

SPECIAL ROAD DISTRICTS:
COMMISSIONER SELLING ROAD
BUILDING MATERIAL OR LABOR
TO DISTRICT, NOT GUILTY OF
CRIME:
WHEN:

Commissioner of special city or town road district, non-township organization county, organized under Secs. 233.010 to 233.165 RSMo 1949, who in individual capacity, sells material and labor for building and repairing district roads to commission of which he is a member; absent fraud, transaction is not criminal offense, and commissioner will not

have violated Sec. 61.300 or Secs. 61.170 to 61.300 RSMo 1949, and cannot be found guilty of a misdemeanor; cannot be punished as provided by Sec. 61.310 RSMo 1949, and will not violate any other criminal statutes.

January 15, 1951

Honorable G. C. Beckham
Prosecuting Attorney
Crawford County
Steelville, Missouri



Dear Mr. Beckham:

This is to acknowledge receipt of your recent request for a legal opinion of this department reading as follows:

"My problem concerns a special road district, which has been organized and exists under and by virtue of Chapter 233 R.S. Mo. 1949. The special road district is in Crawford County, and Crawford County is a County of the fourth class.

"The question is as follows: 'If the commissioners of such a road district, as individuals, sell to the Road District Commission road building materials, and furnish the labor for building and repairing the roads, does that constitute any criminal offense, under the laws of the State of Missouri?' It would appear that Section 61.300 and Section 61.310 R.S. Mo. 1949 touch on this subject. Section 61.300, which appears to define the offense, does not include 'Commissioners of a Road District'. However, Section 61.310, which purports to fix the penalty, does include 'other road official'.

"I would like to have your opinion as to whether or not the sections, above referred to, would be violated by the Commissioners of the Special

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Road District in contracting with themselves for the District.

"If these sections would not be violated by such conduct, then can you point out any other section of the statute that would be violated by such conduct?"

Sections 61.160 to 61.310 RSMo 1949, are in regard to the appointment, qualifications, duties and the penalty for failure to perform the duties thus imposed, and also the penalty provided for violations of any of said sections by the officers named in Chapter 61 RSMo 1949.

Section 61.300 RSMo 1949, prohibits any of the officials specified therein from being the sales agent for compensation, or to be pecuniarily interested in any contract for the building of any culvert, bridge, road, road repairs, tools or machinery to any county or road district of which he is an officer. Said section reads as follows:

"No county highway engineer, county surveyor or deputy county highway engineer, or deputy county surveyor or road overseer shall be the sales agent, for compensation in the sale to, or purchase by, the state, county or road districts of road tools, culvert or bridge material or machinery, or be pecuniarily interested in any contract for the building of any bridge or culvert or for the improvement of any public road to which the county or any road district is a party."

Section 61.310 RSMo 1949, provides that the officers named therein who violate certain sections of Chapter 61, or who fail or refuse to perform any duties imposed thereby, shall be deemed guilty of a misdemeanor and upon conviction shall be punished in the manner specified. Said section reads as follows:

"Any county highway engineer, deputy county highway engineer, county surveyor, deputy county surveyor, road overseer or other road official or county officer who shall violate any of the provisions of sections 61.170 to 61.300, or who shall willfully neglect or fail to perform any of the duties by these sections imposed upon such officer or official, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be

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punished by a fine of not less than five dollars nor more than five hundred dollars."

Section 61.300, supra, names these officers: county highway engineer, deputy county highway engineer, county surveyor, deputy county surveyor, and road overseer.

Section 61.310 RSMo 1949, or the penalty section, names all of said officers and then attempts to broaden the scope of the various classes of officers referred to by stating "or other road official or county officer who shall violate any of the provisions of Secs. 61.170 to 61.300 * * *."

