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ARIZONA ATTORNEY GENERAL

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PHOENIX, ARIZONA

75-14

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DEPARTMENT OF LAW LETTER OPINION NO. (75-2-L)(R-5)

REQUESTED BY: THE HONORABLE ROBERT R. BEAN
Pinal County Attorney

QUESTION: May a teacher of a school district who was elected in the last election to the board of trustees of such school district continue as a teacher and at the same time serve the Board?

ANSWER: No.

The applicable laws upon which the above decision is based are found within A.R.S. §§ 38-501, et seq. Pursuant to A.R.S. § 38-501 (Article 8, Conflict of Interest of Officers and Employees, Chapter 3, Title 38 of the Arizona Revised Statutes), it is provided:

A. This article shall apply to all public officers and employees of incorporated cities or towns, political subdivisions and of the state and any of its departments, commissions, agencies, bodies or boards, but shall not apply to members of the legislature.

B. Notwithstanding the provisions of any other law, or the provisions of any charter or ordinance of any incorporated city or town to the contrary, the provisions of this article shall be exclusively applicable to all officers and employees of every incorporated city or town, political subdivision or the state and any of its departments, commissions, agencies, bodies or boards and shall supersede the provisions of any other such law, charter provision or ordinance.

A.R.S. § 38-502, the definition section of Article 8, Chapter 3, Title 38, Arizona Revised Statutes, as amended by Chapter 199, Section 1, Laws of 1974, Second Regular Session, provides inter alia:

In this article, unless the context otherwise provides:

* * *

2. "Employee" means all persons who are not public officers who are employed on a full, part-time or contract basis by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies or boards for remuneration.

3. "Political subdivision" means all political subdivisions of the state and county, including all school districts.

* * *

5. "Public officer" means all elected and appointed officers of incorporated cities and towns, political subdivisions and the state, including all members of boards and commissions established by charter, ordinance, resolution or statute, but excluding members of the legislature.

From the above cited definitions, it can be concluded that the inquiry deals specifically with an "employee" (the teacher) of a "political subdivision" (the school district) who has been elected to serve as a "public officer" (elected member of the board of trustees established by statute), and therefore the applicability section of A.R.S. § 38-501 directly mandates that all of the conflict of interest sections of this article be followed in deciding the question as presented.

A.R.S. § 38-503, formerly Section 12-401 of the Code of 1939 and A.R.S. § 38-446, is the substance of Article 3. Subsections C and D of A.R.S. § 38-503 read as follows:

C. Notwithstanding the provisions of subsections A and B of this section [conflict of interest disclosure sections], no public officer or employee of an incorporated city or town, political subdivision, or the state or any of its departments, commissions, agencies, bodies or boards shall supply to such city or town, political subdivision or such state department, commission, agency, body or board any equipment, material, supplies or services, unless pursuant to an award or contract let after public competitive bidding.

D. Any contract, sale or purchase made in violation of this article may be voided by action of the city or town, political subdivision or the state.

Subsection C of A.R.S. § 38-503, as cited above, when interpreted in light of the factual question presented, specifically precludes a board member of the trustees of a school district from rendering services as a teacher in such district, because the services rendered are personal in nature and are of the type not subject to public competitive bidding.

The teacher/trustee exclusion, as mandated by the present conflict of interest statutes, may be buttressed by the exclusions contained in the conflict of interest statutes which existed prior to the enactment of Article 3. These earlier statutes did not contain the abstention and public competitive bidding exemptions now found in the new law; however, under the particular circumstances of this situation, this fact is not relevant since the exemptions are not applicable.

Specifically, in 1966 the Attorney General ruled that there was a conflict of interest for a county welfare advisory council member to receive payment for services rendered the Department of Welfare (Attorney General Opinion No. 66-9). In so concluding the Attorney General noted that the Arizona conflict of interest statutes in effect at that time embodied the common law rule, and cited the following rule as stated in 43 Am.Jur., p. 103:

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.

In the same volume at p. 105, it is said:

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. . . .

Inherently then, since the board of trustees of a school district contracts with each teacher it employs to render services within its school system, a board member/school teacher in effect would be contracting with himself. Furthermore, merely declaring such conflict and abstaining from joining in the negotiation of his own contract would not suffice, as all the policies set by the board of trustees of a school district are impliedly a part of the contracts the board enters into with its teachers.

In accord with the conclusions arrived at above are: Attorney General Opinion No. 50-111 (construing A.R.S. § 12-401 to prohibit a school district board member from being paid to drive a school bus for the school district); Attorney General Opinion No. 56-17 (holding that a member of the board of trustees may not legally sell items to a school district of which he is a member); Attorney General Opinion No. 57-86 (school board may not contract with insurance firm where agent of firm is member of school board); and Attorney General Opinion No. 59-97-L (public officer may not contract with department in which he has an interest).

Also in accord with the rationale of this office in concluding that the conflict of interest statutes preclude a member of a board of trustees from contracting with himself as a teacher is the Arizona Supreme Court where, in the case of State v. Bohannan, 101 Ariz. 520, 421 P.2d 877 (1966), the court noted:

It is, we believe, accepted without dissent that public officers must have no personal interest in transactions with the government which they represent. The rule is most aptly stated in Stockton Plumbing and Supply Co. v. Wheeler, 68 Cal.App. 592, 229 P. 1020:

"The principle upon which public officers are denied the right to make contracts in their official capacity with themselves or to be or

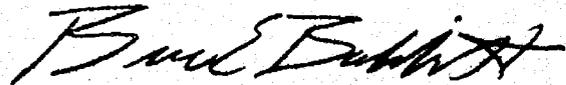
become interested in contracts thus made is evolved from the self-evident truth, as trite and impregnable as the law of gravitation, that no person can, at one and the same time, faithfully serve two masters representing diverse or inconsistent interests with respect to the service to be performed." 68 Cal.App. 592, 601, 229 P. 1020, 1024.

This Court said in *Williams v. State*, 83 Ariz. 34, 315 P.2d 981:

"In order that he [the public officer] act only for and on behalf of the state's interest, it is imperative that he have no personal interest that might clash or conflict with that of the state. * * * Public policy requires that personal interests not exist as a possible factor influencing a public official in the performance of his duties."

In conclusion, therefore, the office of the Attorney General expresses the opinion that no person may act as a member of the board of trustees and serve as a school teacher within the same school district, as these positions are mutually exclusive.

Respectfully submitted,



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