Sec 4406-6750 RS Mo 1929

September 27, 1933.

Mr. L. B. Boicourt,  
Carterville, Missouri.

10-2



Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"The undersigned is a green member of the Carterville City Council, elected last spring, never having held any kind of public office before. A matter has come up that gives me much uneasiness. I do not wish to do anything that is against the law but do not know what the law is in some regards.

Kindly let me know the answers to the following questions: Can we as a Council legally hire the Mayor or members of the Council to work for the City (say at repairing streets) at so much per hour or day? Does the employing by the hour or day make the matter legal? If the member who is to profit does not vote, does that mend matters where it might be illegal if he casts the deciding vote?

If it should be against the law for members of the Council or the Mayor to be given such employment, and if the majority of the Councilmen vote to so employ a fellow member, would those who vote against the said employment be guilty in the eyes of the law, along with those who vote for it?

What, if anything, is the further duty of a Councilman if he known that his Council is breaking a State law although he himself votes against such law breaking?"

Section 4406, R. S. Mo. 1929, of our criminal statutes provides as follows:

"If any city officer shall be directly or indirectly interested in any contract under the city, or in any work done by the city, or in furnishing supplies for the city, or any of its institutions, he shall be deemed guilty of a misdemeanor; and any appointed officer becoming so interested shall be dismissed from office immediately by the mayor; and upon the mayor becoming satisfied that any elective officer is so interested, he shall immediately suspend such officer and report the

facts to the council, whereupon the council, as soon as practicable, shall be convened to hear and determine the same; and if, by two-thirds vote of the council, he be found so interested, he shall be immediately dismissed from such office."

Section 6750, R. S. Mo. 1929, dealing with municipal corporations, provides as follows:

"If any city officer shall be directly or indirectly interested in any contract under the city, or in any work done by the city, or in furnishing supplies for the city, or any of its institutions, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment; and upon the city council, or any member thereof, becoming satisfied that any officer of the city is so interested, the council shall, as soon as practicable, be convened to hear and determine the same, and, if, upon investigation, such officer be found so interested, by a majority of all the members elected to the council, he shall be immediately dismissed from office."

In *State v. Kelly*, 103 M. A. 711, the court held that a member of a municipal assembly of a city was a city officer, saying at page 715:

"No reason can be assigned for exempting a member of a municipal assembly of a city from the punishment prescribed for a violation of the statute. Certainly that he may be removed from office is no sufficient reason, or any reason at all, that he should be exempted from criminal punishment. The statute has not made the exemption and is not within the power of the courts to engraft one upon it in favor of this class of municipal officers."

In *State ex rel. v. White*, 282 S. W. 147, the court held that a contract entered into by a contractor of which the Mayor was a partner was illegal. The court says at page 148:

"His direct interest in the contract as a partner of relator was found by the chancellor, to whose finding we ought and do defer. The contract was *malum prohibitum* if not *malum in se*. Equity will not assist a party to reap the rewards of a contract prohibited by the statute."

Under the foregoing sections of the statute, any city officer who shall directly or indirectly be interested in any contract under the city or in any work done by the city, or any of its

institutions, makes himself criminally liable and at the same time is liable to dismissal from office. Under the Kelly case above, a member of a city council is a city officer within the provisions of said sections, and under the White case above the Mayor is also within the prohibition of the statutes.

The statutes prohibit the city officer from directly or indirectly having any interest in a contract with the city or any work done by the city. Any city officer who is directly or indirectly interested in a contract of the city or who does work for the city comes within the prohibition of the statutes. It is not necessary that the contract be written, or that it be for any particular purpose, and the employing of a person for the repairing of streets, whether such employment is to be paid for by the hour or day, brings into existence a contract between the employe and the city. A person working by the day or by the hour is directly or indirectly interested in a contract under the city and in work done by the city.

It is therefore our opinion:

First: That the city council cannot legally hire the Mayor or the members of the city council to work for the city at repairing streets for so much per hour or per day.

Second: That the employing by the hour or day does not make the employment legal, nor relieve the officer from the prohibition of the statutes.

Third: Under the statutes it is immaterial whether the officer contracting with the city voted to hire himself, as the prohibition of the statute is not that he shall <sup>not</sup> vote to hire himself but is that no officer shall be directly or indirectly interested in any contract or work with the city. Such officer may be employed by the other members of the council, he himself not voting, and still his employment would be illegal under the foregoing sections.

Fourth: We do not understand that the statute makes it a crime or a forfeiture of office for the council to employ others in violation of the above sections. The prohibition of the above sections is that the employed official will become criminally liable and be removed from office. He cannot, if he does the work for which he was employed, recover from the city for his services, for the contract is illegal. The officers, however, might make themselves individually liable by paying out to the employed officer funds under the illegal contract.

Fifth: If a member of the council has knowledge that

Mr. L. B. Boicourt,

-4-

September 27, 1933.

the above section is being violated, we believe it is his duty to inform the Prosecuting Attorney of the County so that he may take such action as in his judgment the matter requires.

Very truly yours,

A handwritten signature in cursive script, reading "Frank W. Hayes", is written over a horizontal line.

Assistant Attorney General.

APPROVED:

---

Attorney General.

FWH:S