

Opinion No. 15-1688

November 26, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. F. M. Hayner, Superintendent of Schools, Las Cruces, New Mexico.

A person identified in an official capacity with the public schools cannot be a party to a contract in connection with the operation of schools.

OPINION

{*260} I have your letter of the 24th inst. in which you ask, in substance, whether the fact that the wife of a successful bidder for the construction of a school building is the clerk of the school board which is to let the contract, would bring the transaction within the prohibition contained in Section 7 of Chapter 70 of the Laws of 1913, which reappears as Section 4917 of the new codification, so that any contract made with that be void.

The portion of that section which the objecting party, whose bid appears to have been almost \$ 600 higher, must rely on is as follows, omitting some words which would have no relation to this particular case:

"and all persons identified in an official capacity with the public schools * * * supported in whole or in part by the public funds of this State, are prohibited from being a party directly or indirectly to any contract or interest in any contract, in connection with the operation or maintenance of such public schools * * * and any contract in which they are so interested shall be void, and the members of any educational board voting for the same shall be guilty of a misdemeanor and liable to punishment accordingly."

The attempt must be to claim that the wife is "interested" in the contract on account of her being the wife of the successful bidder. If that is the ground of objection, I am of opinion that there is nothing to it. The statute means a pecuniary interest in the contract, and the mere fact of marriage does not necessarily involve any pecuniary interest of either of the married persons in contracts made by the other. Of course, there may be cases where the husband and wife are in actual partnership in the building or other business and then each would be interested in any contract made in the name of the other.