

Opinion No. 64-13

February 4, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. Harry Wugalter, Chief, Public School Finance Division, Department of Finance and Administration, Santa Fe, New Mexico

QUESTION

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Is it legally permissible for a member of a board of education to submit a bid on items of school property that a local school district desires to sell?

CONCLUSION

No.

OPINION

ANALYSIS

In answering the question presented, initial consideration must first be given to the various statutes pertaining to the sale and disposition of school property. Real or personal property held by a local public school district may be disposed of only in accordance with state statute. Section 6-1-8, N.M.S.A., 1953 Compilation, specifies in part that:

"Sale of property by state agencies or local public bodies. -- Approval of board of finance -- Exception. --

A. Any department, commission, agency or institutional board of this state, or local public school district is empowered to sell or otherwise dispose of real or personal property belonging to such state department, commission, agency, institution, or local public school district, subject to the approval of the state board of finance; provided, however, the governing authority of each state agency and local public body, as defined by Section 4-4-2.1, New Mexico Statutes Annotated, 1953 Compilation (being Laws 1957, Chapter 248, Section 2), may dispose of items of personal property having a current resale value of fifty dollars (\$ 50.00) or less belonging to such agency or body without necessity of prior approval of the state board of finance, wherein the governing authority of the state agency or local public body has affirmatively complied with the provisions of the preceding section of this 1961 Act. . . ."

Section 6-1-7.1, N.M.S.A., 1953 Compilation, permits school districts, subject to certain restrictions, to dispose of obsolete, wornout and unuseable personal property of a current resale value of fifty dollars or less.

Subject to compliance with the above cited statutory provisions, authority exists whereby a local school board may properly dispose of either real or personal property belonging to such local school district. In instances where the real or personal property exceeds a value of fifty dollars, the manner of disposing of such property is subject to approval by the State Board of Finance. If the property is of a value of less than fifty dollars, the district may dispose of the property in such manner as the board may deem appropriate.

As pointed out in 78 C.J.S., "Schools and School Districts," Section 279, at page 1256, a contract by a school board officer with a school district may be void as being against public policy. Such authority states:

"Under statutes in some jurisdictions a member of a school board or a school officer may not, on behalf of the school district or other local school organization, enter into a contract in which he has an individual interest. Aside from express statutory enactment, such a contract is against public policy. In some jurisdictions it is held that a contract made by an officer personally interested therein is void, as where it is in violation of statute; but in other jurisdictions such contracts are merely voidable, the director being disabled from making a binding contract with his school district, not because the thing contracted for is illegal or tainted with moral turpitude, but because the director's personal relationship to the district as its agent precludes him from acquiring any interest antagonistic to that of the district, and under this view such contracts are binding if properly ratified. . . ."

A provision of the Criminal Code, enacted by the 1963 state legislature (§ 40A-23-6, N.M.S.A., 1953 Compilation), in certain instances makes criminal the act of a public officer, including a school board member where he purchases or attempts to purchase property from the school district after giving anything of value, directly or indirectly to encourage or induce such sale.

From a careful review of the above authorities, it is our opinion that a member of a local board of education may not lawfully bid or purchase school property which is offered for sale by a school district, irrespective of whether such property is or is not in excess of fifty dollars in value. Because of the close relationship of the school board officer, a conflict of personal interest arises precluding such individual from dealing with such school district in the purchase of property sought to be sold by the district. Such contracts of purchase would, in our opinion, be violative of public policy.

As recognized by the New Mexico Supreme Court, contracts against public policy are void and unenforceable. **Tharp v. Allis-Chalmers, Mfg. Co.**, 81 P. 2d 703 42 N.M. 443; **Dominguez v. Rocas**, 281 Pac. 25, 34 N.M., 317; and **De La O v. Pueblo of Acoma**, 1 N.M. 226.