Since special road district commissioners are not specifically referred to as such in Sec. 61.300, Sec. 61.310, supra, or in any other portion of Chapter 61, you inquire in the first question of the opinion request if special road district commissioners would violate Secs. 61.300 and 61.310 by contracting with themselves in the manner stated. The correct answer to this inquiry cannot be given until it is first determined whether a special road district commissioner is included in "other road official or county officer" within the meaning of those terms as used in Sec. 61.310, supra. A determination of the legislative intent and purpose of the statute, and particularly the meaning of the terms referred to above, will depend upon the construction given said statute. It is quite clear that the Secs. 61.300 and 61.310 were intended to apply to each of the officers mentioned, but it is not clear what officers the lawmakers intended to designate as other road officials or county officers.

It is believed that the rules of statutory construction, as enunciated by the appellate courts of this state, are so well known that it would serve no useful purpose in the furtherance of our present discussion to cite cases setting out such rules. However, it is also believed to be sufficient for our purpose, to remind you of that primary rule of statutory construction to the effect that it is necessary to ascertain the lawmakers' intent from the words used in the statute, if possible, and to give the language of the Legislature its plain and rational meaning, and to promote its object and the manifest purpose of the statute. With this rule in mind, we again examine the sections of the statute before us. We repeat, that the officers named in Sec. 61.300 are prohibited from contracting with the state, county, board or other body of which they are members, and Sec. 61.310 states that any

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officer who does so, or fails to perform any of the duties imposed by Secs. 61.170 to 61.300, shall be guilty of a misdemeanor and subject to the penalty provided by Sec. 61.310. We note that commissioners of special road districts are not specifically mentioned in either section. Obviously, a special road district commissioner is not ordinarily classified as a county officer, but in some instances might be referred to as a road official. It is our belief, and we shall endeavor to show that such commissioner cannot properly be classified as "other road official" within the meanings of the terms as used in the section. Section 61.310 is a criminal statute, as it defines certain acts therein described to be misdemeanors and fixes the maximum and the minimum punishment which may be assessed against one who violates any of the provisions of Secs. 61.170 to 61.300.

It has long been the rule, upheld by a long line of appellate court decisions, that criminal statutes are to be strictly construed against the state, and liberally construed in favor of one accused of violating such statutes. The court reaffirmed this rule in the case of *State v. White*, 363 Mo. 83, and at l.c. 86 said:

"Strict construction of criminal statutes is a fundamental principle of our law. 'Criminal statutes are to be construed strictly; liberally in favor of the defendant, and strictly against the state, both as to the charge and the proof. No one is to be made subject to such statutes by implication.' *State v. Bartley*, 304 Mo. 58, 263 S.W. 95, 96; See also *State v. Lloyd*, 320 Mo. 236, 7 S.W. (2d) 344; *State v. Taylor*, 345 Mo. 325, 133 S.W. (2d) 336; *State v. Dougherty*, 358 Mo. 734, 216 S.W. (2d) 467; *Tiffany v. National Bank of Missouri*, 18 Wall. 409, 85 U.S. 409, 21 L. Ed. 862. A defendant should not be held to have committed a crime by any act which is not plainly made an offense by the statute. The question here is: Has the legal duty to support an illegitimate child been imposed upon its father? As pointed out in the *Canfield* case, there is no other statute which has changed the common law rule and specifically imposed upon the father of

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an illegitimate child the legal duty to support it. Certainly, Section 559.350 does not specifically do so. Therefore, we do not think that Section 559.350, a criminal statute, can be reasonably construed as creating this legal duty especially in view of the words 'any other person having the legal care or custody of such minor child.' As said in the Canfield case, 'The use of the words "or any other person," etc., in these sections, which statutes must be strictly construed, shows that the words apply to persons who are charged with the care and custody of the child whether it be a parent or other person so charged.'" * * *

The opinion in the case of State v. Bartley, 263 SW 95, is also in the same vein, except that it goes further in scope than the above-mentioned case and declares that no one is made subject to a criminal statute by implication. At l.c. 96 the Supreme Court of Missouri said:

