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BOARD OF EDUCATION—CANNOT ENTER INTO CONTRACT FOR PURCHASE OF COAL WITH A CORPORATION OF WHICH A MEMBER OF THE BOARD IS A STOCKHOLDER—SUCH MEMBER IS SUBJECT TO PROSECUTION UNDER SECTION 12910, GENERAL CODE.

*SYLLABUS:*

*A board of education is prohibited by virtue of Section 4757, General Code, from entering into a contract for the purchase of coal with a corporation of which one of the members of the board is a stockholder even though such board member has only one share of stock, and the corporation of which he is a stockholder, and which is selling the coal is being operated at a loss. Such board member, if he participated in the making of such a contract would be subject to prosecution under the provisions of Section 12910 of the General Code.*

COLUMBUS, OHIO, July 22, 1927.

HON. E. M. BOTKIN, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—I have your request for my opinion, as follows :

“A member of a local rural Board of Education is a stockholder in a corporation, the stockholders of which are farmers and which corporation is organized for the purpose of buying, selling and dealing in farm produce and commodities. The Board member has a certificate for one share of the company's stock. The business of this company is operated on the plan of the usual farmers co-operative company and for several years the company has not been making a profit.

Is the Board of Education in this case prohibited by Sections 4757 and 12910 of the General Code of Ohio from entering into a contract with this company for the purchase of coal, said company being the lowest and best bidder for such contract?”

Sections 4757 and 12910 of the General Code, respectively provide as follows:

“Sec. 4757. Conveyances made by a board of education shall be executed by the president and clerk thereof. No member of the board shall have directly or indirectly any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as clerk or treasurer. No contract shall be binding upon any board unless it is made or authorized at a regular or special meeting of such board.”

“Sec. 12910. Whoever, holding an office of trust or profit by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education or a public institution with which he is connected, shall be imprisoned in the penitentiary not less than one year nor more than ten years.”

The questions presented by your inquiry are whether or not under Section 4757, of the General Code, the member of the board of education of whom you speak would have “*directly or indirectly any pecuniary interest*” in the contract for coal which the board contemplates entering into, and whether or not his interest, if any, in such contract would be such that he would be said to be “*interested in a contract for the purchase*

of property, supplies or fire insurance" as provided by Section 12910 of the General Code and so be criminally liable if the contract were to be made.

The mere fact that Section 12910, General Code, does not use the words "*directly or indirectly*" makes no substantial difference in my judgment so far as the answer to your inquiry is concerned, because if the board member in this case is interested at all, that interest is a direct interest, and he would be amenable to both statutes.

Certainly the board member would have a direct and substantial interest though small, in the financial affairs of the corporation of which he is a stockholder. That interest is pecuniary in its nature even though no profits have heretofore been made by the corporation. It no doubt has hopes of making some profit in the future, or at least of making up the loss which it has already suffered else it would not be in the field for business, and even if it never shows a profit and has no hopes of so doing each stockholder is pecuniarily interested to the extent of conserving as much of the original capital as possible.

It seems clear to me that the board member of whom you speak must certainly be said to have a pecuniary interest in the contract which the board proposes to make. The mere fact that the interest is small, can make no difference.

Under a similar statute, a member of the board of public works of the city of Cincinnati was prosecuted for having become interested in a contract for the purchase of property for the use of the city. In that case, viz., *Doll vs. The State*, 45 O. S. 445, the court said in the second paragraph of the syllabus:

"To become so interested in the contract, it is not necessary that he make profits on the same. But it is sufficient, if while acting as such officer, he sell the property to the city for its use, or is personally interested in the proceeds of the contract of sale, and receives the same or part thereof, or has some pecuniary interest or share in the contract."

I am therefore of the opinion, that a board of education is prohibited, by virtue of Section 4757 of the General Code, from entering into a contract for the purchase of coal with a corporation, of which one of the members of the board of education is a stockholder, even though the member has only one share of stock and the corporation that is selling the coal is being operated at a loss. If such a contract should be entered into the contract would be void, and the board member who is a stockholder in the corporation with whom such void contract is made would, if he affirmatively participated in the proceedings of the board when the contract was made, be subject to prosecution under Section 12910, General Code.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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#### INHERITANCE TAX—FEES OF PROBATE JUDGE.

##### SYLLABUS:

*No additional proceeding is required under the provisions of enacted House Bill No. 484, and the probate judge is not entitled to additional fees, but is limited to the fees under the*