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TUBERCULOSIS SANATORIUM, COUNTY, TRUSTEE OF:

1. MAY HAVE INTEREST IN CONTRACT FOR SALE OF SUPPLIES OR PROPERTY TO SUBDIVISION OF STATE OR PUBLIC INSTITUTION WHERE HE IS NOT CONNECTED—AMOUNT INVOLVED MUST BE LESS THAN FIFTY DOLLARS—TERMS AND CONDITIONS OF SAVING CLAUSE, SECTION 12911 G. C. ARE NOT WHERE AMOUNT OF CONTRACT EXCEEDS FIFTY DOLLARS—PROVISION IN LAW—ADVERTISEMENT FOR BIDS.
2. SUCH TRUSTEE SUBJECT TO PROSECUTION IF INTERESTED IN CONTRACT FOR SALE OF SUPPLIES OR PROPERTY WHERE AMOUNT EXCEEDS FIFTY DOLLARS—CONTRACT LET ON COMPETITIVE BIDS AFTER ADVERTISEMENT — STATUS, ADVERTISEMENT FOR BIDS NOT REQUIRED NOR PROVIDED FOR BY LAW.
3. WHERE TRUSTEE IS SOLE OWNER AND ACTIVE MANAGER OF PRIVATE CORPORATION—“INTERESTED” AS TERM IS USED IN SECTION 12911 G. C.—SUBJECT TO PROVISIONS OF SECTION—CONTRACTS, SUPPLIES OR PROPERTY LET TO CORPORATION BY SUBDIVISION OR PUBLIC INSTITUTION OF STATE.

SYLLABUS:

1. A trustee of a county tuberculosis sanatorium may have an interest in a contract for the sale of supplies or property to a subdivision of the state or public institution, with which he is not connected, if the amount involved is less than fifty (\$50.00) dollars; or if the terms and conditions of the savings clause of Section 12911, General Code, are met where the amount of the contract exceeds fifty (\$50.00) dollars and there is a provision in law for advertisement for bids.

2. A trustee of a county tuberculosis sanatorium would be subject to prosecution under the provisions of Section 12911, General Code, if he were interested in a contract for the sale of supplies or property to a subdivision of the state or public institution, when the amount involved exceeds fifty (\$50.00) dollars and is let on competitive bids after advertisement, when such advertisement for bids is not required nor provided for by law.

3. A trustee of a county tuberculosis sanatorium, who is the sole owner and active manager of a private corporation, is “interested” as such term is used in Section 12911, General Code, and is subject, therefore, to the provisions of said section on contracts for supplies or property let to said corporation by a subdivision or public institution of the state.

Columbus, Ohio, November 22, 1950

Hon. Paul J. Mikus, Prosecuting Attorney
Lorain County, Lorain, Ohio.

Dear Sir :

Your request for my opinion reads as follows :

“It seems clear under General Code Sections 12910 and 12911, the Opinions of the Attorney General, and the reported cases that a trustee of a county tuberculosis sanatorium cannot be interested in any contract with the institution with which he is connected. Not so clear, however, under some of the decisions are the limits of the restraint placed upon such a sanatorium trustee in making contracts with other agencies and political subdivisions within the county. Therefore, your opinion is respectfully requested upon the following questions :

- “1. May the trustee of a county tuberculosis sanatorium have an interest in a contract for the sale of supplies or property to
 - a. County Commissioners?
 - b. Township trustees?
 - c. Boards or agencies of counties?
 - d. Municipalities or villages?
- “2. If so, must the contract be for an amount less than \$50.00, otherwise let on bids duly advertised as provided by law?
- “3. Would the answer to the first two questions differ in any way if the business of the trustee were conducted by and through a corporation, though wholly owned and actively managed by said trustee?”

Preliminary to a discussion and consideration of your inquiries, it is well to note that the various officials, boards, agencies, etc., to which you make reference in your letter, are all acting on behalf of a county, township, city or village in any contracts they make. Hence, for purposes of simplicity and clarity in this opinion, contracts between such officials, boards, agencies, etc., and a trustee of a county tuberculosis sanatorium will not be treated individually, but will be included in the meaning and context of any reference hereinafter made to contracts between such a trustee and a subdivision of the state or public institution.

The answer to your inquiries evidently hinges on the construction and interpretation to be accorded Sections 12910 and 12911 of the General Code. These sections read as follows :

Section 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.”

Section 12911:

“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 not connected, and the amount of such contract exceeds the sum of fifty dollars, unless such contract is let on bids duly advertised as provided by law, shall be imprisoned in the penitentiary not less than one year nor more than ten years.”

As you point out, the above quoted sections have been before the courts a number of times for construction and have been the subject of numerous opinions emanating from this office. Without an extensive citation of authority, suffice it to say, that the general construction accorded these sections by the courts and previous Attorneys General has been as follows:

Section 12910, *supra*, prohibits an official, coming within its confines, or his agents or servants, from entering into any contract for the purchase of supplies, property or fire insurance for the use of a subdivision of the state or public institutions, when such official is connected with the contracting subdivision or institution.

