

PUBLIC OFFICERS: Denied the right to become interested in contracts made in their official capacity. X

January 7, 1936 V9



Hon. W. Ed Jameson,
President, Board of Managers,
State Eleemosynary Institutions,
Jefferson City, Missouri.

Dear Sir:

We wish to acknowledge your letter of January 3, 1936, wherein you state as follows:

"Please refer to Section 2, page 411, of the Laws of Missouri 1933, which reads as follows: 'The Purchasing Agent shall negotiate all leases and purchase all lands.'

"Inasmuch as the authority for leasing land for the state institutions rests in the State Purchasing Agent, I would like to inquire if it would be permissible for State Hospital #1, Fulton, Mo., to lease a farm from William Woods College of Fulton, Mo. I ask this for the reason I happen to be chairman of the Eleemosynary Board and President of the Board of Trustees of William Woods, but it seems clear to me that the authority for making the lease is in the Purchasing Agent, who has been exercising such authority in leasing farms for farming and grazing at the several eleemosynary institutions."

The question presented is whether your dual capacity as President of the Board of Managers of the State Eleemosynary Institutions and President of the Board of Trustees of William Woods College would so conflict as to prevent William Woods College from leasing a farm to State Hospital No. 1 at Fulton, Missouri.

The law is well established that public officers are denied the right to become interested in contracts made in their official capacity. This is based on the principle that no person can faithfully serve two masters representing diverse or inconsistent interests at the same time. The court in the case of Stockton Plumbing & Supply Co. v. Wheeler, 229 Pac. 1021, l. c. 1024, in recognizing this principle, said:

"The principle upon which public officers are denied the right to make contracts in their official capacity with themselves or to be or become interested in contracts thus made is evolved from the self-evident truth, as trite and impregnable as the law of gravitation, that no person can, at one and the same time, faithfully serve two masters representing diverse or inconsistent interests with respect to the service to be performed. The principle has always been one of the essential attributes of every rational system of positive law, even reaching to private contractual transactions, whereby there are created between individuals trust or fiduciary relations. The voice of divinity, speaking from within the sublimest incarnation known to all history, proclaimed and emphasized the maxim nearly two thousand years ago on occasions of infinite sacredness.

"The personal interest of an officer in a contract made by him in his official capacity may be indirect only, still such interest would be sufficient to taint the contract with illegality. If his interest in the contract is such as would tend in any degree to influence him in making the contract, then the instrument is void because contrary to public policy, the policy of the law being that a public officer in the discharge of his duties as such should be absolutely free from any influence other than that which may directly grow out of the obligations that he owes to the public at large."

And to the same effect is the case of Wardell v. Railroad Co., 103 U. S. 651, l. c. 658, wherein the court said:

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"It is among the rudiments of the law that the same person cannot act for himself and at the same time, with respect to the same matter, as the agent of another whose interests are conflicting. Thus a person cannot be a purchaser of property and at the same time the agent of the vendor. The two positions impose different obligations, and their union would at once raise a conflict between interest and duty; and, 'constituted as humanity is, in the majority of cases duty would be overborne in the struggle.' Marsh v. Whitmore, 21 Wall. 178, 183."

An examination of the Missouri statutes discloses that the power to lease lands is by virtue of Laws of Missouri, 1933, Section 2, page 411, placed in the hands of the State Purchasing Agent, thus:

" * * * He shall negotiate all leases and purchase all lands, except for such departments as derive their power to acquire lands from the Constitution of the State."

The Constitution of the State of Missouri does not vest the power of leasing lands in the Board of Managers of the State Eleemosynary Institutions, and hence you, as president of such board, would have no authority to negotiate leases for the State Eleemosynary Institutions, the power being exclusively vested in the State Purchasing Agent. No conflicting interests being present, we are of the opinion that it would be permissible for William Woods College to lease a farm to State Hospital No. 1 at Fulton, Missouri.

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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