

HIGHWAYS: Salary may be paid from bond issue, absent bond provisions to the contrary, but township board cannot, directly or indirectly, employ president thereof as supervisor.

January 5, 1937. r 8



Honorable Charles F. Lamkin, Jr.,
Prosecuting Attorney,
Chariton County,
Keytesville, Missouri.

Dear Sir:

We have received the following inquiry from you,
to-wit:

"The following situation has arisen in this county, which you know, is under township organization. A certain township sponsored a WPA road project. At the same time they issued road bonds, the proceeds of which were to be used in part for paying of the WPA project and part for their share of a PWA road project. In connection with the WPA road project, the trustee of the board was hired by the WPA as foreman of the job and was to be paid a salary by them. He, in turn retained the president of the board to act as the township supervisor of the job, following the direction of the WPA office, with the understanding that this township supervisor's salary was to be paid from the township funds, being a part of the costs which the township, as sponsor, agreed to assume. This board president in that capacity, has worked for about three months, it being understood that he was to receive a salary of \$50.00 per month.

"I will appreciate an opinion from you as soon as possible regarding the legality of paying the salary of this township supervisor as outlined, out of part of the proceeds of the bond issue. The only section which I find directly bearing on this point, is Section 8154, R.S. Mo. 1929, which does not seem to me to be directly in point. Since this work has gone on for this length of time and the president of the board is anxious to have it settled, I will appreciate an opinion

from you as soon as conveniently possible."

Replying thereto, will say that in an opinion rendered by this office on January 28, 1936 to Honorable G. Logan Marr, Prosecuting Attorney of Morgan County, we stated that the money owned by a special eight-mile road district as the result of a bond issue by said district may be legally expended by the district for the purchase of road building machinery to be used in such special road district. Also, in an opinion dated August 6, 1936 to Honorable Rex H. Moore, Prosecuting Attorney of Grundy County, this department held that if the township has money on hand with which to carry on a WPA project of the township, the same may be lawfully expended in cooperation with the WPA authorities in improving said roads.

The payment of a reasonable salary out of the township funds for officers supervising the work of improvement of the roads is just as essential in order that the completed unit, i.e., the greatest amount of results in improvement to the public may be obtained as is the purchase of proper machinery, each being an essential to securing the ultimate objective, which is a good road built without squandering the money in abortive efforts.

Absent a limitation by the provisions of the bond issue itself by which the township raised certain funds, the township authorities would have the right to expend the money on hand that came to them as the proceeds of the bond issue in the same way that they are authorized to expend the ordinary revenues of the township.

Another question is presented by your inquiry and it refers to the authority to employ the president of the board to act as the township supervisor, and to receive his compensation from the township funds. Stating that part of your inquiry in a different way, we interpret the inquiry to be substantially the following, to-wit: A given township issued bonds to finance road projects - the WPA employed the trustee of the township board as foreman and paid him out of their funds, and he being so employed, employed the president of the township board to act as township supervisor and the latter is paid a salary out of township funds, this all being done at the direction of the WPA. Is such employment of the president of the township board to act as such township supervisor, authorized by law?

The member of the township board employing the president of the township board, who is paid out of township funds, can be but the agent or mouthpiece of the township board in employing some one who is to be paid by them, as appears to be the fact here. One cannot accomplish indirectly that which he is not permitted

to directly accomplish. The township board in fact is doing the employing. They must necessarily be doing the employing because they are paying for the employment. If they were not paying for the employment, then they would be making a donation of the public funds without consideration, no value being received in return therefor.

It appears to us that the necessary result of the set-up as you mention it, is that the township board, through the foreman, is employing the president of the township board to perform these services as supervisor and is agreeing to pay him a salary of \$50.00 a month therefor.

