

TOWNSHIP ORGANIZATION:
TOWNSHIP BOARDS EMPLOYING
MEMBERS:

Township board may not employ one
of its own members to act as fore-
man or overseer of work under the
direction of the board.

May 9, 1939



Mr. G. Derk Green
Prosecuting Attorney
Linn County
Linneus, Missouri

Dear Sir:

This is in reply to yours wherein you submit the following question:

"I have had numerous requests from township officers of various townships, concerning the right of a member of the township board to be employed by, and draw compensation from the township.

"This question arises particularly in connection with the building of roads out of funds obtained from the bond issues. In several instances, members of the township board act as foreman or overseers of the work and draw pay from the township for such work."

In our search of the statutes as to the powers and duties of the township boards we find that Section 12999, R. S. Missouri, 1929, requires the township board to audit all claims against the township. Section 12301, R. S. Missouri, 1929, provides for the presentation of all claims against the board. Section 8150, R. S. Missouri, 1929, which sets out some of the duties of the township board, provides in part as follows:

"* * * * *
In the month of April each year the board shall appoint a road overseer for each district, who shall serve for one year and until his successor is appointed and qualified. Any road overseer may be removed from office by the township board for incompetency, neglect or other good cause, and a successor may be appointed by them in his stead."

By Section 8151, R. S. Missouri, 1929, the township board fixes the compensation of the overseer of the roads. Section 8153, R. S. Missouri, 1929, requires the overseer to make a report to the township board. Section 8154, R. S. Missouri, 1929, provides as follows:

"The overseer shall not employ any member of the township board nor enter into any contract for road work, material, tools, teams, nor purchase any machinery or material for the use of the road district from any member of the board or a member of his own family, either directly or indirectly, nor in any way use the funds of the district so as to become the beneficiary in the disbursement of the same. * * "

By these sections it will be seen that the township board has general supervision over the road work within the boundaries of the township. Section 8154, supra, quite clearly indicates that the lawmakers did not intend that a member of the township board should be the overseer of a road district, or that he should have any dealings with the overseer of the district. In other words, it is very evident that the lawmakers did not intend that a member of the township board should serve his township in any capacity other than a member of the board.

While there may be no particular statute applicable to your question, yet we think this question should be considered under the rule of public policy. In the case of Meglemery v. Weissinger et al., (Ky.) 131 S. W. 40, it was held that the fiscal county court, empowered to employ a bridge commissioner, a salaried officer, could not appoint one of their own members. The court in that case held that such an appointment would be against public policy, nor does the fact that he was not present with the court when the appointment was made have the effect of changing this salutary rule. At l.c. 41 the court said:

"* * * The fact that 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 place the other members under obligations that they may feel obliged to repay. * * * * *"

If a member of the township board were appointed by the board as a foreman or overseer, the township would be put in the situation of having one of its employees reporting to himself and approving his own reports, and

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we do not think that the lawmakers intended that any such conditions should exist.

CONCLUSION.

From the foregoing it is the opinion of this department that the township board of a township under township organization is not authorized to appoint one of its members to act as a foreman or overseer of any work being done under the authority and direction of the board, and he is not authorized to draw any pay from the township for such work.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
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