

CONTRACTS--COUNTY COURT: County Court cannot legally contract with a corporation in which members of a county court are corporation officers.

10-10
October 10, 1935.



Honorable Ted M. Henson
Prosecuting Attorney
Butler County
Poplar Bluff, Missouri

Dear Sir:

We acknowledge your request for an opinion dated September 19, 1935, which reads:

"The presiding Judge of the County Court of Butler County is the President of the Ruth Lumber Company, a corporation, which is engaged in selling lumber and ties in Butler County, Missouri. The County Court has been buying lumber from the above corporation.

I would like to have your opinion as to the legality of a Judge of the County Court purchasing materials from a corporation in which he is interested."

Section 4092 R. S. Missouri 1929, makes certain acts of County Judges a misdemeanor and provides:

"No judge or justice of any county court in this state shall, either directly or indirectly, become a party to any contract to which such county is a party, or act as any road or

bridge commissioner, either general or special, or as keeper of any poor person, or as director in any railroad company in which such county or any township, part of township, city or incorporated town therein is a stockholder, or act as agent for the subscription of any stock voted to any railroad by any county or subdivision thereof; any such judge or justice who shall violate any of the provisions of this section shall be adjudged guilty of a misdemeanor."

13 Corpus Juris, page 434, Section 371, paragraph 3, provides:

"The rule prohibiting a public officer from being personally interested in a contract under his supervision or control has been extended so as to prevent him from letting such a contract to a corporation of which he was an officer or a stockholder."

In the case of State v. Boyd, 196 Mo. 52 l. c. 66; 94 S. W. 532, our Supreme Court said:

"This provision of the Constitution clearly contemplated that the General Assembly had provided for the imposition of penalties upon officers for violation or neglect of duty, and with equal clearness indicated the conception of the framers of that provision as to the essential elements of such wrongful acts and neglect of the officials which subjected them to the imposition of such penalties, that is, 'wilful, corrupt or fraudulent violation or neglect of official duty.'"

46 Corpus Juris, page 1037, Section 308, provides:

"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 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."

15 Corpus Juris, page 553, Section 249, provides:

"A contract with a county is void and unenforceable not only when it is without the authority of the county or the officers making it, but also when it is induced by, or tainted with, fraud, or when it, or some of its stipulations, are opposed to public policy, or come within positive constitutional or statutory prohibitions."

In the case of *People v. Schenectady County*, 151 N. Y. S. 830, 1. c. 831, that Court held that a contract made by a Board of Supervisors for the necessary purchase of mazda lamps at a fair market value, with a corporation of which a member of the board was a stockholder, officer and director, being illegal under a penal law making it a misdemeanor for a public officer to participate in his official capacity in making a contract in which he is individually interested was unenforceable. In that case the Court said:

"The contract is unenforceable, not because a public officer has failed in his duty, but because he has some interest in conflict with his duty. The interest referred to is not necessarily a money interest, nor is it an interest sufficiently large to induce a man generally honest to disregard his duty. It may be indirect. It is such an interest as is covered by the moral rule; No man can serve two masters whose interests conflict."

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CONCLUSION.

We are of the opinion that the County Court of Butler County has no legal power under the Statutes of Missouri to contract for the purchase of supplies from the Ruth Lumber Company, of which the presiding judge is president, and no doubt is a stockholder. Any such contract is against public policy and even if the Statutes were silent, such contract would be void, and county warrants issued pursuant thereto are also void. The reasoning of the New York case, supra, is equally applicable in Butler County.

We do not say that it necessarily follows that a misdemeanor has been committed by the presiding Judge of the County Court. Before a crime has been committed we believe that under our Constitution the criminal charge must be predicated upon a willful, corrupt or fraudulent violation of such duty, and such is the holding in the Boyd case, supra.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General.

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