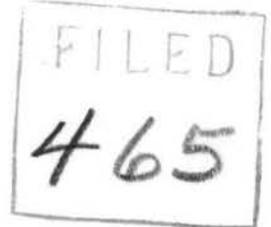


CONFLICT OF INTEREST:  
SOIL AND WATER CONSERVATION  
DISTRICTS AND SUB-DISTRICTS:  
SOIL CONSERVATION DISTRICT  
COMMISSION:  
SOIL CONSERVATION SUBDISTRICT:

The appointment of a member of the state soil and water districts commission, or a member of the board of supervisors of a soil and water conservation subdistrict, or a member of the trustees to the governing body of a subdistrict as the contracting officer for a soil and water conservation subdistrict is against public policy and void.

OPINION NO. 465

December 29, 1966



Mr. Lee E. Norbury  
Assistant Executive Secretary  
Missouri State Soil and Water Districts  
Commission  
T-7 Building  
University of Missouri  
Columbia, Missouri

Dear Mr. Norbury:

This is in answer to your request for an opinion concerning a possible conflict of interest in the hiring of a contracting officer by the board of supervisors of a soil and water conservation subdistrict.

You have stated that the contracting officer is appointed by and is an agent of the subdistrict; is primarily responsible for the development, execution and administration of contracts of the subdistrict; and that his duties and compensation are determined by the subdistrict. However, the contracting officer is not a party to any contract and does not himself award contracts. The soil and water conservation subdistrict through the board of supervisors awards any contracts made.

You have asked whether the appointment of a member of the state commission, a member of the board of supervisors or a trustee of the subdistrict as contracting officer creates a conflict of interest.

If there is any conflict of interest in these appointments, it is because they are against public policy as declared by the common law.

Mr. Lee E. Norbury

The Supreme Court of Missouri in *Nodaway County v. Kidder*, 129 S.W.2d 857, 861, has declared that a contract between an individual and a public body of which he is a member is void as against public policy:

"[11, 12] Appellant's alleged contract was also void as against public policy 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. \* \* \*"

The Supreme Court in a more comprehensive discussion of the common law on this subject in *Githens v. Butler County*, 165 S.W.2d 650, 652, said:

"[1-3] ' \* \* \* The directors of a private corporation may, if there is no fraud in fact or unfairness in the transaction, contract on behalf of the corporation with one of their number. A stricter rule is laid down in regard to public corporations, and it is held that a member of an official board or legislative body is precluded from entering into a contract with that body.' 6 Williston, *Contracts*, §1735, p. 4895. The basis of this common law rule is that it is against public policy (*State ex rel. Smith v. Bowman*, 184 Mo. App. 549, 170 S.W. 700) for a public official to contract with himself. 'At common law and generally under statutory enactment, it is now established beyond question that a contract made by an officer of a municipality with himself, or in which he is interested, is contrary to public policy and tainted with illegality; and this rule applies whether such officer acts alone on behalf of the municipality, or as a member of a board of [or] council. \* \* \* The fact that the interest of the offending officer in the *invalid* contract is indirect and is very small is immaterial. \* \* \* It is impossible to lay down any general rule defining the nature of the interest of a municipal officer which comes without the operation of these principles. Any direct or indirect interest in the subject matter is sufficient to taint the contract with illegality, if the interest be such as to affect the judgment and conduct of the officer either in the making of the contract

Mr. Lee E. Norbury

or in its performance. In general the disqualifying interest must be of a pecuniary or proprietary nature.' 2 Dillon, Municipal Corporations, §773; 46 C.J. § 308; 22 R.C.L., §121; State ex rel. Streif v. White, Mo. App., 282 S.W. 147; Witmer v. Nichols, 320 Mo. 665, 8 S.W.2d 63, Nodaway County v. Kidder, 344 Mo. 795, 129 S.W.2d 857."

In State ex rel. Smith v. Bowman, 184 Mo. App. 549, 170 S.W. 700, the Springfield Court of Appeals said, l.c. S.W. 703:

"A great statesman has voiced the basic principles governing official conduct by declaring that 'a public office is a public trust.' Like a trustee, such officer must not use the funds or powers intrusted to his care for his own private gain or advancement. To allow him to do otherwise is against public policy. It is of the utmost importance that every one accepting a public office should devote his time and ability to the discharge of the duties pertaining thereto without expectation of personal reward or profit other than the salary fixed at the time of accepting the same; and that he should do so, except for a most weighty reason, to the end of his term. Certainly the trend and policy of our law in this respect is to remove from public officials, so far as possible, all temptation to use that official power, directly or indirectly, to increase the emoluments of such office; and so they are forbidden to become interested in contracts let by them, or to have their salaries increased or decreased, or to accept offices created by themselves."

We also cite you to Polk Township, Sullivan County v. Spencer, 259 S.W.2d 804, 805, and 67 C.J.S., Officers, Section 116, Page 406 and 407.

