

**SCHOOLS - A school director cannot enter into a contract with his school board for the sale of insurance or any other commodity - the same being against public policy.**

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May 29th, 1934.



Honorable Clarence Wahl, Secretary  
Board of Education  
Louisiana Public Schools  
Louisiana, Missouri

Dear Sir:

We have your request for an opinion upon the following facts:

" 1. Can a director on a school board sell the school district that he represents, any merchandise, or can a school director, who is a fire insurance agent, sell the school district insurance on the school building in his particular district?

2. If this cannot be done, what, if any, is the penalty for the director who has handled transactions of this kind?"

I.

THE SELLING OF ANYTHING TO A SCHOOL BOARD BY  
A PERSON WHO IS A MEMBER THEREOF AND WHO PROFITS FROM  
THE TRANSACTION, IS VOID AS AGAINST PUBLIC POLICY.

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It would appear that a school director who is an insurance agent would profit from any insurance which he sold the school district of which he was a member of the board of directors. This is especially true in view of the fact that a fixed premium or commission is paid to the agent for each contract of insurance sold, and under the provisions of Section 5868 and Section 5877, Revised Statutes of Missouri, 1929, insurance companies and their agents are prohibited from giving a rebate to the purchaser of insurance. They must, therefore, keep whatever commission is allowed them. It cannot be returned to the school district. The contract, therefore, is one of profit to the school director, acting in his capacity as insurance agent.

The general rule with reference to such transactions, stated in 46 C. J. 1037, Section 308, is as follows:

"A public office is a public trust and the holder thereof cannot use it directly or indirectly for a personal profit; and officers are not permitted to place themselves in a position in which personal interest may come into conflict with the duty which they owe to the public. Thus public officers are denied the right to make contracts in their official capacity with themselves, or to become interested in contracts thus made, or to take contracts which it is their official business to see faithfully performed; and a board cannot make a legal contract with one of its own members in respect of the trust reposed in it. \* \* "

While we find no express statutory authority prohibiting a school district director from acting as in-

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insurance agent and selling insurance to his district, nevertheless such a contract is against public policy. *Witmer v. Nichols*, 8 S. W. (2d) 63; 320 Mo. 665; 56 C. J. p. 485, Sec. 515; 13 C. J. p. 434, Sec. 371.

In advancing this opinion, we are not unmindful of the fact that the term "public policy" has no fixed meaning, but should be applied to each particular set of facts, and the reason for this point of view is ably stated in *Lipscomb v. Adams*, 193 Mo. 530, l.c. 542 in the following language:

"To limit the term "public policy" within the bounds of a fixed definition would be to render evasion of the law in that respect a matter of easy invention."

In *State v. Bowman*, 184 Mo. App. 549, l.c. 553, it was said:

"The term 'public policy' is one of broad significance and cannot be comprehensively defined in specific terms. One of the best definitions perhaps is that of Justice Story, which applied the term to that which 'conflicts with the morals of the time, and contravenes any established interest of society.' "

Briefly, it may be said that the sale of merchandise or any other thing of value by a member of a school district to the school board is against public policy. To hold otherwise would merely open the door of abuse to public officers who could meet in their official capacity and divide up their public business by allocating a portion of it to each member of the board. Under such conditions, the administration of public affairs would descend to the level of "casting lots" and a public office would soon cease to be a public trust.

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It is, therefore, the opinion of this office that any contract of insurance, or sale of merchandise by a member of a school board to the school board or district itself, is void as being in contravention of public policy.

II.

CONTRACTS WHICH ARE AGAINST PUBLIC  
POLICY SHOULD BE CANCELLED.

A school district which has obtained insurance by purchasing the same from some member of its board, should take steps to have that insurance cancelled, and to seek insurance from some agent who is not a member of the school board. Otherwise, the school board, in the event of a loss, may find itself possessed of a contract which the courts will not recognize and which may be held void as against public policy. In this connection, it must be remembered that a public officer, such as a school director, may be held liable for the wrongful payment and disbursement of public funds in his hands. Consolidated School District v. Shawhan et al, 273 S. W. 182.

Yours very truly,

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