

Q-57

January 27, 1959

Honorable Edwynne C. "Polly" Rosenbaum
House of Representatives
Twenty-fourth Legislature
Capitol Building
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mrs. Rosenbaum:

You have requested an opinion from the Attorney General upon the following question:

"May a public officer enter into a contract with a department of government in which he may have a direct or indirect interest?"

The answer to this question devolves, in part, upon the statutes relating to such contracts. We quote them as follows:

"38-446. Interest of officer in public contract prohibited; avoidance of contract

A. Members of the legislature or state, county, city, town or precinct officers shall not be interested directly or indirectly in any contract or in any sale or purchase made by them in their official capacity, or by any body or board of which they are a member.

B. Every contract, sale or purchase made in violation of this section may be avoided at the instance of any party except the officer interested."
(Emphasis supplied)

"38-447. Violation of prohibition against acquisition of certain interests by public officers; penalty

An officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser

Honorable Edwynne C. "Polly" Rosenbaum
House of Representatives

January 27, 1959
Page Two

at sales, or from purchasing evidences of indebtedness, who violates any provision of such laws, shall be punished by a fine of not more than one thousand dollars or by imprisonment in the state prison for not more than five years, and is forever disqualified from holding any office in this state."

These statutes embody the rule of common law. In the absence of such statutes, the courts have invalidated such contracts because, based upon the standards of morality, they are contrary to public policy. Thus, it is stated at Vol. 43 Am.Jur. (Public Officers), § 294, page 103, as follows:

" A contract made by a public officer is against public policy and unenforceable, if it interferes with the unbiased discharge of his duty to the public in the exercise of his office, or if it places him in a position inconsistent with his duty as trustee for the public, or even if it has a tendency to induce him to violate such duty. Such contracts are invalid, although there may be no statute or charter provision prohibiting them, and although there may have been no actual loss or detriment to the public or fraudulent intent in entering into the contracts, since the rule invalidating the contracts is based on public policy."

As an example of the rule, it is stated at 43 Am.Jur. (Public Officers) § 297, page 105, as follows:

" It is a rule, embodied in the statutes of some states, that public officers are debarred from contracting with the public agency which they represent or from having a private interest in its contracts. * * * "

Honorable Edwynne C. "Pelly" Rosenbaum January 27, 1959
House of Representatives Page Three

A further exemplification and application of the statutes, and the rules of law above quoted, is found at 43 Am. Jur. (Public Officers) § 300, page 107, as follows:

" The general rule is to the effect that the interest of a public officer as stockholder in a corporation entering into a contractual relation with the public is a prohibited interest in the transaction within the meaning of statutory provisions in substance prohibiting a public officer from being interested directly or indirectly in any contract with the public, and of the common-law principle against such interest, based on public policy, of which such statutory provisions are the concrete expression. A stronger case of interest exists where public officers are not only stockholders but also officers of corporations with which the public has attempted to enter into a contract. The interest of the parties in such cases is clearly within the meaning of provisions prohibiting public officers from being interested directly or indirectly in contracts with the public. * * * "

Therefore, if a member of the legislature, or a state, county, city, town or precinct officer is directly or indirectly interested in any contract pertaining to any office, body or board of which he is a member, then the contract, perforce the statutes and the rule of law set forth above, is void.

From what is said above, the conclusion is that the inhibition contained in the quoted statutes and the quoted statements from American Jurisprudence is directed to a member of a public body or to one holding a public office dealing with that body or public office and does not extend to dealings with other departments of the state, nor does the inhibition apply to employees of such public officials.

Respectfully yours,

WADE CHURCH
The Attorney General

LESLIE C. HARDY
Chief Asst. Atty. General

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