

“A municipality, in the absence of express authority in its charter if it be a charter municipality, may not legally place its funds, representing the purchase price of real estate proposed to be purchased by it, in escrow pending the preparation and examination of the necessary legal papers and clearing of title to such property.”

In such opinion my predecessor reasoned that since the moneys of the municipality were required by law to be held in the city treasury or the city depository there was no authority to deposit such funds in escrow pending the completion of the conveyance of the title. Such opinion would apply with equal weight to county funds.

If the opinions of my predecessors are correct, it would follow that a county could not buy the property in question by receiving legal title to the premises and giving a mortgage back for the balance of the purchase price, nor could the deed and money be permitted to remain in escrow until the contract is completed. I am of the opinion that the reasoning and conclusions in such opinions are sound. The transaction set forth in your inquiry requires the deed to remain in escrow but permits the contracting vendor to obtain the title to the county funds without vesting the title to the real estate in question, or any part thereof in the county. The conclusion, therefore, follows that the contract in question is beyond the power of the board of county commissioners.

The contract in question is but carrying the attempted powers of the county commissioners one step beyond those which my immediate predecessor held not to exist. (See Opinion of the Attorney General for 1932, No. 4663, supra.) I therefore must answer your inquiry in the negative.

Being of this opinion, it is unnecessary for me to decide whether the county has the authority to contract the indebtedness in question, and agree to pay interest thereon.

Specifically answering your inquiry it is my opinion that, while Section 2433, General Code, authorizes the board of county commissioners to purchase lands adjoining a children's home, for the purposes of such institution, such section does not authorize the board to enter into a contract to purchase lands under a land contract and to agree to pay therefor over a period of nine years, and thereupon receive a deed to the property, the installments of the purchase price to be forfeited in the event of a default in the terms of payment as stipulated in the contract

Respectfully,

JOHN W. BRICKER,
Attorney General.

179.

MAYOR—DIRECTOR OF PUBLIC SAFETY—MAY NOT HAVE AN INTEREST IN CONCERN SELLING SUPPLIES TO THEIR CITY.

SYLLABUS:

A mayor or director of public safety who is an employe of a concern selling supplies to the city of which he is such official, has an interest in such expenditures within the meaning of section 3808, General Code, and within the meaning of a charter provision which prohibits an officer or employe of the city from having any

interest, direct or indirect, in any contract with the city or from being interested directly or indirectly in the sale of supplies to the city.

COLUMBUS, OHIO, March 1, 1933.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I acknowledge receipt of your communication which contains the following inquiry: Has a mayor or safety director of a city who is an employe of a concern selling supplies to a city of which he is such official an interest in such expenditures within the meaning of section 3808, General Code, and within the meaning of a charter provision which reads as follows:

“No officer or employe of the city shall have any interest, direct or indirect, in any contract with the city or be interested directly or indirectly in the sale to the city of any supplies, materials, service or land except on behalf of the city as an officer or employe. Any willful violation of this section shall constitute malfeasance in office and any such officer or employe shall thereby forfeit his office or employment.”

Under the charter referred to, the mayor and directors of public service and public safety constitute the board of public purchase. In non-charter cities, these officers constitute the board of control.

Section 3808, General Code, reads as follows:

“No member of the council, board, officer or commissioner of the corporation, shall have any interest in the expenditure of money on the part of the corporation other than his fixed compensation. A violation of any provision of this or the preceding two sections shall disqualify the party violating it from holding any office of trust or profit in the corporation, and shall render him liable to the corporation for all sums of money or other thing he may receive contrary to the provisions of such sections, and if in office he shall be dismissed therefrom.”

So far as your question is concerned, the prohibitions contained in section 3808 are substantially the same as those contained in the above quoted charter provision.

Provisions such as these are merely enunciatory of common law principles. *Nunemacher vs. Louisville*, 98 Ky. 384. These principles are that no man can faithfully serve two masters and that a public officer should be absolutely free from any influence which would in any way affect the discharge of the obligations which he owes to the public. It is only natural that an officer who is an employe of a concern would be desirous of seeing a contract for the purchase of supplies by the city awarded to his employer, rather than to one with whom he has no relationship. Such an officer would certainly be interested in such a contract or expenditure, at least to the extent that upon the success of his employer's business financially primarily depends the continued tenure of his position and the compensation he receives for his services as such employe. This is especially objectionable where such officer is a member of the board which makes such contract or authorizes such expenditure on behalf of the city. In the case of *Stockton Plumbing and Supply Company vs. Wheeler, et al.*, 68 Calif. A. 592, it is held:

"A person who at the time of making an award of a contract for municipal work to a company by the city council is both a member of the city council and in the employ of said company is 'interested' in such contract within the meaning of the provisions of section 2, article VII of the charter of the City of Stockton to the effect that no officer of the city shall be directly or indirectly interested in any contract of the city, and that as a penalty for the violation of that mandate a forfeiture of the office held by such officer shall take place; and a contract awarded or attempted to be awarded under such circumstances is invalid.

The personal interest of an officer in a contract made by him in his official capacity may be indirect only, still such interest would be sufficient to taint the contract with illegality. If his interest in the contract is such as would tend in any degree to influence him in making the contract, then the instrument is void because contrary to public policy, the policy of the law being that a public officer in the discharge of his duties as such should be absolutely free from any influence other than that which may directly grow out of the obligations that he owes to the public at large."

The following is said in the case of *People vs. Sperry, et al.*, 314 Ill. 205:

"A contract for the construction of a local improvement is void when made by city officers who are interested therein as employes or agents of the party to whom the contract is awarded, even though it may further appear that the contract was a good contract for the city, that there was no fraud in the contract, and that the parties who made it derived no direct benefit from the contract itself."

See also *Nunemacher vs. Louisville*, 98 Ky. 334; *Byrne and Speed Coal Company vs. Louisville*, 189 Ky. 346.

I am of the opinion therefore that a mayor or director of public safety who is an employe of a concern selling supplies to the city of which he is such official, has an interest in such expenditures within the meaning of section 3808, General Code, and within the meaning of a charter provision which prohibits an officer or employe of the city from having any interest, direct or indirect, in any contract with the city or from being interested directly or indirectly in the sale of supplies to the city.

Respectfully,

JOHN W. BRICKER,

Attorney General.