"We must, therefore, look to the statute for the definition of incest. Are uncles and aunts of the half blood, as well as of the whole blood, within the prohibited degrees of relationship? Criminal statutes are to be construed strictly; liberally in favor of the defendant, and strictly against the state, both as to the charge and the proof. No one is to be made subject to such statutes by implication. Where one class of persons is designated as subject to its penalties, all others not mentioned are exonerated. State v. Jaeger, 63 Mo. 403, 409; State v. Gritzner, 134 Mo. 512, 527, 36 S.W. 39; State ex rel. v. State Board of Health, 288 Mo. 659, 671, 232 S.W. 1031; State v. McMahon, 234 Mo. 611, 137 S.W. 872. Such statutes are not to be 'extended or enlarged by judicial construction, so as to embrace offenses or persons not plainly [written] within their terms.' 'The reason of the rule is found in the tenderness of the law for individuals, and on the plain principle that the power of punishment is vested in the Legislature, and not in the

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judicial department.' State v. Reid, 125 Mo. 43, 48, 28 S.W. 172, 173, and cases cited. We cannot interpolate into the statute the words 'uncles and aunts of the half blood.' State v. Owens, 268 Mo. 481, 485, 187 S.W. 1189. We might, with equal propriety, interpolate the words 'first cousins' into the statute, because section 7299, R.S. 1919, forbids their intermarriage. The statute cannot be 'regarded as including anything not within its letter, as well as its spirit; which is not clearly and intelligibly described in the words of the statute, as well as manifestly intended by the Legislature.' * * *

In view of the foregoing, it is our thought that any of the officers specifically named in Secs. 61.300 and 61.310, supra, who violate the former section by contracting with the state, county, or road district of which he is a member, while acting as sales agent for compensation for the purchase of labor, materials or tools for the county or road district, and in which contract he is pecuniarily interested, or who violates any of the provisions, or fails to perform any of the duties imposed upon him by Secs. 61.170 to 61.310, would be deemed guilty of a misdemeanor and upon conviction subject to the punishment authorized by Sec. 61.310.

It is our further thought that the terms "other road officials" as used in Sec. 61.310, supra, were intended by the lawmakers to refer only to any other road official or county officer than those specifically named or impliedly referred to in Secs. 61.170 to 61.300, to which that portion of Chapter 61 applies. Such terms have no application to commissioners of special road districts who have not been specifically or impliedly referred to in the chapter. It further appears that a commissioner who contracts with himself in the manner referred to in the opinion request, or who fails to perform any of the statutory duties referred to, would not violate such sections and could not be legally convicted and punished in accordance with the provisions of Sec. 61.130, supra, therefore, our answer to the first inquiry of the opinion request is in the negative.

The second inquiry in effect is, if the conduct of the special road commissioner referred to in the first inquiry was

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not sufficient to constitute a violation of Secs. 61.300 and 61.310, then you desire us to point out any other section of the statutes which might be violated in that instance.

In a recent letter you gave us the additional information that the commissioner referred to in the opinion request was one of an eight-mile district, organized under provisions of Sec. 233.010 RSMo 1949. Secs. 233.010 to 233.165 RSMo 1949, are in regard to special city or town road districts in non-township organization counties. They contain territory not exceeding eight square miles, and are often referred to as special eight-mile districts.

Section 558.250 RSMo 1949, provides that, if any of the public officials therein named, in his official capacity shall wilfully and corruptly vote to allow any claim or demand for services not authorized by law, he shall be guilty of a criminal offense and punished in the manner provided therein. Said section reads as follows:

"Any member of the county court, common council or board of trustees, or officer or agent of any county, city, town, village, school township, school district, or other municipal corporation, who shall, in his official capacity, willfully or corruptly vote for, assent to or report in favor of, or allow or certify for allowance, any claim or demand, or any part thereof, against the county, city, town, village, school township, school district or other municipal corporation, of which he is such officer or agent, or against the county court, common council or board of trustees of which he is a member--such claim or demand, or part thereof, being for or on account of any contract or demand or service not authorized or made as provided or required by law--every such person so offending shall, on conviction, be punished by imprisonment in the penitentiary not more than five years, or by a fine of not less than one hundred nor more than five thousand dollars, or by imprisonment in the county jail not less than two nor more than twelve months, or by both such fine and imprisonment."

