MISSOURI SCHOOL FOR THE DEAF:)
)
BOND:)

Against public policy for Board to pay for bond supplied by Steward for himself and written by himself as agent for the Insurance Company, unless complete disclosure of all the facts has been made and approved by the Company.

February 14, 1938.

FILED
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Honorable Truman L. Ingle
Superintendent
Missouri School for the Deaf
Fulton, Missouri

Dear Sir:

This Department acknowledges receipt of your letter of February 7th, in which you make the following inquiry:

> "On March first next, Mr. William R. Taylor will take over the position of Steward of the Missouri School for the Deaf.
>
> "Our Board of Managers requires a Five Thousand Dollar ($5,000.00) bond, which has been supplied by Mr. Taylor. The premium on this bond is to be paid by the school. This morning, I received the bill for the premium, and I noticed that Mr. Taylor is named both as the person who is bonded and as the subagency which is writing the insurance.
>
> "May I have an opinion from you as to whether or not it is in order for Mr. Taylor to act as the insurance company's agent and for us to make our check payable to him for the premium on his bond? Mr. Taylor has not yet gone to work, and, therefore, is not in our employ at the present time. His appointment takes effect March 1, 1938.

> Our Board meets on Monday, February 21, and I am sure they will appreciate an opinion at that time, so they may be guided in their actions as to whether or not bill for this bond should be approved."

In 1937 the Legislature made an appropriation which included "insurance and premium on bonds." Laws of 1937, page 71, The authority for paying premium on the bond of Mr. Taylor by the Missouri School for the Deaf, if it so elects, instead of Mr. Taylor paying the premium himself, is found in the Laws of Missouri, 1937, page 190, which is as follows:

> "Whenever any officer of this state or of any department, board, bureau or commission of this state, or any deputy, appointee, agent or employee of any such officer; or any officer of any county of this state, or any deputy, appointee, agent or employee of any such officer, or any officer of any incorporated city, town, or village in this state, or any deputy, appointee, agent or employee of any such officer; or any officer of any department, bureau or commission of any county, city, town or village, or any deputy, appointee, agent or employee of any such officer; or any officer of any district, or other subdivision of any county, or any incorporated city, town or village, of this state, or any deputy, appointee, agent or employee of any such officer, shall be required by law of this State, or by charter, ordinance or resolution, or by any order of any court in this State, to enter into any official bond, or other bond, he may elect, with the consent and approval of the governing body of such state, department, board, bureau, commission, official, county, city, town, village, or other

> political subdivision, to enter into a surety bond, or bonds, with a surety company or surety companies, authorized to do business in the State of Missouri and the cost of every such surety bond shall be paid by the public body protected thereby."

It becomes the duty of the Steward to furnish bond under Section 9695, R. S. Mo. 1929, wherein it is provided:

> "Before entering upon the duties of his office, he shall give bond for the faithful performance of his trust, in such form and with such securities as the board may approve, such bond to be not less than three thousand dollars."

It therefore appearing that all the procedure is legal, the question arises as to whether or not Mr. Taylor can act as the agent for the bonding company in securing his own bond and whether the same is valid. The usual procedure, in order to avoid the least taint of serving two masters or the agent in anywise subjecting himself to embarrassment when such a situation arises, is for the agent to obtain a bond for himself from some other agent. However, Mr. Taylor has not seen fit to follow such procedure and the matter must be determined as a cold proposition of law.

The question of a person acting in a dual capacity, or having an individual interest, is discussed in 3 C. J. S. Par. 253, page 252, as follows:

> "As a principal is not bound by the contract of his agent beyond the scope of his actual or apparent authority, it is a fortiori conclusion that contracts made by his agent in his name without authority and for the agent's benefit and to his individual interest have no greater capacity for creating

> liability for the principal. In addition to this obvious application of the general doctrine of agency, the principal is not bound by contracts made by his agent within the scope of the agent's authority but in the furtherance of the agent's individual interests to the knowledge of the other party to the contract, particularly where the contract was made without the principal's knowledge and consent. The rule applies equally whether the ntice that the agent is acting for his own benefit rather than that of his principal appears from the face of the contract itself, or from the nature of the transaction, or from the constructive notice of the record books."

