

Opinion No. 49-5214

April 29, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Herman W. Atkins Assistant District Attorney First Judicial District Gallup, New Mexico

{*38} I have your letter requesting an opinion of this office on several questions regarding the right and authority of the mayor and members of the board of trustees of the town of Gallup to enter into contracts with or to sell merchandise to said town. The three questions asked by you must be answered under the provisions of Section 14-1608 of the 1941 Compilation, which provides as follows:

"No mayor, trustee or alderman shall, during the time for which he has been elected, or for one (1) year thereafter, be appointed to any municipal office which shall be created, or the emoluments of which shall be increased during the term for which he shall have been elected, except in the cases provided for by law; nor shall any such mayor, trustee or alderman be interested, directly or indirectly, in the profits of any contract or job for work, or services to be performed for the corporation."

It will be noted that this section prohibits interest by city officials in three separate categories, (a) contracts for work, (b) jobs for work, and (c) services to be performed for the corporation.

You first ask whether such officials may sell merchandise to the town. The sale of merchandise is neither a contract nor job for work, nor does it involve the performance of services for the corporation and, therefore, it is the opinion of this office that {*39} such officials do have the right to sell merchandise to the town.

You further ask whether such officials may lease property owned by the town. Here again there is no contract, job or services to be performed for the corporation and it is, therefore, the opinion of this office that such a practice is legal.

You further ask whether such officers may enter into contracts with the town for furnishing services, labor or material. Contracts for furnishing services and labor are expressly prohibited by the terms of Section 14-1608 above quoted, while contracts for furnishing material are not so prohibited. It is, therefore, the opinion of this office that such officers may not enter into contracts with the town for furnishing services or labor, but may enter into contracts with the town for furnishing material.

You ask whether or not the above ruling would be the same where the business of the officer is incorporated and such officer is the president of the corporation and the principal stockholder therein. You will note that Section 14-1608 prohibits any interest, **direct or indirect**, in the profits of any type of prohibited contract or job. It is the opinion

of this office that a town official who is president and principal stockholder of a corporation would be at least indirectly interested in the profits of any contract of a prohibited type made between such corporation and the town.