

OPINION NO. 66-064**Syllabus:**

1. A township trustee can solicit and do business with any township, municipal corporation, board of education or public institution with which he is not connected to any extent by contract when the total consideration for one contract does not exceed \$50.00, but a mere billing of \$50.00 or less will not, of itself, be necessarily considered cogent evidence of a contract of \$50.00 or less; and also a township trustee can enter into similar contracts in excess of \$50.00 if such contracts are let on bids required and provided for by law.

2. A township trustee is not in violation of Section 2919.10, Revised Code, in reference to the employment of his minor children by the township unless it clearly appears that he is interested in the profits of the contract of services performed by said children, and any presumptions that he has any such interest is rebuttable.

To: Neil M. Laughlin, Licking County Pros. Atty., Newark, Ohio
By: William B. Saxbe, Attorney General, March 24, 1966

Your recent request for my opinion reads as follows:

"A recently elected trustee within my county has been prior to his election engaged in the sale of and service of fire fighting equipment such as fire extinguishers, hoses, and all other such like material. Reference being made to Sections 2919.08, 2919.09 and 2919.10 of the Revised Code of Ohio. May this trustee, if he does not do any business with his particular township, solicit and do business with any other township, municipal corporation, board of education or public institution if the amount of said business exceeds the sum of \$50.00? In other words this trustee makes his primary living from sales and service of the aforesaid type of equipment with the largest purchaser thereof being schools and other public institutions. In many instances he will furnish a particular service which he will bill for which would be less than \$50.00; however, throughout the year the total bill for services rendered might exceed \$1,000.00 to one public institution. The aforesaid statutes seem to imply that if he is to continue in business all contracts must be for less than \$50.00 or by public bid and those bids must be by advertisement.

"A further question concerning the aforesaid statutes refers to township trustees utilizing the services of their children under 21 years of age as employees of the township. The question is raised as to whether the trustee would have an interest in having his minor son work as an employee especially if the minor son lived in the home of the trustee."

There are two questions as I see it, and I will treat them in order.

Your first inquiry essentially is whether a trustee in your county can do business selling fire fighting equipment to those entities mentioned in Section 2919.09, Revised Code, with which he is not connected and to what extent the \$50.00 limitation contained in the section is applicable. This section is as follows, and must be strictly construed as it is penal in nature:

"No person, holding an office of trust or profit, by election or appointment, or as agent, servant, or employee of such officer or of a board of such officers, shall be interested in a contract for the purchase of property, supplies, or fire insurance for the use of the county, township, municipal corporation, board of education, or a public institution with which

he is not connected, if the amount of such contract exceeds the sum of fifty dollars, unless such contract is let on bids advertised as provided by law.

"Whoever violates this section shall be imprisoned not less than one nor more than ten years."

There have been many prior Opinions of the Attorney General which discussed this section. Citing these opinions is meaningless herein as I do not find any with which you would apparently disagree or, what is more in point, any which would control the ultimate question prompted by the situation presented.

From the revealed facts, this man does thousands of dollars worth of business in a year with several public institutions. If he can honestly demonstrate that this total is made up of real legitimate contracts, all of \$50.00 or less, he would not run counter to the statute. However, he most assuredly cannot, as a device to get around the clear intent of the statute, break up his billings into numerous vouchers of \$50.00 or less.

Few words in law have been construed, dissected and interpreted with more lengthy diligence and this opinion cannot attempt to reproduce that material, even in part, and it would be inappropriate to do so. This type of legislation is, as I know you will agree, historically designed to place a public official, like Caesar's wife, above reproach, and it should suffice to say that the business operations of this trustee are subject to honest, reasonable and fair evaluation as to whether there are individual contracts of more or less than \$50.00. The spirit of the legislation would require that doubts be resolved against the pecuniary interest of the officeholder.

It is true that a contract can exceed \$50.00 if such contract is let on bids advertised as provided by law, but it is important that the bidding be required. See Opinion No. 2530, Opinions of the Attorney General for 1950, page 765; Opinion No. 366, Opinions of the Attorney General for 1949, page 101.

Your second question poses the problem created by a township trustee utilizing the services of one or more of his children under 21 years of age in the employment of the township and whether the trustee would have an interest in such employment.

Section 2919.10, Revised Code, which is certainly involved and which is subject to strict construction, is as follows:

"No officer of a municipal corporation or member of the council thereof or a member of a board of township trustees, shall be interested in the profits of a contract, job, work, or services for such municipal corporation or township, or act as commissioner, architect, superintendent, or engineer, in

work undertaken or prosecuted by such municipal corporation or township during the term for which he was elected or appointed, or for one year thereafter, or become the employee of the contractor of such contract, job, work, or services while in office.

"Whoever violates this section shall forfeit his office and be fined not less than fifty nor more than one thousand dollars or imprisoned not less than thirty days nor more than six months, or both."

The almost identical question has arisen before and the rather well reasoned and somewhat detailed opinion of one of my predecessors in Opinion No. 1169, Opinions of the Attorney General for 1927, page 2059, can be sufficient prior reference.

The statute then as now referred to "Profits of a Contract" and these words are of the essence. As that Opinion pointed out at page 2063, "a presumption exists that the father is interested in the profit of his son's labor." And the opinion goes on to say that this presumption "is rebuttable by showing that the minor son is emancipated and that the father is not, in fact, interested in the profits of his son's contract, job, work or services." It might well be added herein no doubt that the presumption, if any, that there are profits in which to be interested, is also rebuttable.

Certainly, on the face of the many facts, the father has "rights" under Section 2111.08, Revised Code, wherein some vestige of the common law has been well preserved. This section reads, in pertinent part, as follows:

"The wife and husband are the joint natural guardians of their minor children and are equally charged with their care, nurture, welfare, and education and the care and management of their estates, The wife and husband have equal powers, rights, and duties and neither parent has any right paramount to the right of the other concerning the custody of the minor, the control of the services or the earnings of such minor, or any other matter affecting the minor; * * *"

However, specifically referring to the question here discussed, it is clear that the employment is not a violation but it is having an interest in the profits, and a conviction could not be had without clear proof of the interest.

Based on the foregoing, it is my opinion and you are advised as follows:

1. A township trustee can solicit and do business with any township, municipal corporation, board of education or public institution with which he is not connected to any extent by contract when the total consideration for one contract does not exceed \$50.00, but a mere billing of \$50.00 or less will not, of itself, be necessarily considered

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