Section 12911, *supra*, permits an official, as enumerated therein, to be interested in a contract for the purchase of supplies, property or fire insurance for the use of any subdivision of the state or public institution, with which he is not officially connected, so long as the amount involved is less than fifty (\$50.00) dollars, but prohibits such official from having an interest in such contracts if the amount involved exceeds fifty (\$50.00) dollars, unless such contract is let on bids duly advertised as provided by law.

In view of this construction, it is apparent that a trustee of a county sanatorium may be interested in a contract for the purchase of supplies

or property, for the use of any subdivision of the state or public institution with which he is not connected, if the amount involved is less than fifty (\$50.00) dollars, or if the terms and conditions of the saving clause of Section 12911, supra, have been complied with where the amount involved is more than fifty (\$50.00) dollars. However, if the amount involved is more than fifty (\$50.00) dollars and there is no provision of law calling for the letting of contracts on bids after due advertisement, then a question arises as to whether or not Section 12911, supra, precludes an official from having an interest in a contract for the purchase of supplies or property.

On this question a statement of the then Attorney General of 1934 is pertinent. In an opinion rendered by him, Opinion No. 2341, Opinions of the Attorney General for 1934, Vol. I, page 263, he said :

“* * * if there is no provision in the law requiring advertisement and competitive bidding for the particular ‘supplies,’ then it would be illegal for a senator or representative to be interested in a contract for the purchase of ‘supplies’ over \$50.00 for the use of the county from which he was elected, even if advertisement and competitive bidding was had before the contract was let.”

Also pertinent is my conclusion in Opinion No. 2854, Opinions of the Attorney General for 1938, Vol. II, page 1597, to the effect that :

“A company whose local manager is also a member of the board of education cannot submit sealed bids for contracts to furnish supplies to the board of education when competitive bidding on such contract is not required by law, as a contract made under such circumstances comes within the provisions set forth in Sections 4757 and 12910, General Code.”

On the basis of the above quoted authority, I concluded in Opinion No. 366, Opinions of the Attorney General for 1949, issued April 8, 1949, that :

“By virtue of consistency and the clear intendment of Section 12911, supra, it is my opinion that a county commissioner holding an office of trust or profit, would be subject to prosecution under provisions of Section 12911, General Code, if he were interested in a contract for the sale of supplies to a local board of education, when the amount exceeds \$50.00 and is let on competitive bids after advertisement, when the advertisement for bids is not required by law.”

Accordingly, it is my opinion that a trustee of a county sanatorium may not have an interest in a contract involving an amount in excess of fifty (\$50.00) dollars for the sale of supplies or property to a subdivision of the state or public institution with which he is not officially connected, unless there is a provision in law for advertising for bids, and unless the contract is let in accordance therewith. If there is no such provision for advertising, then in my opinion the saving clause of Section 12911, *supra*, is not available to said trustee and he is, therefore, amenable to the penalties provided for by Section 12911, *supra*, even if the contract was let on competitive bids after due advertisement.

The answer to your third inquiry depends on whether or not it can be said that a trustee of a county sanatorium is "interested," as such term is used in Section 12911, *supra*, in a contract which is let to a corporation wholly owned and actively managed by said trustee.

In the case of *Doll v. State*, 45 O. S. 445, the court, in dealing with a statute similar to Section 12911, *supra*, held, as indicated by the second branch of the syllabus, that:

"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."

The then Attorney General, citing this case as authority, held in Opinion No. 764, Opinions of the Attorney General for 1927, Vol. II, page 1326, that:

"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."

In view of the above authority, it is apparent that "interested," as used in Sections 12910 and 12911, *supra*, means a pecuniary interest and that any such interest regardless of how small it may be is sufficient to

subject the official involved to the penalties provided for by Sections 12910 and 12911, supra.

There is little doubt but that one who wholly owns and actively manages a corporation has a pecuniary interest in such corporation and in any contracts it might make. Hence, it is my opinion that the conclusions I have reached earlier in this opinion would not be changed, altered or affected by the fact that the contract was let to a corporation which is wholly owned and actively managed by a trustee of a county sanatorium.

In summation it is my opinion that :

1. A trustee of a county tuberculosis sanatorium may have an interest in a contract for the sale of supplies or property to a subdivision of the state or public institution, with which he is not officially connected, if the amount involved is less than fifty (\$50.00) dollars, or if the terms and conditions of the savings clause of Section 12911, General Code, are met where the amount of the contract exceeds fifty (\$50.00) dollars and there is a provision in law for advertisement for bids.

2. A trustee of a county tuberculosis sanatorium would be subject to prosecution under the provisions of Section 12911, General Code, if he were interested in a contract for the sale of supplies or property to a subdivision of the state or public institution, when the amount involved exceeds fifty (\$50.00) dollars and is let on competitive bids after advertisement, when such advertisement for bids is not required nor provided for by law.

3. A trustee of a county tuberculosis sanatorium, who is the sole owner and active manager of a private corporation, is "interested" as such term is used in Section 12911, General Code, and is subject, therefore, to the provisions of said section on contracts for supplies or property let to said corporation by a subdivision or public institution of the state.

Respectfully,

HERBERT S. DUFFY,
Attorney General.