

Opinion No. 61-25

March 22, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

TO: Mr. Jack E. Holmes, Chief Tax Commissioner, New Mexico State Tax Commission, Santa Fe, New Mexico

QUESTION

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Is it lawful for a State Legislator to contract with the State Tax Commission for the purchase of lands held by the State of New Mexico under tax deed?

CONCLUSION

No.

OPINION

ANALYSIS

Section 72-8-4, N.M.S.A., 1953 Compilation provides:

"No state official, deputy thereof, or person employed in any capacity by the state, or any county, or municipality, shall be interested or concerned, directly or indirectly in the purchase of any lands, lots or other property sold by the state tax commission under the provisions of law relating to sale of delinquent tax property. Any violation of the provisions of this section shall be punishable by removal from office of such officer, deputy or employee."

Your question is answered when we determine whether a state legislator is a "state official," as that term is used in this statute. At the outset, we should point out that most of the authorities cited in this opinion use the term "state officer" instead of "state official." We have been unable to find any legal distinction between the terms "state officer" and "state official." In fact, **Black's Law Dictionary** (4th ed., 1951), defines "official" as:

"An officer, a person invested with the authority of an office."

We believe that, in the statute in question, there was no intention that "state official" should have any different meaning than "state officer," and hold that the two terms are

synonymous. It follows that what we say hereafter about "state officers" applies with equal force to "state officials."

Your question has never been decided by our Supreme Court, though the intent of our statute has been under consideration. The last portion of Section 76-707, N.M.S.A., 1941 Compilation, contained language almost identical to the present Section 72-8-4, supra. In construing the 1941 law, it was held that a contract in violation of it was void, and constituted grounds for removal from office. See **Eager v. Belmore**, 53, N.M. 299, 207 P. 2d 519 (1949). In **Brown v. Bowling**, 56, N.M. 96, 240 P. 2d 846 (1952), the Court held that the statute was penal in character and should be strictly construed. Then the Court said this about the purpose of the statute:

"This statute plainly states the class of persons affected by its provisions and it is obvious that its purpose is to prevent those persons employed by state, county and municipality from dealing in tax titles or in tax sale certificates because out of such employment by state, county or municipality, some advantage might be gained and used to the detriment of the taxpayer and the public.'

Undoubtedly these observations are applicable to the present law, and we should remain mindful of the purpose of the statute in answering the present question.

In **Morril v. Haines**, 2 N.H. 246, and **In re Anderson**, 164 Wis. 1 159 N.W. 559 (1916), it was held that a member of the state legislature is a state officer. In **Jones v. Lockhart**, 76 Ariz. 390, 265 P. 2d 447 (1953), this was said:

"Members of the legislature are undoubtedly state officers. While elected from a single county, or a subdivision thereof, this fact cannot alter their official rank, which arises from the fact that the legislature is under our Constitution a co-ordinate branch of the state government. Certainly their duties concern the state at large, for the legislature is an instrumentality appointed by the state to exercise a part of its sovereign powers."

This ruling was reaffirmed in **Brown v. Superior Court**, 81 Ariz., 236, 303 P. 2d 990 (1956).

Even more to the point, in **Pitts v. Chilton County**, 27 Ala. App. 364, 173 So. 94, it was held that a member of the state legislature was a state officer within the meaning of a statute prohibiting state officers from taking contracts for work or services to be performed for a county.

A general discussion of the term "state officers" is contained in **State ex rel., Ulrick v. Sanchez**, 32 N.M. 265, 255 P. 2d 1077 (1926), as follows:

"The term "state officers" is sometimes construed as only the heads of the executive departments of the state elected by the people at large, such as Governor, Lieutenant Governor, State Treasurer, Attorney General, and the like, and it should be so construed when used without circumstances indicating any other intent. In its more

comprehensive sense it includes every person whose duty appertains to the state at large. The exact sense in which the term is used in any particular law must often be determined by ordinary rules for judicial construction."

If we could not deduce the intent of Section 72-8-4, supra, we would limit the term "state official" to the heads of the executive departments of government. But we know from the case of **Brown v. Bowling**, supra, that the purpose of the statute is to prevent dealing in tax-deeded property by those persons whose office or employment gives them the power to profit unduly or unfairly from such dealing. Few will deny that a state legislator occupies such an office. Therefore, it is our opinion that state legislators are "state officials" who may not be interested or concerned, directly or indirectly, in a contract to purchase lands or property held by the State of New Mexico under tax deed.