

Opinion No. 15-1696

December 14, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Bascom-French Company, Las Cruces, N. M.

Interest of wife, who is a school officer, in a school contract entered into by her husband.

OPINION

{*265} Your letter of the 7th inst. has not been sooner answered on account of my absence from Santa Fe in attendance upon court at Albuquerque.

I would like very much if you would make a test case of this school-house contract and obtain a decision of courts on the subject as I can see that you never will feel satisfied unless there were {*266} made a judicial decision. Possibly you would not be satisfied even if the court should decide in harmony with my opinion.

You say that your "lawyers hold that the community laws of this state lay the foundation for the fact that the wife certainly has a pecuniary interest in any contract which her husband may enter into." The opinion of your lawyers, I am confident, is based upon a superficial examination of the law. The community idea comes to us from the civil law and has not been seriously changed in its character by any legislation. Our supreme court has distinctly held that the interest or right of the wife is a mere expectancy and possesses none of the characteristics of an estate, either in law or equity. If she dies before her husband that expectancy never can ripen into any estate or ownership of any kind. It is true that our legislature has imposed some limitations upon the power of the husband to convey real estate which is part of the community property, but the essential character of the community property system has not been changed.

It may well happen in some other case that, as you say, there may be "unscrupulous work" in matters of this kind if my opinion is correct, but my opinion is not based upon the possibilities of something being done which is wrong, but upon what I find in the statute. The remedy, if any is necessary, would be through new legislation. If we should have legislation to the effect that a contract made with a school board by either a wife or a husband, would be void if the other one of the married pair should be a member of the board, why should we not go further and say that any such contract must be void if a member of the board is related by blood or marriage to the contractor? And where would we draw the line as to such relationship?

Your further question as to stockholders in your company being eligible to serve on school boards, their interest in the company however small it may be, would be of a pecuniary character and from any point of view would fall within the prohibition of the

statute, although it may be true, as you say, that their relations are not as close with the company as they would be with their husbands. The closeness of the relations between persons is not involved in the consideration of this question. The relations between intimate friends may be of the closest character, and yet the mere fact that one of them is a member of such a board would not make him fall within the prohibition of the statute. He might be devoted to his friend to such an extent as to influence his official action, but the prohibition merely is as to his being "interested in any contract," and the only test to be applied is one of a pecuniary character.