

COUNTY CLERKS: May not sell insurance covering county property as agent of an insurance company.

December 18, 1940

12-19

FILED  
20

Hon. L. Cunningham, Jr.  
Prosecuting Attorney  
Camden County  
Camdenton, Missouri

Dear Sir:

We are in receipt of your letter of December 4, 1940, in which you request an opinion from this Department as to the advisability of your local County Court procuring insurance on county property, through the County Clerk, as agent of an insurance company. While there are a number of statutes prohibiting public officials from becoming interested in contracts which enure to and benefit as individuals, we are unable to find any statute specifically mentioning a county clerk, and it therefore becomes necessary to consider the applicable common law rules.

The general rule concerning this question is stated in Vol. 46 C. J. P. 1037, Sec. 308, 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

Hon. L. Cunningham, Jr.

(2) December 18, 1940

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. Where two boards are created by statute, one having power to make appointments to another and to supervise its actions, it is illegal for the first board to appoint members of the first board to the second board.

"In the discharge of his duties the officer must be disinterested and impartial, and he cannot at the same time act in his official capacity and as the agent of one of the public whose interests are adverse to those of another."

In the case of Nodaway County v. Kidder, 344 Mo. 795, 129 S. W. (2d) 857, the court, recognizing the common law rule of public policy, held that an alleged contract between a county court and the presiding judge thereof purporting to employ the aforesaid judge at Five (\$5.00) Dollars per day and mileage, was not only void under the expressed terms of Section 2089, R. S. Mo. 1929, but also void as against public policy. The court said as follows: (129 S. W. (2d), l.c. 861)

"Appellant's alleged contract was also void as against public policy

Hon. L. Cunningham, Jr.

(3) December 18, 1940

regardless of the statute. A member of an official board cannot contract with the body of which he is a member. The election by a Board of Commissioners of one of its own members to the office of clerk and agreement to pay him a salary was held void as against public policy. *Town of Carolina Beach v. Mintz*, 212 N. C. 578, 194 S. E. 309; 46 C. J. 1037, Sec. 308."

The North Carolina Case, supra, quotes with approval the following language from *Davidson v. Guilford County*, 194 S. E. 1.c. 313:

"Independently of any statute or precedent, upon the general principles of law and morality, a member of an official board cannot contract with the body of which he is a member. To permit it would open the door wide to defraud and corruption. The other members of the board in allowing compensation thus to one of their members would be aware that each of them in turn might receive contracts and good compensation, and thus public office, instead of being a public trust, would become, in the language of the day, "a private snap."!"

In determining whether the situation suggested by you would be against public policy, as above set out, we should consider some of the actual situations which might arise in connection with the

issuance of a policy of insurance, or which would arise in case of a loss within the terms of the policy. The members of the county court are prohibited from entering into contract with the county by Section 2089 R. S. Missouri, 1929.

We know, as a matter of practice, that the county clerk sits with the county court when in session, making a record of the proceedings and it is quite common for him to express an opinion as to some matters before that court for consideration. He is, in a sense, the agent of the court and of the county, for many purposes. He is required by statute to keep the records of the accounts due by, and to, the county. In the event of a loss involving county property, or particularly furnishings or records pertaining to the county clerk's office, the county clerk must necessarily make the proof of loss, placing his valuation on the property destroyed.

In the event of a failure to pay the premium the company, which the county clerk represented as agent, would institute proceedings against the county by service on the county clerk, its own agent. It is possible that some of the conflicts of interest suggested above might not occur, in the event that a contract of insurance was made by the county court with its clerk as agent of an insurance company; but such a contract directly violates the rule laid down in the quotation for C. J., supra:

"\* \* \* 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. \* \* \*"

#### CONCLUSION.

It is, therefore, the conclusion of this Department that the issuance of an insurance policy involving county property by the county clerk as agent of an insurance

Hon. L. Cunningham, Jr.

(5) December 18, 1940

company is incompatible with his official position as county clerk and opposed to public policy as defined by the common law and judicial decisions of this State.

Respectfully submitted,

ROBERT L. HYDER  
Assistant Attorney General

APPROVED:

---

COVELL R. HEWITT  
(Acting) Attorney General

RLH:RW