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Section 558.250 was formerly Section 4090 RSMo 1929, and in the case of State v. Holder, 335 Mo. 175, the defendant, a commissioner of a special road district, was charged by information with having violated said section.

The defendant was alleged to have presented his claim of \$17.00 for labor performed by him upon the roads of the district of which he was a commissioner, and corruptly voted to allow such claim and order same paid to him from the district's funds. It was further alleged that the demand and payment of same was not authorized or done as required by law.

The trial court sustained a demurrer to the information, which action was affirmed by the Supreme Court. In passing upon the sufficiency of the information, the court said at l.c. 180:

"Count five of the information does not disclose under what article of the statute the special road district was organized. We fail to find where the special road district law prohibits a member of the road commission from performing labor for hire upon the roads of his district other than the provisions of Section 8076, Article 10, Chapter 42. No such provision is found in Article 9 of Chapter 42, under which article special road districts may be organized. The only fact alleged in the information which tends to taint the claim with illegality is the fact that the claim was for services performed by the respondent. Since the road district law, under Article 9, Chapter 42, does not prohibit a member of the board of commissioners from receiving pay for labor performed outside of his official duties as a commissioner the section in question certainly cannot be construed to make the allowance of such a claim a felony. The allegation of the information that the services 'had not been authorized or done as provided or required by law' is a mere conclusion and is not of itself sufficient to charge respondent with a crime under the section in question. The information should set forth the facts rendering the claim illegal and should state in what manner the respondent corruptly voted for the allowance of an illegal claim.

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Taking all of the facts alleged in the information as true, exclusive of the conclusion pleaded, it does not charge a violation of Section 4090. The trial court was, therefore, correct in sustaining the demurrer to the latter three counts of the information."

No provisions of Secs. 233.010 to 233.165 RSMo 1949, dealing with special eight-mile road districts, provide that a commissioner who furnishes labor or material for the repair, building or maintenance of roads of his district, of which he is a member and in which contract he is pecuniarily interested and thereby contracts with himself, shall be deemed guilty of a criminal offense. Upon first thought it might appear that a commissioner, who contracts with himself in such manner, would be guilty of a criminal offense and subject to the penalty provided by Sec. 558.250, supra. However, in view of the conclusion reached in State v. Holder, supra, and as long as the commissioner, who contracts with the board of which he is a member, actually performs his part of the contract by furnishing the labor for building or repairing the roads, or furnishes tools or machinery, as agreed, and then votes to allow such claim and to pay himself for same, and it appears that funds of the district legally appropriated for that purpose are expended in payment of the claim, absent any fraud in the transaction, it is our thought that said commissioner will not have violated Sec. 558.250, supra, and he is not guilty of a criminal offense, even though he may have contracted with himself.

We are also unable to find any other sections of the statutes which said special road district commissioner would violate by his conduct in the manner referred to, therefore, our answer to your second inquiry is in the negative.

CONCLUSION

It is, therefore, the opinion of this department that a commissioner of a special city or town road district of a non-township organization county, organized under provisions of Secs. 233.010 to 233.165 RSMo 1949, who, in his individual capacity, sells material and labor for building and repairing the roads of the district to the commission of which he is a member, absent fraud, such transaction will not constitute a

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criminal offense, and said commissioner will not have violated Sec. 61.300 RSMo 1949, prohibiting certain officials to act as sales agent for compensation, or be pecuniarily interested in any contract of sale to the state, county or road district, of any tools, material or machinery for building or repairing any bridge, culvert or public road. Said commissioner not being guilty of violating any provisions of Secs. 61.170 to 61.300, he cannot be found guilty of a misdemeanor and punished in the manner prescribed by Sec. 61.310 RSMo 1949, nor in that event will he violate any other criminal statutes of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Very truly yours,

John M. Dalton
Attorney General

PNC:ld:hw