

Note from the Attorney General's Office:

1949 Op. Att'y Gen. No. 49-1284 was modified by 2019 Op. Att'y Gen. No. 2019-005.

1284

CONTRACT—TOWNSHIP TRUSTEE DISQUALIFIED FROM VOTING ON CONTRACT TO PURCHASE A MAINTAINER—TRUSTEE IN EMPLOY OF SELLER OR A MECHANIC—TRUSTEE WOULD BE ACTING ON BEHALF OF PUBLIC AUTHORITY WHILE HAVING AN INTEREST IN CONTRACT.

SYLLABUS:

A township trustee is disqualified from voting on a contract to purchase a maintainer, where such trustee is in the employ of the seller as a mechanic, because he would be acting on behalf of a public authority while having an interest in the contract.

Columbus, Ohio, December 15, 1949

Hon. Harry C. Johnson, Prosecuting Attorney
Guernsey County, Cambridge, Ohio

Dear Sir:

Your request for my opinion is as follows:

“The township trustees of ‘R’ Township expect to purchase a maintainer. Proper advertising has been had, but this problem arises: One of the township trustees is an employe in the capacity of a mechanic of one of the persons who is bidding to furnish the maintainer. His vote is necessary in order to purchase the maintainer from this person, should he be the lowest and best bidder.”

There are various sections of the General Code which relate to the personal interest of a public officer in a public contract. The more important are Sections 2420, 3410-8, 3808, 4028, 4081, 4334, and the criminal provisions of Sections 12910 to 12914, inclusive. In essence, these sections provide that an officer cannot act in behalf of a public authority if he has an interest in the contract. Section 3410-8, which relates to township trustees, reads in part, as follows:

“No member of the board of township trustees or any officer or employee thereof shall be interested in any contract entered into by said board;* * *”

Numerous Ohio decisions and opinions of attorneys general have gone into the question of interest and its effect on contracts. In 33 O. Jur. 748, the general rule is stated as follows:

“The effect of a statute making it a crime for an officer to be personally interested in a contract entered into by the authority he represents is to render any contract as to which such interest is present void, or at least voidable—particularly if the action of the officer was essential to the making of the contract. The fact that the public would suffer no financial loss from performance is not material to the question of validity.”

In 39 O. Jur. 310, the rule is stated as follows :

“The general rule that interest in a project disqualifies a public officer applies to a township trustee. A township trustee is the agent of his township in the transaction of its business ; and hence, in the performance of his duties, he acts in a fiduciary as well as an official capacity. Therefore, the rule which requires fair dealings and disinterested conduct on the part of an agent or trustee towards those he represents applies with full force to a township trustee. So, where township trustees pass a resolution providing for the payment of a certain part of the cost of a road improvement by the township and a certain part by the abutting landowners, a member of such board owning land abutting on such improvement within his township is disqualified from offering a resolution at a subsequent meeting and casting the deciding vote therefor by which the amount to be paid by abutting landowners is reduced and the amount to be paid by the township is increased and which inures to his own pecuniary advantage in a substantial sum.”

The question therefore resolves itself into whether the employe in question has such an interest in the contract as to disqualify him. It has been held in Ohio and elsewhere that an officer may be interested in a contract although he makes no profit thereby. In *Doll v. State*, 45 O. S. 445, at page 449, 15 N. E. 293, Judge Williams used the following language :

“To permit those holding offices of trust or profit to become interested in contracts for the purchase of property for the use of the state, county, or municipality of which they are officers, might encourage favoritism, and fraudulent combinations and practices, not easily detected, and thus make such officers, charged with the duty of protecting those whose interests are confided to them, instruments of harm. The surest means of preventing this, was to prohibit all such contracts ; * * *”

In *Opinions of the Attorney General for 1948*, page 197, the syllabus of the opinion reads as follows :

“Where a board of education undertakes to purchase school buses of a dealer whose foreman is a member of such board, such

contract is under the terms of Section 4834-6, General Code, an illegal contract.”

On page 199 of the reported opinion the then Attorney General used this language:

“It is too obvious to admit of argument that if an employe who is a member of the board of education is in a position to throw to his employer large and profitable contracts, he will inevitably build up for himself a standing with his firm and in all probability ultimately reap substantial rewards growing out of his usefulness in that respect.”

In the 1948 opinion, *supra*, numerous authorities were cited to sustain the position taken, and in the light of that opinion and the general principles of law relating to an officer's interest in a contract it is my opinion that a township trustee is disqualified from voting on a contract to purchase a maintainer if he is in the employ of the seller as a mechanic, because he would be acting on behalf of a public authority while having an interest in the contract.

Respectfully,

HERBERT S. DUFFY,
Attorney General.