The facts, although somewhat dissimilar but unquestionably involving the principals of law and placing parties in the same relation, are decided in the case of Central West Casualty Co. v. Stewart, 58 S. W. (2d) 366, as follows:

> "The ground on which the contract is assailed is that it is contrary to public policy. In a general way the public policy of a state is its attitude toward certain acts, transactions, and practices, as declared in its Constitution and statutes, and in its common law found in the opinions of its court of last resort. If the Constitution or statutes speak upon a subject, the policy of the state is necessarily fixed to that extent. Whatever they authorize or approve is sanctioned by public policy, and whatever they prohibit is against public policy. Gathright v. Byllesby & Co., 154 Ky. 106, 157 S. W. 45. However, there are innumerable subjects not

specifically treated in either the Constitution or statutes, and as to these the public policy of the state is declared by the court of last resort. In a more narrow sense public policy is usually understood to be the principles under which freedom of contract and private dealing are restricted by law for the good of the community. Ballard County Bank's Assignee v. U. S. Fidelity & Guaranty Co., 150 Ky. 236, 150 S. W. 1, Ann. Cas. 1914C, 1208. Thus certain classes of contracts, though not prohibited by the Constitution or statutes, are held by the courts to be against public policy on the ground that they promote unfairness and injustice, and are therefore mischievous in their tendency, and detrimental to the public good. Pursuant to this principle it may be laid down as a general rule that, in the absence of express authority or subsequent ratification with full knowledge of the facts, an agent cannot act for his principal in any matter in which the private interests of such agent are involved. The reason for the rule is that the agent owes his principal the utmost good faith, and on account of the weakness of human nature cannot be expected to be faithful to his principal when impelled by selfishness to look out for himself. Following this rule we held in Bank of Louis ville v. Gray, 84 Ky. 565, 2 S. W. 168, 8 Ky. Law Rep. 664, that a sale by an agent to himself of the property of the principal was void at the option of the principal, and that one who purchases from the agent with notice of the facts holds as trustee for the principal. In Johns v. Parsons, 185

Ky. 513, 215 S. W. 194, we approved of the rule announced in 21 R. C. L. p. 910, that every agency is subject to the legal limitation that it cannot be used for the benefit of the agent himself, or of any person other than the principal, in the absence of an agreement that it may be so used, and, as this is a matter of law, and not of fact, all persons must take notice of it. In Johnson v. Mitchell, 192 Ky. 444, 233 S. W. 884, we held that an agent employed to sell property could not become the purchaser thereof without fully and completely acquainting his principal with all the facts. In the more recent case of Heatherholt v. National Liberty Insurance Co., 204 Ky. 824, 265 S. W. 311, we held that public policy forbids one to enter into a contract with himself as agent for another without the acquiescence or ratification of the principal, and that an insurance policy written by the agent on his own property could not be enforced. A case more nearly in point is Salene v. Queen City Fire Ins. Co., 59 Or. 297, 116 P. 1114, 35 L. R. A. (N. S.) 438, Ann. Cas. 1916D, 1276. There a fire insurance agent had a general authority from his company to write and issue fire insurance policies. There was no express restriction on his issuing a policy against his own house. He mortgaged one of his houses to plaintiff for a loan to him personally, and issued on behalf of his company a fire policy with loss clause payable to plaintiff. He reported the transaction to the company and remitted the customary premium. Before the company could repudiate the act of the agent, the fire occurred.

In denying a recovery on the policy, the court pointed out that plaintiff knew that the agent was providing a security for the possible payment of his debt out of the funds of the company, and therefore dealt with him at her peril, and that, before she could recover, it was necessary for her to bring home to the company knowledge of the whole transaction before any liability arose on the policy, and to further show that the company with such knowledge approved or ratified the transaction.

"Here Stewart accepted the bond knowing that it was executed by Culbertson as principal, and on behalf of the casualty company as surety, for the purpose of securing the rent, which Culbertson agreed to pay. Authority to execute 'any bond or undertaking' was not sufficiently broad or specific to bind the company on Culbertson's own debt. The facts pleaded in the answer negative the theory of knowledge, acquiescence, or ratification. As Stewart accepted the bond knowing that the interest of Culbertson and those of the casualty company were necessarily antagonistic, he was charged with notice of Culbertson's want of authority to bind his principal by his acts. 21 R. C. L. p. 910; Langlois v. Gragnon, 123 La. 453, 49 So. 18, 22 L. R. A. (N. S.) 414. While the result is a harsh one, a contrary holding is not possible in view of the settled law of this state that such a contract is against public policy. It follows that the demurrer to the answer should have been overruled."

We quote from the case extensively realizing that it is a decision from a sister state, but unquestionably the same law should be applicable to the facts in Missouri.

Conclusion.

We are of the opinion that unless Mr. Taylor has made a complete disclosure of the situation and the same has been sanctioned and approved by the Company and the Company so accepts the same and acknowledges that a full disclosure of the facts and situation has been made to it, the bond would not be legal. We think it is against public policy and that it involves a risk which the officials should not in good conscience assume, and therefore should not pay the premium for the bond.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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