SCHOOLS: Members of school board employing themselves to render service or labor for a school district and receive compensation for same, violate the public policy of the State

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September 24, 1937

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Honorable Edward T. Eversole
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri

Dear Sir:

This department is in receipt of your letter of September 16, in which you submit the following facts and desire an opinion thereon:

> "One of the directors of a rural school, that is, a common school district, having a board consisting of three members, at the request of the board did some work on the school building in the district of which he was a member. There is no complaint about the price charged for the labor done and no complaint was made about the director doing the work until after it was completed, when certain residents objected to the director being paid for his work and have insinuated that if he is paid out of the district funds, action will be commenced against him to remove him from office.
>
> "I have been unable to find any prohibition in the school laws against the director entering into a contract with the school board or doing any work for the district other than the prohibition contained in Section 9360, R. S. Mo. 1929. It occurs that provisions of said section to not apply in this case as the district

> in question is not a city, town or consolidated one.
>
> "This question has arisen frequently and there seems to be a variety of opinions on the subject and for that reason, I would appreciate very much receiving your opinion as to whether or not a director of a common or rural school district has the right to do work for the school district of which he is a director and receive compensation for his labor.
>
> "Thanking you for an early reply, I am."

Irrespective of the provisions of Section 9360 mentioned in your letter, we think that a member of a school board should not be employed to perform labor or services for the reason that it violates the public policy of the State.

A leading authority which bears on this question is that of State ex rel. v. Bowman, 184 Mo. App. l. c. 559:

> "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 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 reply.' 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.)"

We are of the opinion that members of a school board of any district who employ themselves, or a member thereof, to render labor and services for the school district and receive compensation for the same, violate the public policy of the State.

Respectfully submitted,

OLLIVER W. NOLEN
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APPROVED:

J. E. TAYLOR
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