

Opinion No. 13-1134

November 13, 1913

BY: H. S. CLANCY, Assistant Attorney General

TO: Honorable James A. French, State Highway Commissioner, Santa Fe, New Mexico.

COUNTY ROAD BOARD.

Unlawful for county road board to pay wages to one of its members.

OPINION

{*315} I am in receipt of your communication of the 7th inst. asking for the opinion of this office upon the following question:

Is it unlawful for the County Road Boards to hire and pay daily wages to one of the members of the Road Board while such member is acting as a superintendent, foreman, or boss?

I answer this question in the affirmative, and will briefly state my reasons therefor.

The members of the County Road Board are public officers and {*316} it is their duty to act solely for the public interest without reference to their own and for such a board to enter into a contract with one of its members for the performance of any labor, or to furnish any supplies, would be improper, inasmuch as the member so employed would necessarily be called upon to audit and pay an account in his own favor. This matter has been passed upon by a number of courts, and a reference to a few of these cases may be instructive.

In the case of the People vs. The Township Board of Overysell, 11 Mich., 226, the court said:

"All public officers are agents, and their official powers are fiduciary. They are trusted with public functions for the good of the public; to protect, advance and promote its interests, and not their own. And, a greater necessity exists than in private life for removing from them every inducement to abuse the trust reposed in them, as the temptations to which they are sometimes exposed are stronger, and the risk of detection and exposure is less. A judge cannot bear and decide his own case, or one in which he is personally interested. He may decide it conscientiously and in accordance with law. But that is not enough. The law will not permit him to reap a personal advantage from an official act performed in favor of himself."

Again, in the case of the People of the State of New York vs. Thomas, 38 Barb. 287, it is said in the syllabus:

"It is a principle of universal application, as well as of public decency, that a public trust committed to an individual by name shall not be discharged for his own benefit or to promote his private interest."

In the State of Oregon vs. Hoyt, 2 Oreg. 249, the question involved was that of the office of marshal of the city of Portland. It appeared that one Rosenheim, who was a member of the common council of the city, secured his election by that body to the office of city marshal and asserted his right to discharge the duties of both offices and to receive the emoluments connected with the office of marshal. The Supreme Court of Oregon took a different view of the case and in holding against Rosenheim made use of the following language:

"The marshal is the executive officer of the council, and has to settle his accounts for fees and services with that body; and it would not be competent for him to pass on his own accounts, and vote money out of the city treasury into his own pocket. It is contrary to the policy of the law for an officer to prostitute his official position by using his official appointing power to place himself in office."

I believe that there can be no doubt that the opinion of this office, that a member of a county road board should not be employed by the board for any purpose, is the correct one, and you are therefore advised accordingly.