

Opinion No. 13-1071

July 5, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Honorable Alvan N. White, Superintendent of Public Instruction, Santa Fe, New Mexico.

SCHOOLS.

Member of Board of Education should not write insurance upon school buildings.

OPINION

{*243} I have before me your letter of the 2nd inst. enclosing another from Mr. A. C. Keinath, who appears to be Clerk of a Board of Education at some place in New Mexico, the name of which does not appear.

You ask my opinion as to the application of Chapter 70 of the Laws of 1913, to the matters mentioned in the letter enclosed.

In that letter, two matters are presented for consideration, one of which is as to whether a member of the board is prohibited from writing insurance on school buildings, and the other is as to whether a member may sell school supplies, such as chalk, erasers, blackboards, etc., to the board.

The portion of the statute to be considered in this connection is that which prohibits members of boards of education and school directors "from acting as the agent for any person or firm engaged in the selling of school furniture, apparatus, etc., or to receive any commission attending the purchase of such furniture, apparatus, etc., for use in their respective districts;" and also the next clause by which "all persons identified in an official capacity with the public schools, or with the higher educational institutions, supported in whole or in part by the public funds of this state, are hereby prohibited from being a party, directly or indirectly, to any contract, or interested in any contracts in connection with the operation or maintenance of such public schools or higher educational institutions."

The first of these clauses must be the one, if any, which, it is thought, may interfere with the purchase, from a member of the board, of school supplies. The intention of the legislature was, undoubtedly, to prevent any member of a board of education, or school directors, making use of his position for his own personal benefit, and the spirit of the act would forbid the purchase, from any member of such a board, any sort of school supplies in the way of ordinary business, although the strict letter of the act merely applies to acting as agent for anyone who sells such things, or to receiving any commission on such purchase. It might be said that this would not forbid {*244} buying

directly from a member that which he has for sale, and permitting him to make his ordinary profit, but I do not favor any such construction of the statute. I think it would be safe only for the board to obtain, through one of its members, such supplies when any are furnished without his receiving any personal profit on the transaction, and I judge, from what Mr. Keinath writes, that this is the fact, as he says that they are able to buy supplies from one member at a less price than they could obtain if they ordered themselves from outside dealers.

The second clause is the one applicable to the consideration of the insurance policies. An insurance policy is certainly a contract, and all persons identified in an official capacity with the public schools are prohibited from being parties to any contract, or interested in any contract, in connection with the operation or maintenance of such public schools. I have tried to convince myself that the insurance on school buildings is not a part of the operation or maintenance of the schools, but I have not been able entirely to do so. In the ordinary meaning of the words, insurance is certainly not any part of the operation of the schools, but it is so closely identified with the preservation of school property, or with indemnification for probable loss of school property, that I believe it is properly a part of the maintenance of schools. It is paid for out of school funds and this would not be proper unless the expense is one for the maintenance of the schools. I think it would be unsafe for any member of the board to write insurance upon the school buildings under the charge and control of the board.

I return Mr. Keinath's letter herewith.