In an opinion of this office dated February 11, 1933 to the Honorable T.J. Harper, Prosecuting Attorney of Stone County, with reference to the right of road district commissioners to employ themselves, this conclusion was reached:

"As we understand your inquiry: - a board of commissioners of a special road district was appointed under the provision of Section 8026 R.S. Mo. 1929, who under the provision of Section 8031 R.S. Mo. 1929, were to serve without pay, except for their actual necessary expenses. Are they, or either of them, while holding the office of commissioner, entitled to work upon the road in some capacity and draw compensation therefor the same as a road overseer, and at the same time draw the expenses as provided for the board of commissioners, or would they be permitted to draw the road overseer's salary and forego the expenses as so provided?

"The adjudged cases upon the validity of appointment to office, made from the membership of the appointing board, hold uniformly that such appointments are illegal, as against public policy and for that reason are generally discountenanced. The reason for declaring such act against public policy is obviously from the fact that the power to fix and regulate the duties and compensation of the appointee, is lodged in the body of which the commissioner is a member. Unless such rule was promulgated and enforced, it might permit the general public to be taken advantage of by the board or commission created as their agent and for their protection. It is of the highest importance that municipal and other bodies of public servants should be free from every kind of personal influence.

"For the reasons as hereinabove stated, it is

the opinion of this department that it would be unlawful as against public policy for the member of your special road district board to be employed by the board, or engage themselves as an employee and draw compensation for working upon the highway of the road district in which he is serving as commissioner."

In the case of State v. Bowman, 184 Mo. App. 549, the Court had before it the question of whether or not a member of the City Council of Springfield, Missouri, could be appointed City Clerk. The Court said:

" * * * Other reasons might be given, but it is sufficient to say, and we so hold, that it is against the policy of the law to allow a member of the appointing body, in a case like this, where the appointive office is a lucrative one, to become the beneficiary of the appointment. * * *

"We are not without abundant authority for this ruling. The case of Meglemery v. Weissinger, (Ky.) 131 S.W. 40, 31 L.R.A. (N.S.) 575, is a leading case on this subject. The editorial note to that case says: 'The adjudged cases upon the validity of appointment to office made from the membership of the appointing body hold uniformly that such appointments are illegal and to be generally discountenanced.' In that case it was held that the fiscal court of a county, empowered to appoint a bridge commissioner, a salaried officer, could not appoint one of their own number. No specific statute or constitutional provision is cited as prohibiting such action. The court held the appointment void as against public policy, and said: 'Nor does the fact that his term expired within a few days after his appointment, or the fact that his duties would be prescribed and his compensation allowed by a body of which he was not a member, or the fact that he was not present with the court when his appointment was made, have the effect of changing this salutary rule. The fact that the

the power to fix and regulate the duties and compensation of the appointee is lodged in the body of which he is a member is one, but not the only, reason why it is against public policy to permit such a body charged with the performance of public duties to appoint one of its members to an office or place of trust and responsibility. It is of the highest importance that municipal and other bodies of public servants should be free from every kind of personal influence in making appointments that carry with them services to which the public are entitled and compensation that the public must pay. And this freedom cannot in its full and fair sense be secured when the appointee is a member of the body and has the close opportunity his association and relations afford to the place the other members under obligations that they may feel obliged to repay.' Other cases to the same effect will be found, giving the same and other reasons for so holding. (Smith v. City of Albany, 61 N.Y. 444; Gaw et al v. Ashley, et al., (Mass) 80 N.E. 790; The People v. Thomas, 33 Barbour's Repts. 287; Ohio ex rel. v. Taylor, 12 Ohio St. 130; Kinyon v. Duchene, 21 Mich. 497. * * *)"

CONCLUSION

It is our opinion that the proceeds of the bond issue issued for the purpose of raising money to improve the roads of the township, absent some limitation or restriction in the issuance of the bonds themselves (and no such restriction or limitation appears here) may be expended in employing a supervisor or overseer of the road work and paying him a reasonable salary therefor.

It is our further opinion that that person so employed as such supervisor by the township board, whether said board be acting directly or indirectly, whether doing the employing themselves or authorizing some other person so to do, regardless of whether it be a person designated by the WPA or by another authority as such employing agency, such person receiving his compensation from the township board is employed by the township board, and the president of the township board may not legally be employed by said board

to perform road services for the township board and receive compensation therefor from said board.

Respectfully submitted,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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