

## Opinion No. 71-36

March 1, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Mr. E. P. Ripley General Counsel Department of Education Education Building  
Santa Fe, New Mexico 87501

### QUESTIONS

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May a school board transfer a school bus transportation contract to the wife of a member of the local board making such a transfer?

#### CONCLUSION

Yes.

### OPINION

#### {\*52} ANALYSIS

Under Sections 73-8-15 and 77-19-1, N.M.S.A., 1953 Comp., a member of a local school board "shall not, directly or **indirectly**, . . . work under contract to the department of education, school district or public school with which he is associated or employed." (Emphasis added.) Opinion of the Attorney General No. 64-88, dated July 1, 1964, stated that Section 73-8-15, **supra**, is "squarely controlling" in determining that a member of a local school district board may not enter into a contract with the school district to drive a school bus on behalf of the district.

Since the laws mentioned above would prohibit a school board member from entering into such a "direct" contract, the issue in the instant case is whether an "indirect" contract results where the wife of a school board member enters into a contract with the board to drive a school bus.

The most obvious consideration in an analysis of the question is that of "community property." Under the community property laws of New Mexico [Sections 57-4-1 through 9, N.M.S.A., 1953 Comp.] the profits derived from the contract in question must be specified as either community or separate property. Only if such profits are deemed separate property of the wife can we determine that the contract will not result in an "indirect" contract with the school board member himself.

Section 57-4-1, **supra**, sets forth the general law of community property in the state:

" **Community property -- Source -- Presumptions.** -- All other real and personal property acquired after marriage by either husband or wife, or both, is community property; **but whenever any real or personal property, or any interest therein or encumbrance thereon is acquired by a married woman by an instrument in writing the presumption is that title is thereby vested in her as her separate property.** And if acquired by such married woman and any other person the presumption is that she takes the part acquired by her as a tenant in common, unless a different intention is expressed in the instrument; except, that when any such real or personal property is acquired by husband and wife by an instrument in writing in which they are described as husband and wife, unless a different intention is expressed in the instrument, the presumption is that such property is community property of said husband and wife. The presumptions in this section mentioned, are conclusive in favor of any person dealing in good faith and for valuable consideration with such married woman or her legal representatives or successor in interest and regardless of any change in her marital status after acquisition of said property." (Emphasis added.)

In our opinion with presumption of the above statute involving instruments in writing, it is possible that a contract between a school district and the wife of a school board member would not involve a violation of either Section 73-8-15, **supra** or Section 77-19-1, **supra**.

Further support for this position is found in Opinion of the Attorney {<sup>\*53</sup>} General No. 6361, dated January 18, 1956, on the basis of Section 73-12-31, N.M.S.A., 1953 Comp. (now repealed), stating that if a school bus contract was made out in both the name of the husband and wife and each drives a bus, both are eligible for state retirement benefits. Current regulations of the Educational Retirement Association allow the individual or individuals with whom the school bus contract is made to receive retirement benefits if they also personally drive a bus. Rule II, Section C (2) (11-19-65). If such a contract is deemed personal to the contracting party for retirement purposes, it is logical to conclude that for purposes of the two statutes in issue here, the school bus transportation contract between the school district and a wife of a member of the local board making the contract is personal to the wife. Under such circumstances no violation of either Section 73-8-15, **supra** or 77-19-1, **supra**, will result, as the school board member is neither "directly or indirectly" working under contract to his school district. Presumptions, of course, may be rebutted. So the contract truly has to be between the school board and the wife only, with the husband having no personal interest, pecuniary or otherwise, in the contract.

By: Oliver E. Payne

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