



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable I. I. Geren
County Attorney
Limestone County
Groesbeck, Texas

Dear Sir:

Opinion No. O-2306

Re: Whether or not a trustee of a consolidated rural high school district can validly receive compensation from the contractor for carpenter work performed on a building the contractor is erecting for the school district.

We received your letter dated April 26, 1940 requesting our opinion on the following question which we quote from your letter as follows:

"Can a trustee for a consolidated rural high school district receive compensation from the contractor for carpenter work performed on a building the contractor is erecting for the school district?"

It is well settled in Texas that if a public official directly or indirectly has a pecuniary interest in a contract, no matter how honest he may be, and although he may not be influenced by the interest, such a contract is against public policy. *Meyers et al vs. Walker et al*, 276 S. W. 305.

Under the facts set out in your letter, we assume that the contractor is an independent contractor. This being true, the will of the school board is represented only as to the result of the work and the contractor is left to determine the manner and means involved in the performance of said contract.

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If, at the time the contract in question was let, there was no agreement, express or implied, between the contractor and the school trustee with reference to the employment in question, it would appear that the trustee in question has no such pecuniary interest in the contract as to make it void under the public policy doctrine.

We recognize the fact that such a situation as herein involved might be subject to criticism due to the fact that the board of trustees must accept the work when completed. A situation might arise here whereby the trustee would have conflicting interests. That is to say, there may be a tendency on the part of the school trustee, because of such employment, to induce the approval of the work when completed which otherwise might not be approved. Notwithstanding the possibility that certain conflicting interests might arise under the contract of employment, we are of the opinion that the mere existence of such a possibility would not preclude the employment under the public policy doctrine.

In our Opinion No. O-1589, this Department held that trustees of an independent school district were not subject to the provisions of Article 373, Penal Code. For the reasons set out in that opinion, a copy of which is enclosed, we are of the opinion that Article 373, supra, has no application to your question here.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Glenn R. Lewis

Glenn R. Lewis
Assistant

By

Ice Shoptaw

Ice Shoptaw

APPROVED JUN 25, 1940

Glenn R. Lewis

ATTORNEY GENERAL

LS:EP

Enclosure