A soil and water conservation subdistrict is governed by a board of soil district supervisors. Section 278.240, RSMo Cum. Supp. 1965. This section reads as follows:

"1. The board of soil and water conservation district supervisors of a soil and water conservation district in which the subdistrict is formed shall be the governing

Mr. Lee E. Norbury

body of the subdistrict. When a sub-district lies in more than one soil and water conservation district, the combined boards of soil and water conservation district supervisors shall be the governing body.

"2. Three persons living within the sub-district shall be elected to serve as trustees to the governing body of the subdistrict. The trustees shall be elected by a majority vote of all land representatives participating in the referendum for the establishment of the subdistrict, but the date of the election shall not fall upon the date of any regular political election held in the county. At the first regular election of trustees after October 13, 1963, one trustee shall be elected for a period of two years, one trustee shall be elected for a period of four years, and one trustee shall be elected for a period of six years. Each of their successors shall be elected for a period of six years. The trustees, acting in an advisory capacity, shall assist in the administration of the subdistrict. The trustees shall be reimbursed for any expenses incurred in the attendance of meetings of the governing body of the subdistrict."

The board of supervisors directly governs the subdistrict and as one of their functions directly employs and compensates the contracting officer. It is our opinion that the appointment of one of the members of the board of supervisors as contracting officer would clearly violate public policy and be void.

The trustees of the subdistrict, although not the governing body of the subdistrict, do advise the board of supervisors and assist the administration of the subdistrict. It is our opinion that the trustees have such an interest, though indirect, in the appointment of a contracting officer that the appointment of a trustee would also be against public policy and void.

Your last situation concerns the members of the state commission. Section 278.080, RSMo 1959, reads in part as follows:

"1. There is hereby established 'The State and Soil Districts Commission' to administer for this state the soil conservation districts herein provided for by this law. The soil commission shall formulate policies and general programs for the

Mr. Lee E. Norbury

saving of Missouri soil by the soil conservation districts; it shall receive and allocate or otherwise expend for the use or benefit of the soil conservation districts any funds appropriated by the legislature of this state for the use or benefit of such districts; it shall receive and properly convey to the soil conservation districts any other form of aid extended to such districts by any other agency of this state, except that any money or other form of aid raised or provided within a soil district for the use or benefit of that soil district shall be received and administered by the governing body of that soil district; it shall exercise other authority conferred upon it and perform other duties assigned to it by this law; and it shall be the administrative agency to represent this state in these and all other matters arising from the provisions of this law.

\* \* \* \* \*

"5. In addition to the authority and duty herein assigned to the state soil districts commission, it shall have the following authority and duty:

\* \* \* \* \*

(2) To formulate and fix the rules and procedures for fair and impartial referendums on the establishing or disestablishment of soil district; for fair and impartial selection of soil districts supervisors;

\* \* \* \* \*

(4) To advise any soil conservation district in developing its program for saving the soil, in order that such district may become eligible for any form of aid from state or federal sources;

(5) To obtain or accept the cooperation and financial, technical or material assistance of the United States or any of its agencies, and of this state or any of its agencies, for the work of such soil districts;

Mr. Lee E. Norbury

(6) To enter into agreements with the United States or any of its agencies on policies and general programs for the saving of Missouri soil by the extension of federal aid to any soil conservation district; to advise any soil conservation district on the amount or kind of federal aid needed for the effective saving of soil in that district; to determine within the limits of available funds or other resources the amount or kind of state aid to be used for saving the soil in any soil conservation district; and to determine the withholding of state aid of any amount or kind from any soil conservation district which has failed to follow the policies of the state soil districts commission in any matter under the provisions of this law;

(7) To give such other proper assistance as the soil commission may judge to be useful to any soil district in the saving of soil in that district."

Section 278.120, RSMo 1959, establishes the authority and duties of a soil and water district through the board of supervisors and enumerates, in addition to others, the following duty:

"2. (5) To make and execute contracts and other legal instruments, necessary for the saving of the soil in that district, subject to approval by the state soil districts commission;"

Finally, Section 278.210, RSMo 1959, reads as follows:

"The state soil districts commission shall develop the procedure including rules, regulations, forms and other documents to be used in the establishment of a subdistrict, and a board of supervisors shall submit to the state soil districts commission for its approval copies of any rules, regulations, forms and other documents as this board shall contemplate using in pursuance of their duties, and such other information concerning their activities as the soil commission may require in the performance of its own duties under sections 278.160 to 278.270."

Mr. Lee E. Norbury

Because of the general supervisory authority and control over the operation of the districts and subdistricts, it is our opinion that the state commission also has such an interest, though indirect, in the appointment of a contracting officer that the appointment of a commission member would be against public policy and void.

CONCLUSION

It is the opinion of this office that the appointment of a member of the state soil and water districts commission, or a member of the board of supervisors of a soil and water conservation subdistrict, or a member of the trustees to the governing body of a subdistrict as the contracting officer for a soil and water conservation subdistrict is against public policy and void.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Walter W. Nowotny, Jr.

Yours very truly,

A handwritten signature in black ink, appearing to read "Norman H. Anderson". The signature is written in a cursive style with a large, looping initial "N".

NORMAN H. ANDERSON  
Attorney General